



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

O. P. No. 35 of 2023
And
I. A. Nos. 8 and 9 of 2023
Dated 28.10.2024

Present

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

Between:

M/s Kakatiya Cement Sugar & Industries Limited,
1-10-140 / 1, "GURUKRUPA", Ashok Nagar,
Hyderabad, Telangana – 500 020.

... Petitioner.

AND

1. Northern Power Distribution Company of Telangana Limited,
Corporate Office, H.No.2-5-31/2, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal 506 001.

2. Telangana State Transmission Corporation Limited,
(TSTRANSCO), Vidyut Soudha, Somajiguda,
Hyderabad – 500 082.

... Respondents.

The petition came up for hearing on 18.12.2023, 04.04.2024, 06.05.2024 and 06.06.2024. Sri. Vikram Pooserla, Senior Advocate along with Ms. Achala Siri, counsel for petitioner appeared on 18.12.2023 and 06.05.2024, Ms. Achala Siri, counsel for petitioner along with Sri. Kaushik Soni, Advocate for petitioner appeared on 04.04.2024 and Ms. Achala Siri, counsel for petitioner appeared on 06.06.2024. Sri. Mohammad Bande Ali, Law Attaché being the representative of the respondents appeared on 18.12.2023, 04.04.2024, 06.05.2024 and 06.06.2024. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Kakatiya Cement Sugar and Industries Limited (petitioner) has filed a petition under section 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) questioning the recovery of grid support charges and consequential reliefs. The averments of the petitioner are extracted below.

- a. It is stated that the petitioner is a public limited company incorporated under the Companies Act, 1956 (Act, 1956), having its registered office at 1-10-140/1, Gurukrupa, Ashok Nagar, Hyderabad - 500020 and is engaged in the production of cement, sugar and generation of power all of which are power intensive.
- b. It is stated that in view of certain encouraging incentives of the erstwhile Government of Andhra Pradesh (GoAP) as under the G. O. Ms. No. 93 dated 18.11.1997, the petitioner had proposed to set up a captive power plant (CPP) with a capacity of 16.7 MW for captive production and utilization of the electrical energy. Upon the sanction provided by Non Conventional Energy Development Corporation of Andhra Pradesh (NEDCAP) vide its letter dated 09.06.2000, the petitioner had invested huge amounts for captive production and utilisation of the electrical energy for its own industrial purposes and set up a non-conventional energy plant with a capacity to generate 16.7 MW of power for consumption as well as sale.
- c. It is stated that thereafter, the petitioner entered into a power purchase and captive wheeling agreement dated 19.02.2002 (PPWA) with the erstwhile Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) (now the Telangana State Transmission Corporation Limited that is respondent No. 2 herein) (TGTRANSCO), in accordance with the provisions of the Andhra Pradesh Electricity Reform Act, 1998 (Reforms Act, 1998) and in line with the incentives allowed for wheeling and banking and charges for captive consumption in various government orders. The PPWA, as amended vide amendment agreement dated 14.10.2004, was valid till 11.04.2022.
- d. It is stated that as per Article 2.5 of the PPWA, the petitioner was liable to pay grid support charges as may be determined by the Commission

in its tariff orders from time to time.

- e. It is stated that the Commission, through retail supply tariff orders (RSTOs), had year-on-year, determined the grid support charges (GSC) payable for FY 2002-03 till FY 2008-09. From the RSTO for the FY 2009-10 onwards, the Commission had withdrawn levy of GSC, and the same was not mentioned in the tariff orders. Thus, the GSC were payable on demand by the company during the FYs 2002 - 03 to 2008 - 09 as per the RSTOs. However, no claim for payment of the GSC was made by either of the TGNPDCL and TGTRANSCO herein as per the PPWA at any point in time during the said period nor within a period of three years thereafter.
- f. It is stated that while things stood thus, for the very first time, the TGNPDCL raised a demand vide notice dated 07.01.2021 requesting to pay an amount of Rs. 20,53,85,723/- towards GSC allegedly payable for the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020 within a period of 15 days from the date of receipt of the said notice.
- g. It is stated that in response to the afore-said notice, the petitioner had addressed a reply dated 15.01.2021 denying such a liability and also stating that the claim is barred by limitation as the petitioner was never demanded any amount when it was due.
- h. It is stated that thereafter, the following correspondence was exchanged between the parties:

Date	Details of Correspondence
11.02.2021	The TGNPDCL addressed a letter informing that the demanded amount of GSC of Rs. 20,53,85,723/- along with interest for subsequent periods that is from 01.01.2021 till date of amount would be recovered from the power bills.
03.03.2021	The petitioner addressed a reply disputing such recovery and reiterating its stance that the claim in itself is barred by limitation and the question of interest does not arise at all. The TGNPDCL was requested to withdraw its demand letters.
24.03.2021	The TGNPDCL addressed a letter to the petitioner informing

Date	Details of Correspondence
	that the contentions of the petitioner are untenable and request for withdrawal of its demand letters cannot be considered.

- i. It is stated that the petitioner has received no further intimation from the TGNPDCL on demand / claim in respect of the GSC allegedly payable by the petitioner and consequently, the petitioner was under the assumption that the claim of the respondent was at a stand-still and no further action was being taken by the TGNPDCL for the alleged recovery.
- j. It is stated that while things stood thus, having not received any payment for the monthly power bills raised by the petitioner on TGTRANSCO during the period from November 2018 till January 2021 for power sold by the petitioner under the PPWA, the petitioner had addressed a letter dated 23.02.2021 to TGTRANSCO requesting to release payment towards outstanding dues of Rs. 9,48,67,464/-. However, the same was not considered and no payments were released. Aggrieved, the petitioner was constrained to file Writ Petition No. 10458 of 2021 before the Hon'ble High Court for the state of Telangana challenging the action of TGTRANSCO in not releasing the payments towards outstanding power bills. By way of an interim order dated 22.04.2021, the Hon'ble Court had directed the TGTRANSCO and the state DISCOMs including the TGNPDCL herein to consider the petitioner's representation dt. 23.02.2021 in respect of the power bills due and to pass appropriate orders.
- k. It is stated that pursuant to the said interim order of the Hon'ble High Court, the Telangana State Power Co-ordination Committee (TPCC), acting for the TGNPDCL, had issued proceedings vide Lr. No. FA & CCA / Dy. CCA (PP & S) / SAO / (PP & S) / AAO-4 / D. No. 267 / 21, dated 22.06.2021, whereby it is informed that payments in respect of the power purchase bills were withheld by the respondents on account of non-establishment of data acquisition system (DAS) for real-time data integration as per applicable standards.

- l. It is stated that in furtherance to the proceedings dated 22.06.2021, the petitioner had undertaken necessary steps for installation of DAS at its plant so as to seek release of outstanding amounts towards power purchase bills. While so, certain correspondence was exchanged between the petitioner and TGPC in respect of renewal of PPA, whereby the petitioner suddenly came to learn that the claim of GSC is still shown as pending arrears against the petitioner. As per the letter dated 02.09.2022 received from TGPC, the petitioner is alleged to have been due a sum of Rs. 12,13,82,703/- towards GSC along with interest from 01.01.2021 to 24.03.2021. From this, it appeared that the respondents had purported to recover / adjust the GSC allegedly payable by the petitioner from the power purchase bills due and payable by TGNPDCL, which is absolutely arbitrary, and illegal.
- m. It is stated that upon successful establishment of DAS and its installation, the Chief Engineer (SLDC), acting for TGNPDCL, through proceedings in Lr. No. CE (SLDC) / SE (SLDC) / DE (SCADA) / F, KKTC / D. No. 12 dated 12.04.2023, had confirmed that the real time data of 16.7 MW bagasse based co-generation plant at the petitioner's factory has been integrated to SLDC on 04.04.2023 and also confirmed that the data is getting reported to SLDC. This was also intimated to the TGNPDCL, but to no avail as the outstanding amounts towards power purchase bills due to be released have not yet been released.
- n. It is stated that it is pertinent to bring to the attention of the Commission that the GSC and interest thereon claimed by the TGNPDCL is continuously shown as arrears in relation to the petitioner, consequent to which the petitioner is denied permanent supply of power under HT - I category – I by the TGNPDCL as well as renewal of PPA by the TGTRANSCO and TGPC.
- o. It is stated that in the year 1999 - 2000, erstwhile APTRANSCO filed O. P. No. 1 of 1999 before the Commission seeking levy of GSCs on HT - I industrial consumers who were operating CPP in parallel with the grid. The Commission issued a public notice and heard various objectors as well as APTRANSCO before delivering its verdict. The Commission, vide order dated 08.02.2002, approved the proposals of APTRANSCO to levy

GSC where parallel operation of CPPs was permitted, on the difference between the total capacity of the CPP in kVA and the contracted maximum demand in kVA with the licensee and all other sources of supply, at a rate equal to 50% of the prevailing demand charge for HT consumers; the Commission further directed that in case of CPPs exporting firm power to APTRANSCO, the capacity, which is dedicated to such export, will also be additionally subtracted from the CPP capacity. The levy was made applicable from the Financial Year 2002 - 03 onwards.

- p. It is stated that the said order dated 08.02.2002 was challenged by various generators before the erstwhile Hon'ble High Court of Andhra Pradesh. In the meantime, for the FY 2003 - 04, the Commission in its retail supply tariff order (RSTO) dated 24.03.2003, determined the GSC for FY 2003 - 04 on the same lines as O. P. No. 1 of 1999, but the levy was made subject to the matters which were sub-judice before the Hon'ble High Court of Andhra Pradesh at that time.
- q. It is stated that by a common judgment and order in C. M. A. No. 1104 / 2002 and batch writ petitions dated 02.05.2003 reported in [2003 (5) ALT 408 (DB)], the Hon'ble High Court allowed the writ petitions and the C. M. As. filed by the generators and set aside the order in O. P. No. 1 of 1999 dated 08.02.2002. APTRANSCO preferred an appeal against the judgement of the Hon'ble High Court dated 02.05.2003 before the Hon'ble Supreme Court vide Civil Appeal No. 8969 of 2003 and batch.
- r. It is stated that while so, the Act, 2003 was brought into force with effect from 10.06.2003. Under the provisions of the Act 2003 it was not permissible for APTRANSCO as the state transmission utility to engage in activities of trading in electricity. Consequently, the state government notified the third transfer scheme in G. O. Ms. No. 58, Energy (Power-III) dated 07.06.2005 in exercise of powers conferred by the Reforms Act, whereby the generating capacities including all obligations of APTRANSCO to purchase unallocated energy stood transferred by operation of law to various DISCOMs, including the TGNPDCL herein. In pursuance to the said transfer scheme, the PPA was assigned in favour of the DISCOMs, including the TGNPDCL herein.

- s. It is stated that for the FY 2004-05 vide common RSTO dated 23.03.2004, for APTRANSCO and the four DISCOMs, including the TGNPDCL herein, the Commission again determined the GSC on the same lines as O. P. No. 1 of 1999, however the levy of the same was made subject to the appeals before the Hon'ble Supreme Court. In the following RSTO for the FY 2005-06 dated 22.03.2005, the FY 2006-07 dated 23.03.2006, the FY 2007-08 dated 20.03.2007, and the FY 2008-09 dated 20.03.2008, similar orders regarding GSC were passed by the Commission wherein GSC was determined but not levied in view of the pendency of the appeals before the Hon'ble Supreme Court. Pertinently, in all these years, there was neither any revenue requirement that was sought by the respondent in view of the costs incurred nor was any income estimated relating to GSCs. From the RSTO for the Financial Year 2009-10 onwards, the Commission had withdrawn levy of GSC, and the same was not mentioned in the tariff orders.
- t. It is stated that in the meantime, the Hon'ble Supreme Court in Civil Appeals No. 8969 of 2003 and batch, vide order dated 03.08.2005, referred the matters to a three-judge bench. Civil Appeal Nos. 4569 of 2003 and batch were filed by APTRANSCO relating to the imposition and determination of wheeling charges by the Commission in the FY 2002 - 03, which were challenged by various generators. It is pertinent to note that the petitioner was never involved in either the public hearing conducted by the Commission in O. P. No. 1 of 1999 on 15.03.2001, or in C. M. A. No. 1104 / 2002 and batch, or in Civil Appeals No. 8969 of 2003 and batch and no demand of GSC was ever made on the petitioner.
- u. It is stated that subsequently, Civil Appeal Nos. 4569 of 2003 and batch as well as Civil Appeals No. 8969 of 2003 and batch were disposed by way of a common judgement dated 29.11.2019 wherein both sets of appeals were allowed, and the order of the Commission in O. P. No.1 of 1999 was restored.
- v. It is stated that the claim of GSC as against the petitioner appears to have been a consequence of the common judgement dated 29.11.2019 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 4569 of 2003 and batch as well as Civil Appeals No. 8969 of 2003 and batch, whereby

the order of the Commission in O. P. No. 1 of 1999 was restored. However, such claim is time-barred and not tenable under law. It is brought to the knowledge of the petitioner herein and it believes it to be true that the TGNPDCL had issued demand notices to other CPPs from 2002 onwards, whereas the petitioner for the first time received such notice in the year 2021 only. Thus, the claim of GSC along with interest till date of payment is time-barred and thus, unsustainable in law. Further, the interest being charged by the respondent on the GSC allegedly payable by the petitioner, with the demand having been made for the first time only on 07.01.2021, after a lapse of 11 years, is without any basis under law and void.

x. It is stated that on account of the arbitrary and high-handed actions of the TGNPDCL, the petitioner is subjected to grave loss and its statutory rights and fundamental rights guaranteed under the constitution have been violated.

y. It is stated that being left with no other alternate and efficacious remedy, the petitioner is constrained to approach this Hon'ble Commission on the following grounds:

i. That the notice dated 07.01.2021 issued by the TGNPDCL demanding payment of GSC for the period from FY 2002-03 till FY 2008-09 along with interest with effect from 01.04.2002 is manifestly arbitrary and illegal on account of such claim being time barred.

ii. That the claim for GSCs raised by the respondent No. 1 is subject to the law of limitation. The grid support system was provided by the TRANSCO during the FYs 2002 - 03 to 2008 - 09 and the period of limitation for claiming GSC for each such financial year shall expire at the end of three years from the corresponding dates of provision of service. Thus, the GSC were payable on demand by the company during the FYs 2002 - 03 to 2008 - 09 or within a period of three years from the end of the each of such financial year. No claim for payment of the GSC was made by the TGNPDCL herein or the TGTRANSCO as per the PPWA at any point in time during the said period nor within three years from the

said period. The demand for GSC for the period from FY 2002 - 03 till 2008 - 09 has made against the petitioner for the first time only on 07.01.2021 vide notice dated the same issued by the TGNPDCL. Therefore, the claim for GSC is clearly barred by limitation.

- iii. That the demand / claim of GSC for the period from 2002-03 to 2008-09, having been made only in 2021, after a lapse of 11 years, clearly suffers from lapses in relation to prescribed time under section 56 (2) of the Act 2003.
- iv. That as per section 56 (2) of the Act 2003, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. Indisputably, the amount claimed towards GSC were never shown as arrears in the account of the petitioner for the electricity supplied. Thus, the same are not recoverable by the TGNPDCL as against the petitioner.
- v. That it is brought to the knowledge of the petitioner herein and it believes it to be true that the TGTRANSCO and TGNPDCL had issued demand notices to other CPPs from 2002 onwards, whereas the petitioner for the first time received such notice in the year 2021 only. It is settled position of law that where there is no acknowledgement of debt by the debtor within the prescribed period and the debt becomes time-barred, such debt cannot be claimed by the creditor. Thus, the claim for GSC for the period from FY 2002-03 to FY 2008-09 is time-barred.
- vi. That without prejudice to the above, the levy of surcharge / interest on the GSC allegedly payable by the petitioner for the period from FY 2002 - 03 till 2008 - 09 is manifestly arbitrary and illegal. It is settled principle of law that interest is payable only when there is a failure to pay as per liability determined. Reliance is placed on ***NTPC Limited. v. M.P. SEB, reported in 2011 (15) SCC 580, and CIT v. Ranchi Club Limited., 2013 (15) SCC 545.*** It is stated that as elaborated above, the petitioner was demanded

GSC for the very first time vide notice dated 07.01.2021 and thus, the liability to pay interest thereon with effect from 2002 till such date does not arise at all.

- vii. That the common judgment and order dated 29.11.2019 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 4569 of 2003 and batch as well as Civil Appeals No. 8969 of 2003 and batch and batch petitions cannot, in any way, be construed to have a retrospective effect so as to impose interest / surcharge on the GSCs claimed by the respondent No. 1.
- viii. That the TGNPDCL is raising arbitrary, vague, illegal and time barred claims pertaining to GSC allegedly payable by the petitioner so as to cause severe loss to the petitioner and make unlawful gains to themselves.
- ix. That the notice dated 11.02.2021 issued by the TGNPDCL purporting to recover the GSC from power purchase bills raised by the petitioner on the respondent No. 2 is highhanded, absolutely arbitrary and void, and thus, the notice ought to be set aside.
- x. That the TGNPDCL's claim of GSC has no bearing on or connection with the outstanding amounts payable by the TGTRANSCO in respect of the power purchase bills raised by the petitioner under the PPA. That the claim of TGNPDCL towards GSC and the claim of the petitioner towards power purchase bills are distinct claims and the TGTRANSCO as well as TGNPDCL cannot act hand-in-glove to the prejudice of the petitioner. The respondents' purported action of recovering the GSCs along with interest through the power bills is highhanded, arbitrary and illegal.
- xi. That the TGTRANSCO and TGNPDCL are acting in concert with each other and resorting to highhanded and arbitrary actions, putting the petitioner at severe losses, which cannot be adequately compensated.

- xii. The alternative or inconsistent pleas, if any, are taken without prejudice to each other and the petitioner reserve the right to raise additional grounds / pleas / questions of law at the time of hearing.
- z. It is stated that owing to the petitioner's non-payment of the GSC demanded by the TGNPDCL, as the same is vehemently disputed by the petitioner for reasons stated above, the petitioner is being arbitrarily denied permanent supply of power at its plant as well as renewal of PPA.
2. The petitioner has sought the following prayers in the original petition.
- “a. To declare that the claim of grid support charges for the period from FY 2002 - 03 till FY 2008 - 09 along with interest calculated with effect from FY 2002 - 03 allegedly payable by the petitioner, demanded vide Lr. No. CGM / IPC & RAC / GM / DE (IPC / AO (IPC) / AAO / F. Grid Support / D. No. 544 / 20, dated 07.01.2021 issued by the TGNPDCL is time-barred, illegal and void.
- b. To consequently, direct that the petitioner is not liable to pay grid support charges for from FY 2002-03 till FY 2008-09 along with interest, by setting aside the notice bearing Lr. No. CGM / IPC & RAC / GM / DE(IPC) / AO (IPC) / AAO / F. Grid Support / D.No.544 / 20, dated 07.01.2021 issued by the respondent No.1.
- c. To consequently declare that the respondent No.1 is not entitled to recover the grid support charges for the period from FY 2002 - 03 till FY 2008 - 09 along with interest from the power purchase bills due and payable by respondent No. 2 to the petitioner by setting aside the letter bearing Lr. No. CGM / IPC&RAC / GM / DE (IPC) / AO (IPC) / AAO / F. Grid Support / D. No. 612 / 20, dated 11.02.2021 issued by the respondent No.1.”
3. The petitioner has also filed an interlocutory application under section 94 (2) of the Act, 2003 r/w TSERC Regulation No. 2 of 2015 seeking interim direction to the respondent not to take any coercive steps against the petitioner in pursuance to the notice bearing Lr. No. CGM / IPC & RAC / GM / DE (IC / AO (IPC) / AAO / F. Grid Support / D. No. 612 / 20, dated 11.02.2021 including recovery of the grid support charges for the period from FY 2002 - 03 to FY 2008 - 09 along with interest from the

power purchase bills due and payable by TGTRANSCO to the petitioner. The pleadings of the application are extracted below.

- a. It is stated that the petitioner is a public limited company incorporated under the Act, 1956, having its registered office at 1-10-140/1, Gurukrupa, Ashok Nagar, Hyderabad 500 020 and is engaged in the production of cement, sugar and generation of power all of which are power intensive.
- b. It is stated that in view of certain encouraging incentives of the erstwhile GoAP as under the G. O. Ms. No. 93 dated 18.11.1997, the petitioner had proposed to set up a CPP with a capacity of 16.7 MW for captive production and utilization of the electrical energy. Upon the sanction provided by NEDCAP vide its letter dated 09.06.2000, the applicant had invested huge amounts for captive production and utilisation of the electrical energy for its own industrial purposes and set up a non-conventional energy plant with a capacity to generate 16.7 MW of power for consumption as well as sale.
- c. It is stated that thereafter, the petitioner entered into a PPWA dated 19.02.2002 with the erstwhile APTRANSCO and now the TSTRANSCO. in accordance with the provisions of the Reforms Act, 1998 and in line with the incentives allowed for wheeling and banking and charges for captive consumption in various government orders. The PPWA, as amended vide amendment agreement dated 14.10.2004, was valid till 11.04.2022.
- d. It is stated that as per Article 2.5 of the PPA, the petitioner was liable to pay GSC as may be determined by the Commission in its tariff orders from time to time.
- e. It is stated that the Commission, through retail supply tariff orders (RSTOs), had year-on-year, determined the GSC payable for FY 2002 - 03 till FY 2008 - 09. From the RSTO for the FY 2009-10 onwards, the Commission had withdrawn levy of GSC and the same was not mentioned in the tariff orders. Thus, the GSC were payable on demand by the company during the FYs 2002 - 03 to 2008 - 09 as per the RSTOs. However, no claim for payment of the GSC was made by the

TSTRANSCO and TGNPDCL herein as per the PPWA at any point in time during the said period nor within a period of three years thereafter.

- f. It is stated that while things stood thus, for the very first time, the TGNPDCL issued a demand notice dated 07.01.2021 requesting to pay an amount of Rs. 20,53,85,723/- towards GSCs allegedly payable for the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020 within a period of 15 days from the date of receipt of the said notice.
- g. It is stated that in response to the aforesaid notice, the applicant had addressed a reply dated 15.01.2021 denying such a liability and also stating that the claim is barred by limitation as the petitioner was never demanded any amount when it was due.
- h. It is stated that thereafter, the following correspondence was exchanged between the parties:

Date	Details of Correspondence
11.02.2021	The TGNPDCL addressed a letter informing that the demanded amount of GSC of Rs. 20,53,85,723/- along with interest for subsequent periods that is from 01.01.2021 till date of recovery would be recovered from the power bills.
03.03.2021	The applicant addressed a reply disputing such recovery and reiterating its stance that the claim in itself is barred by limitation and the question of interest does not arise at all. The TGNPDCL was requested to withdraw its demand letters.
24.03.2021	The TGNPDCL addressed a letter to the petitioner informing that the contentions of the Petitioner are untenable and request for withdrawal of its demand letters cannot be considered.

- i. It is stated that the petitioner has received no further intimation from the TGSPDCL on demand / claim in respect of the GSC allegedly payable by the applicant and consequently, the applicant was under the assumption that the claim of the TGNPDCL was at a stand-still and no

further action was being taken by the TGNPDCL for the alleged recovery.

- j. It is stated that while things stood thus, having not received any payment for the monthly power bills raised by the applicant on TGTRANSCO during the period from November 2018 till January 2021 for power sold by the petitioner under the PPWA, the petitioner had addressed a letter dated 23.02.2021 to TGTRANSCO requesting to release payment towards outstanding dues of Rs. 9,48,67,464/-. However, the same was not considered and no payments were released. Aggrieved, the applicant was constrained to file writ petition W. P. No. 10458 of 2021 before the Hon'ble High Court challenging the action of TGTRANSCO in not releasing the payments towards outstanding power bills. By way of an interim order dated 22.04.2021, the Hon'ble Court had directed the TGTRANSCO and the state DISCOMs including the TGNPDCL herein to consider the applicant's representation dated 23.02.2021 in respect of the power bills due and to pass appropriate orders.
- k. It is stated that pursuant to the said interim order of the Hon'ble High Court, the TGPC, acting for the TGNPDCL, had issued proceedings vide Lr. No. FA & CCA / Dy. CCA (PP & S) / SAO / (PP & S) / AAO-4 / D. No. 267 / 21, dated 22.06.2021, whereby it is informed that payments in respect of the power purchase bills were withheld by the TGTRANSCO and TGNPDCL respondents on account of non-establishment of DAS for real-time data integration as per applicable standards.
- l. It is stated that in furtherance to the proceedings dated 22.06.2021, the petitioner had undertaken necessary steps for installation of DAS at its plant so as to seek release of outstanding amounts towards power purchase bills. While so, certain correspondence was exchanged between the petitioner and TGPC in respect of renewal of PPWA, whereby the applicant suddenly came to learn that the claim of GSC is still shown as pending arrears against the applicant. As per the letter dated 02.09.2022 received from TGPC acting for the TGTRANSCO, the petitioner is alleged to have been due a sum of Rs. 12,13,82,703/- towards GSC along with interest from 01.01.2021 to 24.03.2021. From

this, it appeared that the TGTANSCO and TGNPDCL had purported to recover / adjust the GSC allegedly payable by the applicant from the power purchase bills due and payable by TGTRANSCO, which is absolutely arbitrary, and illegal.

- m. It is stated that upon successful establishment of DAS and its installation, the Chief Engineer (SLDC), acting for TGTRANSCO, through proceedings in Lr. No. CE (SLDC) / SE (SLDC) / DE (SCADA) / F, KKTC / D. No. 12 dated 12.04.2023, had confirmed that the real time data of 16.7 MW bagasse-based cogeneration plant at the applicant's factory has been integrated to SLDC on 04.04.2023 and also confirmed that the data is getting reported to SLDC. This was also intimated to the TGTRANSCO, but to no avail as the outstanding amounts towards power purchase bills due to be released have not yet been released.
- n. It is stated that it is pertinent to bring to the attention of the Commission that the GSC and interest thereon claimed by the TGTRANSCO and TGNPDCL is continuously shown as arrears in relation to the petitioner, consequent to which the petitioner is denied permanent supply of power under HT category – I by the TGTRANSCO and TGNPDCL as well as renewal of PPWA by the TGTRANSCO and TGNPDCL.
- o. It is stated that the claim of GSC as against the applicant appears to have been a consequence of the common judgement dated 29.11.2019 passed by the Hon'ble Supreme Court in Civil Appeal Nos.4569 of 2003 and batch as well as Civil Appeals No. 8969 of 2003 and batch, whereby the order of the Hon'ble Commission in O. P. No. 1 of 1999 was restored. However, such claim is time-barred and not tenable under law. It is brought to the knowledge of the applicant herein and it believes it to be true that the TGNPDCL had issued demand notices to other CPPs from 2002 onwards, whereas the petitioner for the first time received such notice in the year 2021 only. Thus, the claim of GSC along with interest till date of payment is time-barred and thus, unsustainable in law. Further, the interest being charged by the TGNPDCL on the GSC allegedly payable by the applicant, with the demand having been made for the first time only on 07.01.2021, after a lapse of 11 years, is without any basis under law and void.

- p. It is stated that on account of the arbitrary and high-handed actions of the TGNPDCL, the petitioner is subjected to grave loss and its fundamental rights guaranteed under the constitution have been violated.
- q. It is stated that being left with no other alternate and efficacious remedy, the applicant is constrained to approach the Commission on the following grounds:
- i. That the notice dated 07.01.2021 issued by the TGNPDCL demanding payment of GSC for the period from FY 2002 - 03 till FY 2008 - 09 along with interest with effect from 01.04.2002 is manifestly arbitrary and illegal on account of such claim being time barred.
 - ii. That the claim for GSC raised by the TGNPDCL is subject to the law of limitation. The GSC was provided by the TRANSCO during the FYs 2002 - 03 to 2008 - 09 and the period of limitation for claiming GSC for each such financial year shall expire at the end of three years from the corresponding dates of provision of service. Thus, the GSC were payable on demand by the applicant during the FYs 2002 - 03 to 2008 - 09 or within a period of three years from the end of the each of such financial year. No claim for payment of the GSC was made by the respondent No. 1 herein or the respondent No. 2 as per the PPA at any point in time during the said period nor within three years from the said period. The demand for GSC for the period from FY 2002 - 03 till 2008 -- 09 has made against the petitioner for the first time only on 07.01.2021 vide notice dated the same issued by the TGNPDCL. Therefore, the claim for GSC is clearly barred by limitation.
 - iii. That the demand / claim of GSC for the period from 2002 - 03 to 2008 - 09, having been made only in 2021, after a lapse of 11 years, clearly suffers from lapses in relation to prescribed time under section 56 (2) of the Act 2003.
 - iv. That as per section 56 (2) of the Act, 2003, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has

been shown continuously as recoverable as arrear of charges for electricity supplied. Indisputably, the amount claimed towards GSC were never shown as arrears in the account of the petitioner for the electricity supplied. Thus, the same are not recoverable by the TGNPDCL as against the petitioner.

- v. That it is brought to the knowledge of the petitioner herein and it believes it to be true that the TGTRANSCO and TGNNPDCL had issued demand notices to other CPPs from 2002 onwards, whereas the petitioner for the first time received such notice in the year 2021 only. It is settled position of law that where there is no acknowledgement of debt by the debtor within the prescribed period and the debt becomes time barred, such debt cannot be claimed by the creditor. Thus, the claim for GSC for the period from FY 2002-03 to FY 2008-09 is time barred.
- vi. That without prejudice to the above, the levy of surcharge / interest on the GSC allegedly payable by the petitioner for the period from FY 2002-03 till 2008-09 is manifestly arbitrary and illegal. It is settled principle of law that interest is payable only when there is a failure to pay as per liability determined. Reliance is placed on ***NTPC Limited. v. M.P. SEB as reported in 2011 (15) SCC 580*** and ***CIT v. Ranchi Club Limited*** as reported in ***2013 (15) SCC 545***. It is stated that as elaborated above, the applicant was demanded GSC for the very first time vide notice dated 07.01.2021 and thus, the liability to pay interest thereon with effect from 2002 till such date does not arise at all.
- vii. That the common judgment and order dated 29.11.2019 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 4569 of 2003 and batch as well as Civil Appeals No.8969 of 2003 and batch of petitions cannot, in any way, be construed to have a retrospective effect so as to impose interest / surcharge on the GSC claimed by the TGNPDCL.
- viii. That the TGNPDCL is raising arbitrary, vague, illegal and time barred claims pertaining to GSC allegedly payable by the

- applicant so as to cause severe loss to the applicant and make unlawful gains to themselves.
- ix. That the notice dated 11.02.2021 issued by the TGNPDCL purporting to recover the GSC from power purchase bills raised by the applicant on the TGTRANSCO is high-handed, absolutely arbitrary and void, and thus, the notice ought to be set aside.
- x. That the TGNPDCL's claim of GSC has no bearing on or connection with the outstanding amounts payable by the TGTRANSCO in respect of the power purchase bills raised by the applicant under the PPA. That the claim of TGNPDCL towards GSC and the claim of the applicant towards power purchase bills are distinct claims and the respondents cannot act hand-in-glove to the prejudice of the applicant. The TGTRANSCO and TGNPDCL's purported action of recovering the GSC along with interest through the power bills is highhanded, arbitrary and illegal.
- xi. That the TGTRANSCO and TGNPDCL are acting in concert with each other and resorting to highhanded and arbitrary actions, putting the applicant at severe losses, which cannot be adequately compensated.
- xii. That the exorbitant amount arbitrarily demanded by the TGNPDCL imposes heavy financial burden on the applicant and the applicant would consequently be pushed into a financial turmoil, in which case, the applicant may even be constrained to shut down its business, leaving several thousands of workers / employees of the petitioner at bay.
- xiv. That the applicant would be subjected to severe loss, if the urgent ad-interim reliefs sought herein are not granted.
- xv. The alternative or inconsistent pleas, if any, are taken without prejudice to each other and the applicant reserve the right to raise additional grounds / pleas / questions of law at the time of hearing.
- r. It is stated that owing to the applicant's non-payment of the GSC demanded by the TGNPDCL, as the same is vehemently disputed by

the applicant for reasons stated above, the applicant is being arbitrarily denied permanent supply of power at its plant as well as renewal of PPA.

4. The petitioner has sought the following prayer in the application.

“Pending adjudication and disposal of the main O. P. filed by the petitioner, the Commission may be pleased to direct the respondent No. 1 not to take any coercive steps against the petitioner in pursuance to the notice bearing Lr. No. CGM / IPC & RAC / GM / DE (IC / AO (IPC) / AAO / F. Grid Support / D. No. 612 / 20, dated 11.02.2021 including recovery of the grid support charges for the period from FY 2002-03 to FY 2008-09 along with interest from the power purchase bills due and payable by respondent No. 2 to the petitioner.”

5. The petitioner has also filed an interlocutory application under section 94 (2) of the Act, 2003 r/w TSERC Regulation No. 2 of 2015 seeking interim direction to the respondent not to insist upon payment of the grid support charges for the period from FY 2002 - 03 to FY 2008 - 09 along with interest as demanded vide notice bearing Lr. No. CGM / IPC & RAC / GM / DE (IPC / AO (IPC) / AAO / F. Grid Support / D. No. 544 / 20, dated 07.01.2021 issued by the TGNPDCL and consequently not to reflect the demanded amount as arrears in relation to the applicant. The averments in the application are extracted below.

a. It is stated that the petitioner is a public limited company incorporated under the Act, 1956, having its registered office at 1-10-140 / 1, Gurukrupa, Ashok Nagar, Hyderabad and is engaged in the production of cement, sugar and generation of power all of which are power intensive.

b. It is stated that in view of certain encouraging incentives of the erstwhile GoAP as under the G. O. Ms. No. 93 dated 18.11.1997, the petitioner had proposed to set up a CPP with a capacity of 16.7 MW for captive production and utilization of the electrical energy. Upon the sanction provided by NEDCAP vide its letter dated 09.06.2000, the petitioner had invested huge amounts for captive production and utilisation of the electrical energy for its own industrial purposes and set up a non-conventional energy plant with a capacity to generate 16.7 MW of power for consumption as well as sale.

- c. It is stated that thereafter, the petitioner entered into a PPWA dated 19.02.2002 with the erstwhile APTRANSCO, now TGTRANSCO that is respondent No. 2 herein, in accordance with the provisions of the Reform Act, 1998 and in line with the incentives allowed for wheeling and banking and charges for captive consumption in various government orders. The PPWA, as amended vide amendment agreement dated 14.10.2004, was valid till 11.04.2022.
- d. It is stated that as per Article 2.5 of the PPA, the petitioner was liable to pay GSC as may be determined by the Commission in its tariff orders from time to time.
- e. It is stated that the Commission, through RSTOs, had year on year, determined the GSC payable for FY 2002 - 03 till FY 2008 - 09. From the RSTO for the FY 2009 - 10 onwards, the Commission had withdrawn levy of GSC, and the same was not mentioned in the tariff orders. Thus, the GSC were payable on demand by the company during the FYs 2002 - 03 to 2008 - 09 as per the RSTOs. However, no claim for payment of the GSC was made by either of the TGTRANSCO or TGNPDCL herein as per the PPWA at any point in time during the said period nor within a period of three years thereafter.
- f. It is stated that while things stood thus, for the very first time, the respondent No. 1 issued a demand notice dt. 07.01.2021 requesting to pay an amount of Rs. 20,53,85,723/- towards GSC allegedly payable for the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020 within a period of 15 days from the date of receipt of the said notice.
- g. It is stated that in response to the aforesaid notice, the petitioner had addressed a reply dated 15.01.2021 denying such a liability and also stating that the claim is barred by limitation as the petitioner was never demanded any amount when it was due.
- h. It is stated that thereafter, the following correspondence was exchanged between the parties:

Date	Details of Correspondence
11.02.2021	The TGNPDCL addressed a letter informing that the demanded amount of GSC of Rs. 20,53,85,723/- along

Date	Details of Correspondence
	with interest for subsequent periods that is from 01.01.2021 till date of recovery would be recovered from the power bills.
03.03.2021	The petitioner addressed a reply disputing such recovery and reiterating its stance that the claim in itself is barred by limitation and the question of interest does not arise at all. The TGNPDCL was requested to withdraw its demand letters.
24.03.2021	The TGNPDCL addressed a letter to the applicant informing that the contentions of the applicant are untenable and request for withdrawal of its demand letters cannot be considered.

- i. It is stated that the petitioner has received no further intimation from the TGNPDCL on demand / claim in respect of the GSCs allegedly payable by the applicant and consequently, the applicant was under the assumption that the claim of the TGNPDCL was at a stand-still and no further action was being taken by the TGNPDCL for the alleged recovery.
- j. It is stated that while things stood thus, having not received any payment for the monthly power bills raised by the applicant on TGTRANSCO during the period from November 2018 till January 2021 for power sold by the applicant under the PPWA, the applicant had addressed a letter dated 23.02.2021 to TGTRANSCO requesting to release payment towards outstanding dues of Rs. 9,48,67,464/-. However, the same was not considered and no payments were released. Aggrieved, the petitioner was constrained to file Writ Petition No. 10458 of 2021 before the Hon'ble Telangana High Court challenging the action of TGTRANSCO in not releasing the payments towards outstanding power bills. By way of an interim order dated 22.04.2021, the Hon'ble Court had directed the TGTRANSCO and the state DISCOMs including the TGNPDCL herein to consider the petitioner's representation dated

23.02.2021 in respect of the power bills due and to pass appropriate orders.

- k. It is stated that pursuant to the said interim order of the Hon'ble High Court, the TGPCC, acting for the TGTRANSCO had issued proceedings vide Lr. No. FA & CCA / Dy. CCA (PP & S) / SAO / (PP & S) / AAO - 4 / D. No. 267 / 21, dated 22.06.2021, whereby it is informed that payments in respect of the power purchase bills were withheld by the TGTRANSCO and TGNPDCL on account of non-establishment of DAS for real-time data integration as per applicable standards.
- l. It is stated that in furtherance to the proceedings dated 22.06.2021, the petitioner had undertaken necessary steps for installation of DAS at its plant so as to seek release of outstanding amounts towards power purchase bills. While so, certain correspondence was exchanged between the petitioner and TGPCC in respect of renewal of PPWA, whereby the petitioner suddenly came to learn that the claim of GSC is still shown as pending arrears against the petitioner. As per the letter dated 02.09.2022 received from TGPCC acting for the TGTRANSCO, the applicant is alleged to have been due a sum of Rs. 12,13,82,703/- towards GSC along with interest from 01.01.2021 to 24.03.2021. From this, it appeared that the respondents had purported to recover / adjust the GSC allegedly payable by the petitioner from the power purchase bills due and payable by TGTRANSCO which is absolutely arbitrary, and illegal.
- m. It is stated that upon successful establishment of DAS and its installation, the Chief Engineer (SLDC), acting for Respondent No. 2, through proceedings in Lr. No. CE (SLDC) / SE (SLDC) / DE (SCADA) / F, KKTC / D. No. 12 dated 12.04.2023, had confirmed that the real time data of 16.7 MW bagasse-based co-generation plant at the applicant's factory has been integrated to SLDC on 04.04.2023 and also confirmed that the data is getting reported to SLDC. This was also intimated to the respondent No. 2, but to no avail as the outstanding amounts towards power purchase bills due to be released have not yet been released.
- n. It is stated that it is pertinent to bring to the attention of the Commission that the GSC and interest thereon claimed by the respondent is

continuously shown as arrears in relation to the petitioner, consequent to which the petitioner is denied permanent supply of power under HT category – I by the TGNPDCL as well as renewal of PPWA by the TGTRANSCO and TGPCCC.

- o. It is stated that the claim of GSCs as against the petitioner appears to have been a consequence of the common judgement dated 29.11.2019 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 4569 of 2003 and batch as well as Civil Appeals No. 8969 of 2003 and batch, whereby the order of the Commission in O. P. No. 1 of 1999 was restored. However, such claim is time-barred and not tenable under law. It is brought to the knowledge of the Petitioner herein and it believes it to be true that the respondent had issued demand notices to other CPPs from 2002 onwards, whereas the petitioner for the first time received such notice in the year 2021 only. Thus, the claim of GSCs along with interest till date of payment is time-barred and thus, unsustainable in law. Further, the interest being charged by the respondent on the GSCs allegedly payable by the petitioner, with the demand having been made for the first time only on 07.01.2021, after a lapse of 11 years, is without any basis under law and void.
- p. It is stated that on account of the arbitrary and high-handed actions of the respondent, the petitioner is subjected to grave loss and its fundamental rights guaranteed under the constitution have been violated.
- q. It is stated that being left with no other alternate and efficacious remedy, the petitioner is constrained to approach the Commission on the following grounds:
 - A. That the notice dated 07.01.2021 issued by the respondent No. 1 demanding payment of GSCs for the period from FY 2002-03 till FY 2008-09 along with interest with effect from 01.04.2002 is manifestly arbitrary and illegal on account of such claim being time-barred.
 - B. That the claim for GSCs raised by the respondent No. 1 is subject to the law of limitation. The grid support system was provided by the TRANSCO during the FYs 2002-03 to 2008- 09 and the period

of limitation for claiming GSCs for each such financial year shall expire at the end of three years from the corresponding dates of provision of service. Thus, the GSCs were payable on demand by the company during the FYs 2002-03 to 2008-09 or within a period of three years from the end of the each of such financial year. No claim for payment of the GSCs was made by the respondent No. 1 herein or the respondent No. 2 as per the PPA at any point in time during the said period nor within three years from the said period. The demand for GSCs for the period from FY 2002-03 till 2008-09 has made against the petitioner for the first time only on 07.01.2021 vide notice dated the same issued by the respondent No. 1. Therefore, the claim for GSCs is clearly barred by limitation.

- C. That the demand / claim of GSCs for the period from 2002-03 to 2008-09, having been made only in 2021, after a lapse of 11 years, clearly suffers from lapses in relation to prescribed time under section 56 (2) of the Act 2003.
- D. That as per section 56 (2) of the Act 2003, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. Indisputably, the amount claimed towards GSC were never shown as arrears in the account of the petitioner for the electricity supplied. Thus, the same are not recoverable by the respondent No. 1 as against the petitioner.
- E. That it is brought to the knowledge of the petitioner herein and it believes it to be true that the respondents had issued demand notices to other CPPs from 2002 onwards, whereas the petitioner for the first time received such notice in the year 2021 only. It is settled position of law that where there is no acknowledgement of debt by the debtor within the prescribed period and the debt becomes time-barred, such debt cannot be claimed by the creditor. Thus, the claim for GSCs for the period from FY 2002-03 to FY 2008-09 is time-barred.

- F. That without prejudice to the above, the levy of surcharge / interest on the GSCs allegedly payable by the petitioner for the period from FY 2002-03 till 2008-09 is manifestly arbitrary and illegal. It is settled principle of law that interest is payable only when there is a failure to pay as per liability determined [Reliance is placed on ***NTPC Ltd. v. M.P. SEB, (2011) 15 SCC 580, and CIT v. Ranchi Club Ltd., (2013) 15 SCC 545***]. It is submitted that as elaborated above, the petitioner was demanded GSCs for the very first time vide notice dated 07.01.2021 and thus, the liability to pay interest thereon with effect from 2002 till such date does not arise at all.
- G. That the common judgment and order dated 29.11.2019 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 4569 of 2003 and batch as well as Civil Appeals No. 8969 of 2003 and batch and batch petitions cannot, in any way, be construed to have a retrospective effect so as to impose interest/surcharge on the GSCs claimed by the respondent No. 1.
- H. That the respondent No. 1 is raising arbitrary, vague, illegal and time-barred claims pertaining to GSCs allegedly payable by the petitioner so as to cause severe loss to the petitioner and make unlawful gains to themselves.
- I. That the notice dt. 11.02.2021 issued by the Respondent No. 1 purporting to recover the GSCs from power purchase bills raised by the petitioner on the respondent No. 2 is high-handed, absolutely arbitrary and void, and thus, the notice ought to be set aside. That the respondent No. 1's claim of GSCs has no bearing on or connection with the outstanding amounts payable by the respondent No. 2 in respect of the power purchase bills raised by the petitioner under the PPA. That the claim of respondent No. 1 towards GSC and the claim of the petitioner towards power purchase bills are distinct claims and the respondents cannot act hand-in-glove to the prejudice of the petitioner. The respondents' purported action of recovering the GSCs along with interest through the power bills is high-handed, arbitrary and illegal.

- J. That the respondents are acting in concert with each other and resorting to high-handed and arbitrary actions, putting the petitioner at severe losses, which cannot be adequately compensated.
- K. That the exorbitant amount arbitrarily demanded by the Respondent imposes heavy financial burden on the petitioner, and the petitioner would consequently be pushed into a financial turmoil, in which case, the petitioner may even be constrained to shut down its business, leaving several thousands of workers / employees of the petitioner at bay.
- L. That the petitioner would be subjected to severe loss, if the urgent ad-interim reliefs sought herein are not granted.
- M. The alternative or inconsistent pleas, if any, are taken without prejudice to each other and the petitioner reserve the right to raise additional grounds / pleas / questions of law at the time of hearing.
- r. It is stated that owing to the petitioner's non-payment of the GSCs demanded by the respondent No. 1 (as the same is vehemently disputed by the petitioner for reasons stated above), the petitioner is being arbitrarily denied permanent supply of power at its plant as well as renewal of PPA.
- s. It is stated that the petitioner has no other effective alternative remedy except to approach the Commission by way of the present petition. It is submitted that the petitioner has not filed any writ or suit or case before the Commission or before any other forum seeking the relief prayed for in this petition. It is stated that the petitioner has made out a prima facie case and the balance of convenience is in its favour for the Commission to intervene and exercise its powers. Further, if the reliefs as prayed for here are not granted, the petitioner will suffer irreparable loss and injury.
- t. It is stated that the petitioner reserves its right to file an additional pleadings / documents as and when required or directed by the Commission.

6. The petitioner has sought the following prayer in the application.

“Pending adjudication and disposal of the main O. P. filed by the petitioner, the

Commission may be pleased to direct the respondents not to insist upon payment of the grid support charges for the period from FY 2002-03 to FY 2008-09 along with interest, which is demanded vide notice bearing Lr. No. CGM / IPC & RAC / GM / DE (IPC / AO (IPC) / AAO / F. Grid Support / D. No. 544 / 20, dated 07.01.2021 issued by the respondent No. 1 and consequently not to reflect the demanded amount as arrears in relation to the petitioner.”

7. The respondent No. 1 has filed counter affidavit and the contents of the same are extracted below.

- a. It is stated that the present petition is filed under section 86 (1) (f) of the Act, 2003 challenging the claim made by the respondent No.1 towards grid support charges (GSC) for the period from FY 2002-03 till FY 2008-09 along with interest against the petitioner.
- b. It is stated that in the year 2001-02 the erstwhile APERC by order dated 08.02.2002 in O. P. No. 01 of 1999 had approved the levy of the GSC with effect from the billing month of March 2002 on the captive power plants (CPP) operating in parallel to grid at a rate equal to 50% of the prevailing demand charge for HT consumers on the difference between the total capacity of CPP in KVA and the contracted maximum demand (CMD) in kVA with the licensee and all other sources of supply. Further, in case of CPPs exporting power to APTRANSCO, the capacity which is dedicated to such export will also be additionally subtracted from the CPP capacity.
- c. It is stated that aggrieved by the dated 08.02.2002 in O. P. No. 01 of 1999 of the State Regulatory Commission, various captive generating plants (CPPs) filed Civil Miscellaneous Appeals (CMA) before the Hon'ble High Court. The Hon'ble High Court by a common order dated 02.05.2003 in CMA No 1104 of 2002 and batch, set aside the orders of the erstwhile APERC holding that APERC has no jurisdiction to determine GSC.
- d. It is stated that aggrieved by the order dated 02.05.2003 in C. M. A. No. 1104 of 2002 and batch, the APTRANSCO filed SLP before the Hon'ble Supreme Court which later came to be registered as Civil Appeal Nos. 8969 of 2003 and batch.

- e. It is stated that the Hon'ble Supreme Court had tagged Civil Appeal Nos. 8969 of 2003 and batch along with Civil Appeal No. 4569 of 2003 filed by the then APTRANSCO challenging the order dated 18.04.2003 passed by the Hon'ble High Court setting aside the order in OP No 510 of 2001 passed by erstwhile APERC determining the wheeling & transmission charges payable by all private generators / NCE developers / HT consumers availing power from their captive power plants from 3rd parties under power wheeling agreements by introducing a two part tariff (i) payable at 28.4% in kind towards energy loss in the transmission network and distribution network depending on the voltage level plus (ii) Rs 0.50 Paise per kWh on gross generation of units for recovery of investment made in the transmission and distribution network superseding the wheeling charges as agreed in the existing wheeling agreements where under only concessional charges in kind was provided.
- f. It is stated that the Hon'ble Supreme Court by a common judgment dated 29.11.2019, allowed the appeals setting aside the judgment dated 18.04.2003 of the Hon'ble A. P. High Court holding that the State Commission is competent to determine wheeling charges and also set aside the order dated 02.05.2003 in C. M. A. No. 1104 of 2002 and batch passed by the Hon'ble High Court and upheld the order of the APERC with regard to the grid support charges.
- g. It is stated that the erstwhile APERC continued to determine the GSCs on the same basis as determined in its O. P. No. 1 of 1999 for the subsequent periods Viz., FY 2003-04 to 2008-09 with a condition that the said charges are to be levied subject to the outcome of the appeal pending before the Hon'ble Supreme Court.
- h. It is stated that the petitioner has a power purchase and captive wheeling agreement dated 19.02.2002 and its amendments with TRANSCO (Subsequently with TSNPDCL) whereby the company has to pay GSCs as decided by APERC for grid support given to the process unit in the premises vide Article 2.5 of the above said PPA. The relevant clause is extracted below for ready reference: -

"Where in any billing month, the Gross energy and demand

supplied by the APTRANSCO to the Company as a bilateral arrangement to maintain the auxiliaries in the power plant in situation of non-generation of power plant shall be billed by the APTRANSCO as per the explanations given, and the Company shall pay the APTRANSCO for such energy and demand supplies. Further, since the Company's power house is running in parallel with APTRANSCO grid, the Company has to pay Grid Support Charges as decided by APERC for grid support given to the process unit in the premises."

- i. It is stated that since the Hon'ble Supreme Court upheld the order passed by the erstwhile APERC in levying the GSC to CPPs and the erstwhile APERC had determined the GSC till FY 2008-09 with a condition to levy the charges subject to the outcome of the pending matter before Hon'ble Supreme Court, the Respondent No 1 had issued demand notice dated 07.01.2021 for Rs. 20,53,85,723/- duly enclosing the detailed calculation sheets and requested the petitioner to pay the demanded amount towards GSCs for the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020 calculated as per the rate and procedure determined by the erstwhile APERC for the period from FY 2002-03 to FY 2008-09.
- j. It is stated that the petitioner instead of paying the demanded amount, issued reply to the demand notice dated 07.01.2021 on 15.01.2021 stating that the amount claimed towards grid support charges dated 07.01.2021 is barred by limitation and requested to withdraw the said notice.
- k. It is stated that on 11.02.2021 vide Lr. No. CGM / IPC&RAC / GM / DE (IPC) / AO (IPC) / AAO / F. Grid Support / D. No. 612 dated 11.02.2021 the petitioner was informed that the said claim towards grid support charges is not barred by limitation as the matter was sub-judice before the Hon'ble Supreme Court of India till 29.11.2019; that the claim towards grid support charges is in accordance with the APEX Court of India & ERC orders; and that the petitioner has to pay the said GSCs along with interest. The petitioner was also informed through the above-mentioned letter that an amount of Rs. 20,53,85,723/- and interest for

subsequent periods that is from 01.01.2021 to till date recovery will be recovered from the power bills.

- l. It is stated that the petitioner filed W. P. No. 10458 of 2021 challenging the action of this respondent in not releasing the amount of Rs. 9,48,67,464/- towards outstanding power bills to petitioner.
- m. It is stated that the respondent has filed counter affidavit in W. P. No. 10458 of 2021 stating that after adjusting due amount payable to the petitioner still a sum of Rs. 13,84,91,961/- is receivable from the petitioner.
- n. It is stated that GSCs could not be levied during the period from 2002-03 to 2008-09 since the matter was sub-judice before the Hon'ble Supreme Court of India till 29.11.2019. Therefore, the contention of the petitioner that the claim is barred by limitation is untenable and hence deserves no consideration.
- o. It is stated that the respondent issued the demand notice dated 07.01.2021 duly enclosing the detailed calculation sheets and requested the petitioner to pay the demanded amount of Rs. 20,53,85,723/- towards GSCs for the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020. The petitioner replied to the above demand notice on 15.01.2021 stating that the amount claim towards GSCs dated 07.01.2021 is barred by limitation and requested to withdraw the said notice.
- p. It is stated that this respondent in response to the reply of the petitioner dated 15.01.2021, informed the petitioner vide letter dated 11.02.2021 that the said claim towards GSCs is not barred by limitation as the matter was sub-judice before the Hon'ble Supreme Court of India till 29.11.2019; that the claim towards GSCs is in accordance with the judgment of the APEX Court of India & ERC orders; and that the petitioner is liable to pay the said GSCs along with interest and also it was informed that a sum of Rs. 20,53,85,723/- and interest for subsequent periods that is from 01.01.2021 to till date recovery will be recovered from the power bills.
- q. It is stated that the petitioner again addressed a letter dated 03.03.2021 to the respondent stating that the claim of GSCs is barred by limitation

and the question of interest does not arise and requested to withdraw the said letters. This respondent in reply to the letter dated 03.03.2021 of the petitioner informed the petitioner vide letter dated 24.03.2021 stating that the request to withdraw the letters demanding GSCs and interest deserve no consideration in view of the detailed reasons mentioned therein and hence cannot be withdrawn.

- r. It is stated that partial amount towards the above said GSCs is adjusted with available outstanding power purchase bills of the petitioner and the remaining amount is being shown as arrears in the bill as said stated in the present petition.
- s. It is stated that the amount payable towards power purchase bills to petitioner was withheld by this respondent in view of non-fulfilling of technical obligation that is establishment of data acquisition system (DAS) by the petitioner. The petitioner filed W. P. No. 10458 of 2021 before the Hon'ble High Court challenging the action of this respondent in not releasing the amount Rs. 9,48,67,464/- towards outstanding power purchase bills to petitioner.
- t. It is stated that the respondent has filed counter affidavit before the Hon'ble High Court of Telangana in W. P. No. 10458 of 2021 stating that after adjusting due amount payable to the petitioner still an amount of Rs. 13,84,91,961/- is payable by the petitioner as per the terms and conditions of the agreement dated 19.02.2002. It is thus clear that the petitioner failed to comply the terms and conditions and regulations in transmission of power. Therefore, the present writ petition is liable to be dismissed.
- u. It is stated that the above said W. P. No. 10458 of 2021 is still pending before the Hon'ble High Court of Telangana. The statement showing outstanding arrears to be receivable from the petitioner along with adjusted power purchase bills are tabulated below for ready reference: -

Sl. No.	Description	Amount in Rs.
1	Amount to be receivable from petitioner towards GSCs including Interest up to	20,53,85,723

Sl. No.	Description	Amount in Rs.
	31.12.2020 vide demand notice dated 07.01.2021	
2	Interest on GSCs from 01.01.2021 to 24.03.2021	18,71,942
3	Amount payable to M/s. Kakatiya Cement Sugars & Ind. Ltd. towards power purchase bills (24.10.2018 to 24.05.2021)	6,87,65,704
4=(1+2-3)	Net amount receivable from M/s Kakatiya Cement Sugars & Ind. Ltd. as on 24.05.2021	13,84,91,961
5	Amount payable to M/s Kakatiya Cement Sugars & Ind. Ltd. towards power purchase bills (24.05.2021 to 12.04.2022)	1,71,09,258
6=(4-5)	Net amount Receivable from M/s. Kakatiya Cement Sugars & Ind. Ltd.	12,13,82,703

- v. It is stated that the renewal of PPA is to be in accordance with the Article 7 of PPA that is *“This Agreement may be renewed for such further period of time and on such terms and conditions as may be mutually agreed upon by the parties, 90 days prior to the expiry of the said period of twenty years, subject to the consent of ERC.”*
- w. It is stated that the petitioner has explained facts of chronological events in the GSCs needs no reply.
- x. It is stated that the matter related to grid support charges was sub-judice before the Hon’ble Supreme Court of India till 29.11.2019. In the subsequent ARR filings of TSDISCOMs, the proposals for levy of GSCs are filed by the respondent.
- y. It is stated that the Hon’ble Commission provided opportunity to all stakeholders by convening a public hearing during the enquiry in O. P. No. 1 of 1999. The utilization of said opportunity is left to the respective stakeholders. The judgment of the Apex Court in respect of the GSCs

is not only to the petitioners / respondents, but also applicable to one and all who are connected to the issue.

- z. It is stated that the levy of grid support charges during the period from 2002-03 to 2008-09 was sub-judice before the Hon'ble Supreme Court of India till 29.11.2019. As per the section 14 of Limitation Act 1963, the sub-judice period will be excluded for computation of limitation period. Hence, the claim towards GSCs is not barred by limitation as the matter was sub-judice before the Hon'ble Supreme Court of India till 29.11.2019.
- aa. It is stated that the matter pertaining to the levy of GSCs was sub-judice before the Hon'ble Supreme Court of India till 29.11.2019. The State Electricity Regulatory Commission in its tariff orders categorically ordered that the levy of GSCs is subject to the orders of the Hon'ble Supreme Court in the pending appeals before it. The said claim of grid support charges is in accordance with the judgment of the Hon'ble Supreme Court of India dated 29.11.2019 and tariff orders of the State Electricity Regulatory Commission.
- ab. It is stated that further, as per the section 14 of Limitation Act 1963, the sub-judice period will be excluded for computation of limitation period. The claim towards grid support charges is not barred by limitation as the matter was sub-judice before the Hon'ble Supreme Court of India till 29.11.2019. Hence, the petitioner is liable to pay GSCs as given in the notices.
- ac. It is stated that the section 56 (2) of the Act 2003 is not applicable to the facts and circumstances of the present case. The limitation under section 56 (2) of the Act 2003 is with reference to bar in respect of disconnection by the licensee but not for the recovery of arrears of electricity charges. The Apex Court of India has explained the scope of section 56 (2) of the Act 2003 in the judgment in Civil Appeal No 2109-2110 of 2004 (K C Ninan Vs Kerala State Electricity Board & Ors) dated 19.05.2023 by the three-judge bench of Hon'ble Supreme Court of India, the bar of limitation under section 56 (2) restricts the remedy of disconnection under section 56, the licensee is entitled to recover electricity arrears through civil remedies or in exercise of its statutory

power under the conditions of supply. However, the levy of grid support charges was sub-judice before the Hon'ble Supreme Court of India till 29.11.2019, hence the claim towards GSCs is not barred by limitation.

ad. It is stated that as per Article 5.2 of power purchased agreement dated 19.02.2002, it is agreed that in case the respondent company does not pay the bill generated by the petitioners company within the stipulated date, the respondent is liable to pay interest @ 10% p.a. as per existing nationalized bank rate, in case this rate of interest is reduced, such reduced rate is applicable from date of reduction. In this case the same principle has been applied to claim the interest on grid support charges from the petitioner company. It is further stated that the Hon'ble Supreme Court in a matter relating to fuel surcharges adjustment in Civil Appeal No. 5542 / 2016 dated 05.07.2016 directed the appellants to make the deposit along with interest, if no other rate is prescribed at the rate of 8 percent per annum, and other charges for delay and granted liberty to take coercive steps if the amount claim is not paid by the consumers. The facts and circumstances of the present case are similar to the cited case decision rendered by the Hon'ble Supreme Court. Therefore, this respondent is entitled to claim the interest on the amounts to be recovered from the petitioner.

ae. It is stated that the petitioner entered PPA with the erstwhile APTRANSCO, subsequently in view of Electricity Act 2003 and G. O. Ms. No. 58, Energy (Power.III) Department dated 07.06.2005 and G. O. Ms. No. 53, Energy (Power.III) Department dated 28.04.2008, power purchase agreement was transferred from APTRANSCO to APNPDCL (New Respondent No. 1 TSNPDCL). As per the PPA, the petitioner is supplied power to respondent No.1 only and power purchase bills were raised by the petitioner on Telangana State Power Co-ordination Committee (TSPCC) acting for TSDISCOMs only. The power purchase bills are being paid by TSPCC on behalf of the respondent No.1. It is stated that partial amount of GSCs were recovered by TSPCC on behalf of respondent No. 1 from power purchase bills to the extent of available amount. In view of the above there is no role of respondent No. 2

(TSTRANSCO) in the adjustment of power purchase bills against the GSCs.

af. It is stated that therefore prayed the Commission to dismiss the petition under reply.

8. The respondent No. 2 has filed counter affidavit and the contents of the same are extracted below.

a. It is stated that the averments of affidavit which are not specifically admitted or denied may be deemed to have been denied by this respondent.

b. It is stated that the petitioner filed the present petition under section 86 (1) (f) of the Act 2003 challenging the claim made by respondent No.1 towards grid support charges for the period from FY 2002-03 till FY 2008-09 along with interest against the petitioner.

c. It is stated that in reply to the prayer of the petitioner that the grid support charges are exclusively dealt by DISCOM in whose area the captive plant is located that is TGNPDCL / respondent No.1 in this case.

d. It is stated that the petitioner has quoted as TPCC (acting for respondent No. 2 that is TGTRANSCO) at several places of the petition. However, it is stated that as per the PPA, the petitioner had supplied power to respondent No. 1 / TGNPDCL and the power purchase bills were raised by the petitioner on Telangana Power Co-ordination Committee (TPCC) which acts on behalf of TGDISCOMs but not for TGTRANSCO / respondent No. 2. Hence, the power purchase bills are paid by TPCC to the petitioner on behalf of TGNPDCL / respondent-1 and the partial amount of grid support charges were recovered by TPCC on behalf of respondent No. 1 from the power purchase bills to the extent of available amount.

e. It is stated that in view of the above, there is no role of the respondent No. 2 / TGTRANSCO in the adjustment of power purchase bills against the grid support charges. Therefore, TGTRANSCO / respondent No. 2 is a proforma respondent and is no way connected to the relief sought by the petitioner.

f. It is stated that therefore prayed that the Commission may be pleased to

pass such other order or orders as the Commission deems fit and proper in the circumstances of the case.

9. The Managing Director of the petitioner Company has submitted rejoinder as extracted below.

“I have perused the counter affidavit filed by respondent No. 1 - TGNPDCL and have understood the contents of the same. I hereby deny the contents of the counter affidavit except those that are a matter of record and fact, unless specifically or expressly admitted herein. It is further submitted that none of the contents of the counter affidavit shall be deemed to be admitted by the petitioner for want of specific traverse.

I submit that the petitioner reiterates all that has been stated in the above-captioned petition filed under section 86(1)(f) of the Act, 2003, and the submissions made therein may be deemed to have been incorporated herein by reference and read as part and parcel of the submissions herein.

At the outset, it is submitted that from the contentions in the counter affidavit under reply it is evident that the claim of GSCs for the period from FY 2002-03 till FY 2008-09 along with interest with effect from 01.04.2002 is time-barred, and thus, not liable to be paid by the petitioner.

PARAGRAPH-WISE REPLY:

I submit that the paragraph-wise reply to the averments made by the respondent No. 1 in the counter affidavit under reply is as follows:

- a. The averments in paragraph Nos. 1 and 2 of the counter affidavit under reply are formal in nature and require no specific traverse.
- b. The averments in paragraph No. 3 of the counter affidavit under reply are a matter of fact and record and require no specific traverse from the petitioner.
- c. In reply to the averments in paragraphs No. 4 to 9 of the counter affidavit under reply, it is stated that the petitioner was not a contesting party in the litigation detailed by the respondent No. 1. The petitioner had never disputed their liability to pay the GSCs as per the terms of the PPA executed between the parties, but for in the present petition as the claim is barred by limitation.

- d. In reply to the averments in paragraph No. 10 of the counter affidavit under reply, it is stated that the claim of the respondent No. 1 for GSCs towards the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020 is barred by limitation as the petitioner was never demanded any amount during the period when it was allegedly due.
- e. The averments in paragraphs no. 11 to 13 of the counter affidavit under reply are a matter of fact and record. However, the contents of the letter dt. 11.02.2021 addressed by the respondent No. 1 are denied as being untenable, illegal and the respondent No. 1 is put to strict proof of the same. It is reiterated that the claim of the respondent No. 1 for GSCs towards the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020 is barred by limitation. The respondent No. 1 is purporting to recover the claim unlawfully. It is settled law that what cannot be done directly, cannot be done indirectly. It is stated that the respondents are raising arbitrary demands and resorting to unlawful methods for recovering time-barred claims, causing severe loss to the petitioner. It is submitted that the petitioner is owed a huge sum of money towards arrears in power supplied by the petitioner as per the terms of PPA. In order to evade such liability, the respondents are raising arbitrary, time-barred claims against the petitioner.
- f. In reply to the averments in paragraph No. 14 of the counter affidavit under reply, it is stated that the petitioner was not a contesting party in the litigation detailed by the respondent No. 1. The petitioner had never disputed their liability to pay the GSCs as per the terms of the PPA executed between the parties. Having not raised any demand against the petitioner during the period from 12.04.2002 to 31.03.2009, the respondents are estopped from making any claims beyond the period of limitation. It is further stated that the demand / claim of GSCs for the period from 2002-03 to 2008-09, having been made only in 2021, after a lapse of 11 years, clearly suffers from lapses in relation to prescribed time under section 56 (2) of the Act 2003, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.

Indisputably, the amount claimed towards GSC were never shown as arrears in the account of the petitioner for the electricity supplied. Thus, the same are not recoverable by the respondent No. 1 as against the petitioner.

- g. In reply to the averments in paragraph No. 15 of the counter affidavit under reply, it is stated that the action of respondents in adjusting the outstanding arrears towards power purchase bills raised by the Petitioner towards their time-barred claim for GSCs is absolutely arbitrary, illegal and void.
- h. In reply to the averments in paragraph No. 16 of the counter affidavit under reply, it is stated that the petitioner had installed and established DAS on 04.04.2023 and had also informed the respondents of the same. Despite the establishment of DAS, the respondents, without releasing the outstanding arrears, purportedly adjusted the same towards their claims for GSCs, and are claiming further amounts. It is reiterated that the action of respondents in adjusting the outstanding arrears towards power purchase bills raised by the petitioner towards their time-barred claim for GSCs is absolutely arbitrary, illegal and void. The respondents are conveniently altering their position, so as to withhold the amounts rightfully owed to the petitioner by deviating from previously established obligations / conditions for release of the outstanding arrears. It is further stated that the tabulated claims and adjustment set out by the respondent No. 1 in paragraph No. 16 of the counter affidavit under reply are denied as being false, baseless and untenable. It is stated that the respondents are due a sum of Rs. 12,00,29,789/- towards arrears under the power purchase bills raised by the petitioner during the period between 24.10.2018 and 24.05.2021, together with interest.
- i. In reply to the averments in paragraph No. 17 of the counter affidavit under reply, it is stated that the petitioner is being arbitrarily denied renewal of PPA citing the time-barred claims of GSCs allegedly due and payable by the petitioner to the respondents.
- j. The averments in paragraph No. 18 and 19 of the counter affidavit under reply are denied as being false, and misleading. The petitioner reiterates

all that has been stated in the above petition filed before the Commission.

- k. In reply to the averments in paragraphs No. 20 to 23 of the counter affidavit under reply, it is reiterated at the cost of repetition that the petitioner was not a contesting party in the litigation detailed by the respondent No. 1. The petitioner had never disputed their liability to pay the GSCs as per the terms of the PPA executed between the parties. Having not raised any demand against the petitioner during the period from 12.04.2002 to 31.03.2009, the respondents are estopped from making any claims beyond the period of limitation. It is further submitted that the demand / claim of GSCs for the period from 2002-03 to 2008-09, having been made only in 2021, after a lapse of 11 years, clearly suffers from lapses in relation to prescribed time under section 56 (2) of the Act 2003. As per section 56(2) of the Act, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. Indisputably, the amount claimed towards GSC were never shown as arrears in the account of the petitioner for the electricity supplied. Thus, the same are not recoverable by the respondent No. 1 as against the petitioner. The action of respondents in adjusting the outstanding arrears towards power purchase bills raised by the petitioner towards their time-barred claim for GSCs is absolutely arbitrary, illegal and void.
- l. The averments in paragraph no. 24 of the counter affidavit under reply are denied as being false, and untenable. It is stated that the levy of surcharge / interest on the GSCs allegedly payable by the petitioner for the period from FY 2002-03 till 2008-09 is manifestly arbitrary and illegal. It is settled principle of law that interest is payable only when there is a failure to pay as per liability determined. It is stated that as elaborated above, the petitioner was demanded GSCs for the very first time vide notice dated 07.01.2021 and thus, the liability to pay interest thereon with effect from 2002 till such date does not arise at all. Therefore, the claim of the respondent No. 1 that they are entitled to claim interest on the amounts is absolutely untenable and arbitrary.

- m. In reply to the averments in paragraph No. 25 of the counter affidavit under reply, the submissions of the petitioner herein above may read as part and parcel of the submissions herein.
- n. It is stated that the petitioner is not liable to pay GSCs for the period from FY 2002-03 till FY 2008-09 along with interest with effect from 01.04.2002 as the claim is time-barred, which is also evident from the counter affidavit of the respondent No. 1. It is stated that the petitioner has made out a strong *prima facie* case and the balance of convenience is in its favour. If the reliefs sought herein are not granted, the petitioner would suffer irreparable and irretrievable loss in light of the arbitrary claims. On the other hand, the respondent shall not suffer any harm, loss or hardship, if reliefs are granted to the petitioner.

In view of the above-stated facts and circumstances, it is therefore prayed that the Commission may be pleased to allow the above petition by granting the reliefs sought therein, and pass such other order or orders as deemed fit and proper.”

10. The Commission has heard the counsel for petitioner and also considered the material available on record. The submissions mad on several dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 18.12.2023:

...The counsel for petitioner stated that the petition is filed towards claims made by licensee on account of recovery of grid support charges. He also stated that interlocutory applications have been filed seeking to restrain the respondents from taking any coercive steps as also not facilitating renewal of power wheeling & purchase agreement entered with the petitioner.

The counsel for petitioner stated that due to urgency the petitioner has sought interim orders as there is a threat of disconnection of power supply to the petitioner. Though claims have been made towards grid support charges, they are hit by limitation as such claims were never raised during the relevant period. The counsel for petitioner through the correspondence made by the respondents have shown that the claims are made for the first time.

The representative of the respondents stated that notice has been issued by the Commission only the other day and the matter is listed today. The

respondents need time to file counter affidavit both in the original petition and the interlocutory applications. The Commission enquired with both the parties as to the real urgency, upon which the counsel for petitioner stated that the remand has been made for the first time in 2020 and reiteration is made only in the year 2023 with different figures. Moreover, the licensee has adjusted the interest portion which the petitioner is not liable against the payments due to the petitioner. Thereby there are variations in the amounts claimed.

The representative of the respondent stated that the respondents are not in a hurry and would not insist for payments at present in view of the filing of the present petition as well as interlocutory applications. ...”

Record of proceedings dated 04.04.2024:

“...The counsel for petitioner stated that the counter affidavits on behalf of the respondents are yet to be filed. A copy of the counter affidavit is made available by the officers of the respondent No. 1 / DISCOM. The Commission pointed out that the counter affidavit on behalf of the DISCOM had already been filed and sought to know as to the counter affidavit on behalf of the TSTRANSCO is yet to be filed. The representative of the DISCOM stated that he needs time to seek instructions from the TSTRANSCO. However, the Commission noticing that the representative of TSPCC-cum-TRANSCO was present in the Court required him to appraise the status of the matter to TSTRANSCO. The Commission directed that the counter affidavit be filed on or before 06.05.2024 and rejoinder if any thereof by that date. The matter will be taken up for hearing.”

Record of proceedings dated 06.05.2024:

“...The counsel for petitioner stated that the matter arises out of the demand raised by the respondents towards grid support charges for the period from 2002 to 2009. The petitioner is put on notice in the year 2021 demanding payment of grid support charges from the year 2002 to 2009 and interest for the period from 2002 to 2021. The counsel for petitioner explained in detail the correspondence set forth between the petitioner and respondents with regard to the claim.

The counsel for petitioner stated that the Hon’ble Supreme Court had already decided about the authority of the Commission to determine the levy of grid support charges. The erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC) had in the year 2002 determined the grid support

charges for the first time. The consumers and generators being aggrieved by the determination approached the Hon'ble High Court questioning the said determination by way of appeals and writ petitions. By order dated 02.05.2003 the Hon'ble High Court of Andhra Pradesh had set aside the order of the APERC with regard to levy of grid support charges. The respondents had preferred appeal before the Hon'ble Supreme Court questioning the order passed by the Hon'ble High Court of Andhra Pradesh as it then was. Ultimately, the Hon'ble Supreme Court upheld the determination of grid support charges by the APERC on 29.11.2019.

The counsel for petitioner stated that from the correspondence, it is noticed that the present levy of grid support charges is pursuant to the decision of the Hon'ble Supreme Court and accordingly notice has been issued to the petitioner. However, it is his case that the respondents ought to have issued notice in the year 2002 itself, which never happened. The respondents now cannot seek to levy the original amount as also interest on the amount due in the guise of recovery of the grid support charges. It is appropriate to state that the grid support charges itself was considered for levy upto the year 2009, but now the respondents are seeking the same with interest also for the entire period from 2002 to 2021.

The counsel for petitioner stated that since the respondents have claimed the original amount belatedly, they have no right of claiming the interest thereon for the period from 2002 to 2021. It is his case that notice ought to have been given in the year 2002 itself after the Commission had passed orders. Having failed to do so, the respondents have no right to claim the interest for the entire period. In terms of the judgement of the Hon'ble Supreme Court, the respondents are entitled to recover the amount as per the determination made by the APERC as adopted by the Commission. However, had the respondents initiated the claim in time and if no payment is made, certainly the petitioner would be liable to pay the interest. The respondents having failed to issue notice, cannot now claim the principal amount towards grid support charges along with interest for the amount thereof.

The counsel for petitioner relied on and referred to judgments of the Hon'ble Supreme Court in the matter of Andhra Pradesh Power Coordination Committee and others Vs. Lanco Kondapalli Power Limited and others with

regard to amount due etc. arrears of rent, recovery of claims and period of limitation. He has also referred to judgment of the Hon'ble Supreme Court in the matter of Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others with regard to applicability of section 14 of the Limitation Act, 1963. By citing the above judgments, he stated that the claims raised by the respondents are time barred. Therefore, he has sought for setting aside the claims made by the respondents.

The representative of the respondents stated that the claim is raised in the year 2021 after the decision of the Hon'ble Supreme Court. At the relevant time, the claim was not made owing to the fact that the order of the Commission had been stayed by the Hon'ble High Court. The respondents understood that it cannot bypass the Hon'ble High Court, which had stayed the order of the APERC. As such, action was initiated soon after the Hon'ble Supreme Court confirmed the order of the APERC. Since the petitioner has withheld the amount due to the respondents, as and when the claim is raised, the respondents have chosen to recover the amount along with interest thereon. As the matter was under adjudication and being sub- judice, the respondents did not initiate any action to recover the amount from the petitioner. It does not constitute a time barred debt for the reason that the issue is pending adjudication before the Hon'ble Supreme Court. The representative of the respondents would endeavour to submit that the petitioner cannot claim that it is not liable to pay the same, merely because it has not challenged the order of the APERC or that no claim was made by the licensee at the relevant time. Thus, the petitioner cannot seek any relief in the matter and is only trying to circumvent the order of the Hon'ble Supreme Court and deny the payment.

The counsel for petitioner stated that the petitioner is not shirking away from the liability, but at the same time the respondents are estopped from claiming the same having not claimed the amounts immediately after the order of the APERC. Thus, neither the original claim nor the interest thereon would be liable to be recovered by the respondents. The counsel for petitioner stated that as the respondents were not inclined to extend the PPA that has been subsisting between the parties and were insisting the payment of the amounts due for facilitating extension of PPA, the petitioner had no option but pay a part of the amount to enable itself for securing the extension of the PPA. The Commission

may consider the prayers in the petition.

The counsel for petitioner sought for permission to file written arguments in the matter. Similar request is made by the representative of the respondents. The Commission directs the parties to file written submissions, if any on or before 06.06.2024.”

Record of proceedings datd 06.06.2024:

“...The counsel for petitioner stated that the written submissions have been filed today itself. The representative of the respondents stated that he had received the written submissions only today and needs time to file the written submissions on behalf of the respondents. The Commission is not inclined to grant any further time for the said purpose, however, liberty is given to the respondents to file written submission within six days.”

11. The petitioner has submitted written submissions and the same are extracted below.

- a. It is stated that at the outset, the petitioner’s grievance in the present matter pertains to time-barred and illegal claim of TGNPDCL / respondent No. 1 for grid support charges for the period from 12.04.2002 to 31.03.2009, along with interest calculated with effect from 2002.
- b. It is stated that the erstwhile APERC, through retail supply tariff orders (RSTOs), had year-on-year, determined the grid support charges (GSC) payable for FY 2002-03 till FY 2008-09. As per Article 2.5 of the power purchase and captive wheeling agreement dated 19.02.2002 (PPA) entered between the parties, the Petitioner was liable to pay Grid Support Charges as may be determined by this Hon’ble Commission in its Tariff Orders from time to time.
- c. It is stated that from the RSTO for the FY 2009-10 onwards, the Commission had withdrawn levy of GSC, and the same was not mentioned in the tariff orders. Thus, the GSCs were payable on demand by the company during the FYs 2002-03 to 2008- 09 as per the RSTOs.
- d. It is stated that it is pertinent to note that no claim for payment of the GSCs was made by either of the respondents herein as per the PPA at any point in time during the said period nor within a period of three years

thereafter. This is also evident from the counter filed by the respondent No. 1.

- e. It is stated that for the very first time and after a lapse of about 11 years, the respondent No. 1 issued a demand notice dt. 07.01.2021 requesting to pay an amount of Rs. 20,53,85,723/- towards GSCs allegedly payable for the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020 within a period of 15 days from the date of receipt of the said notice. Such claim is thus, clearly barred by limitation and the petitioner had persistently disputed the claim as being time-barred, illegal and void.
- f. It is stated that for the sake of convenience, the detailed factual background is set out in a tabular manner herein below.

CHRONOLOGY OF EVENTS

S. No.	Date	Description of Event
1.	09.06.2000	The petitioner obtained a sanction from NEDCAP for setting up a captive power plant (CPP) with a capacity of 16.7 MW for captive production and utilization of the electrical energy.
2.		Pursuant to the sanction, the petitioner invested huge amounts for captive production and utilization of the electrical energy for its own industrial purposes and set up a non-conventional energy plant with a capacity to generate 16.7 MW of power at Peruvancha Village, Kallur Mandal, Khammam District, Telangana.
3.	19.02.2022	A power purchase agreement dated 19.02.2002 (PPA) was entered into between the petitioner and the erstwhile Transmission Corporation of Andhra Pradesh Limited [now, the Telangana State Transmission Corporation Ltd. (TGTRANSCO)], in accordance with the provisions of the Andhra Pradesh Electricity

S. No.	Date	Description of Event
		Reforms Act, 1998. As per Article 2.5 of the PPA, the petitioner was liable to pay GSCs as may be determined by the Commission in its tariff orders from time to time.
4.	14.10.2004	An amendment agreement dated 14.10.2004 was executed between the petitioner and APTRANSCO, whereby the PPA was renewed for a further period of 20 years.
5.		The Commission, through Retail Supply Tariff Orders (RSTOs), had year-on-year, determined the GSCs payable for FY 2002-03 till FY 2008-09. From the RSTO for the FY 2009-10 onwards, the Commission had withdrawn levy of GSC, and the same was not mentioned in the tariff orders. Thus, the GSCs were payable on demand by the company during the FYs 2002-03 to 2008-09 as per the RSTOs. However, no claim for payment of the GSCs was made by either of the respondents herein as per the PPA at any point in time during the said period nor within a period of three years thereafter.
6.	07.01.2021	For the very first time, respondent No. 1 issued a demand notice requesting the Petitioner to pay an amount of Rs. 20,53,85,723/-towards GSCs allegedly payable for the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020 within a period of 15 days from the date of receipt of the said notice.
7.	15.01.2021	The petitioner addressed a reply letter denying

S. No.	Date	Description of Event
		liability towards GSCs as the same is barred by limitation.
8.	11.02.2021	The respondent No. 1 addressed a letter informing that the demanded amount of GSC of Rs. 20,53,85,723/- along with interest for subsequent periods i.e. from 01.01.2021 till date of recovery would be recovered from the power purchase bills.
9.	03.03.2021	The petitioner addressed a reply disputing such recovery and reiterating its stance that the claim in itself is barred by limitation and the question of interest does not arise at all. The respondent No. 1 was requested to withdraw its demand letters.
10.	24.03.2021	The respondent No. 1 addressed a letter to the petitioner informing that the contentions of the petitioner are untenable and request for withdrawal of its demand letters cannot be considered.
11.	22.04.2021	Having not received any payment for the monthly power purchase bills raised on respondent No. 2 / TGTRANSCO during the period from November 2018 till January 2021 for power sold by the petitioner under the PPA, the petitioner had addressed a letter dated 23.02.2021 to respondent No. 2 requesting to release payment towards outstanding dues of Rs. 9,48,67,464/-. However, the same was not considered and no payments were released. Aggrieved, the petitioner was constrained to file WP No. 10458 of 2021 before the Hon'ble

S. No.	Date	Description of Event
		Telangana High Court. By way of an interim order dated 22.04.2021, the Hon'ble Court had directed the respondent No. 2 and the state DISCOMs including the respondent herein to consider the petitioner's representation dated 23.02.2021 in respect of the power bills due and to pass appropriate orders.
12.	22.06.2021	Pursuant to the said interim order of the Hon'ble High Court, the Telangana State Power Co-ordination Committee (TSPCC), acting for the Respondent No. 2, had issued proceedings vide Lr. No. FA&CCA / Dy. CCA (PP&S) / SAO / (PP&S) / AAO-4 /D. No. 267/21, dt. 22.06.2021, whereby it is informed that payments in respect of the power purchase bills were withheld by the respondents on account of non-establishment of DAS for real-time data integration as per applicable standards.
13.	02.09.2022	Certain correspondence was exchanged inter alia between the petitioner and TSPCC in respect of renewal of PPA, whereby the petitioner suddenly came to learn that the claim of GSCs is still shown as pending arrears against the petitioner. As per the letter dated 02.09.2022 received from TPCC (acting for the Respondent No. 2), the petitioner is alleged to have been due a sum of Rs. 12,13,82,703/- towards GSC along with interest from 01.01.2021 to 24.03.2021.
14.	12.04.2023	In furtherance to the proceedings dated 22.06.2021, the petitioner had undertaken

S. No.	Date	Description of Event
		<p>necessary steps for installation of DAS at its plant so as to seek release of outstanding amounts towards power purchase bills.</p> <p>The Chief Engineer (SLDC), acting for respondent No. 2, through proceedings dt. 12.04.2023, had confirmed that the real time data of the petitioner's co-generation plant has been integrated to SLDC on 04.04.2023 and also confirmed that the data is getting reported to SLDC.</p>
15.		<p>Despite integration of the petitioner's plant to SLDC and establishment of DAS, the outstanding amounts towards power purchase bills are withheld. Thus, it is contemplated that the respondents have withheld such amounts towards recovery of the GSCs, allegedly payable by the petitioner as per demand notice dt. 07.01.2021 issued by respondent No. 1.</p>

g. It is stated that the impugned notice is wholly arbitrary, vague, illegal and time barred.

Respondent's claim for GSCs as against the petitioner is barred by the limitation.

i. It is stated that the grid support system was provided by TRANSCO during the FYs 2002-03 to 2008-09 and the period of limitation for claiming GSCs for each such financial year shall expire at the end of three years from the corresponding dates of provision of service. Thus, the GSCs, if at all, were payable on demand by company during the FYs 2002-03 to 2008-09 or within a corresponding period of three years from the end of each of such financial year.

ii. It is stated that the demand for GSCs for the period from FY 2002-

03 till 2008-09 was made against petitioner for the first time only on 07.01.2021 vide notice dated the same issued by respondent No. 1. The petitioner was never demanded any amount during the period when it was allegedly due. This is evident from the counter filed by respondent No. 1.

- iii. Thus, the claim of the Respondent No. 1 for Grid Support Charges towards the period from 12.04.2002 to 31.03.2009 with interest up to 31.12.2020 is thus, clearly barred by limitation.

Impugned Notice is in violation of Section 56(2) of the Act.

- iv. It is stated that as per section 56 (2) of the Act 2003, no sum due from any consumer shall be recoverable after period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.
- v. It is stated that the demand / claim of GSCs for the period from FY 2002-03 till 2008-09, having been made only in 2021, after a lapse of 11 years, clearly suffers from lapses in relation to prescribed time under section 56 (2) of the Act 2003.
- vi. It is stated that undisputedly, the amount claimed towards GSC were never shown as arrears in the account of the petitioner for the electricity supplied. Thus, the same are not recoverable by the respondent No. 1 as against the petitioner.
- vii. It is stated that it is settled position of law that where there is no acknowledgment of debt by debtor within the prescribed period and the debt becomes time-barred, such debt cannot be claimed by creditor. Thus, the claim of GSCs for the period from FY 2002-03 till 2008-09 is time-barred.

Levy of surcharge / interest is arbitrary and illegal

- viii. It is stated that it is settled principle of law that interest is payable only when there is a failure to pay as per liability determined. [Reliance is placed on ***NTPC Ltd v. M.P. SEB, (2011) 15 SCC 580*** (Para 25) and ***Ranchi Club Ltd. v. CIT & Others, 1995 SCC OnLine Pat 508***, [as affirmed in ***CIT v. Ranchi Club Ltd., (2013) 15 SCC 545***].

- ix. It is stated that as the petitioner was demanded GSCs for the very first time vide notice dated 07.01.2021 and thus, the liability to pay interest thereon with effect from 2002 till such date does not arise at all.
- x. It is stated that common judgment and order dated 29.11.2019 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 4569 of 2003 and batch as well as Civil Appeals No. 8969 of 2003 and batch petitions cannot, in any way, be construed to have a retrospective effect so as to impose interest / surcharge on the GSCs claimed by the respondent No. 1.

Section 14 of the Limitation Act, 1963 is not applicable to the facts of the present case –

- xi. It is stated that a bare perusal of section 14 of the Limitation Act, 1963 would reveal its policy to afford protection to a bona-fide litigant against the bar of limitation. While considering the provisions of section 14, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. The section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. Reliance is placed on ***Consolidated Engg. Enterprises v. Irrigation Dept., (2008) 7 SCC 169*** – (Para No. 22).
- xii. It is stated that in the present case, the petitioner has never challenged the power of the Commission to levy and collect GSCs. There is no litigation instituted at the behest of the petitioner or against the petitioner in regard to the liability of the petitioner to pay GSCs. As a matter of fact, the respondents had rightly approached the Hon'ble Supreme Court through several civil appeals and batch petitions, resulting in a common judgment and order dated 29.11.2019 for upholding the power to levy GSC. The same is neither an instance of mistaken remedy nor selection of a wrong forum. Thus, the benefit under section 14 is not available to the respondents.

- xiii. It is stated that further, the petitioner cannot be penalized for the lackadaisical approach of the respondents themselves in making the demand against the petitioner within the period of limitation nor in pursuing the matters before the Hon'ble Supreme Court of India for a long duration.
- xiv. It is stated that it is also pertinent to note that during the course of oral submissions in the captioned matter, the counsel for respondent had also conceded that principles embodied in section 14 of the Limitation Act would not be applicable to the facts of the present case and that the disputed claim would be subject to law of limitation.

Time-barred dues cannot be recovered

- xv. It is stated that it is settled position of law that in the absence of any provision in the Act 2003 creating a new right upon a claimant to claim / recover monies barred by law of limitation or taking away a right of the other side to take a lawful defence of limitation, time-barred dues cannot be recovered. (Reliance is placed on ***A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468***, Para 30)
- xvi. It is stated that the respondent No. 1's claim of GSCs has no bearing on or connection with the outstanding amounts payable by respondent No. 2 in respect of power purchase bills raised by the petitioner under PPA. Thus, the respondents' purported action of recovering the GSCs along with interest through the power bills is high-handed, arbitrary and illegal.
- xvii. It is stated that the respondent No. 2, in an arbitrary and high-handed manner, is seeking payment of GSCs as a condition for renewal of the PPA, which is vitiated in law.
- xviii. It is stated that the petitioner has made out a prima facie case and the balance of convenience is in its favour for the Commission to intervene and exercise its powers.
- xix. It is stated that in view of the afore said, the Commission may be pleased to declare that claim of GSCs for the period from FY 2002-03 till FY 2008-09 along with interest calculated w.e.f. FY

2002-03 allegedly payable by the petitioner vide notice dated 07.01.2021 issued by the respondent No. 1 is time-barred, illegal and void and pass necessary as this Commission may deem fit and necessary in the interest of justice.

12. The respondents have filed written submissions as extracted below.

a. It is stated that the petitioner filed the present petition abusing the process of Law ignoring the settled proposition of law on the subject involved in the present petition. The contention of the petitioner that the claim of the 1st respondent towards GSCs is illegal and time-barred is false and baseless. It is stated that the petitioner raised this contention to avoid its liability of payment of GSCs.

Reply to Factual Submissions: -

b. It is stated that the petitioner in its written submissions categorically admitted that as per Article 2.5 of the power purchase and captive wheeling agreement dated 19.02.2002 (PPA) entered between the parties, the petitioner was liable to pay GSCs as may be determined by the Commission in its tariff orders from time to time.

c. It is stated that the erstwhile APERC by order dated 08.02.2002 in O. P. No. 01 of 1999 had determined the GSCs with effect from the billing month of March 2002 on the CPPs operating in parallel to the grid and the various CPPs.

d. It is stated that aggrieved by the dated 08.02.2002 in O. P. No. 01 of 1999 of the State Regulatory Commission, various captive generating plants (CPPs) filed civil miscellaneous appeals (CMA) before the Hon'ble High Court. The Hon'ble High Court by a common order dated 02.05.2003 in C. M. A. No. 1104 of 2002 and batch, set aside the orders of the erstwhile APERC holding that APERC has no jurisdiction to determine GSC.

e. It is stated that aggrieved by the above order of the Hon'ble High Court, the erstwhile APTRANSCO filed special leave petitions (SLPs) before the Hon'ble Supreme Court which were numbered as Civil Appeal No. 8969 of 2003 and batch. The Hon'ble Supreme Court by its judgment dated 29.11.2019 allowed Civil Appeal No. 8969 of 2003 and batch

restoring the order of APERC holding that the Commission is vested with the power to determine the grid support charges.

- f. It is stated that since the order of APERC in O. P. No. 01 / 1999, whereby APERC determined the GSCs was challenged in C. M. A. No. 1104 of 2002 and batch before the Hon'ble High Court and the same was set aside by the Hon'ble High Court by a common order dated 02.05.2003 in C. M. A. No. 1104 of 2002 and batch, the 1st respondent could not issue notice demanding the GSCs as determined by APERC in O. P. No. 01 / 1999. Thereafter, the matter of claiming / demanding GSCs as determined by the APERC was sub judice before the Hon'ble Supreme Court.
- g. It is stated that the respondents had to wait for the judgment of the Hon'ble Supreme Court in Civil Appeal No. 8969 of 2003 and batch, which common judgment was pronounced on 29.11.2019. Therefore, the contention of the petitioner that the respondents did not claim/demand GSCs as per PPA at any point in time during the period from 2002-03 to 2008-09 within a period of 3 years thereafter becomes untenable and hence the same deserves no consideration.
- h. It is stated that there was no occasion for the respondents to claim / demand GSCs as determined by the APERC till the disposal of Civil Appeal No. 8969 of 2003 and batch on the file of Hon'ble Supreme Court, since the GSCs as determined by the APERC were set aside by the High Court of AP. The 1st respondent came into position of claiming GSCs as determined by the APERC only after restoration of the order of APERC in O. P. No. 01 / 1999. In such view of the matter the contention of the petitioner that the 1st respondent claimed / demanded GSCs after lapse of about 11 years for the first time through notice dated 07.01.2021 becomes baseless, illogical and irrational.
- i. It is stated that it thus become very much clear that the claim of GSCs as determined by the APERC is not time-barred. Hence, the present petition is liable to be dismissed with exemplary cost for abusing the process of law and for wasting the precious time of the Commission.

Reply to Legal Submissions: -

- j. It is stated that in view of the submissions made supra, it stood established that the claim of GSCs determined by the APERC is not time-barred and hence the contention of the petitioner that impugned notice is only arbitrary, vague, illegal and time-barred becomes unsustainable.
- k. It is stated that it also becomes very much clear that the petitioner filed the present false, frivolous and baseless petition abusing the process of Law and waste the precious time of the Commission.
- l. It is stated that in reply to the contentions raised in the written submissions it is stated that the submissions made by these respondents supra establish that there was no occasion for the respondents to claim or demand the Grid Support Charges during the period referred to in para 6A (a to c). Therefore, the contentions raised in para 6 A of the written submissions of the petitioner becomes untenable and unsustainable and hence deserve no consideration. Therefore, the present petition is liable to be dismissed.

Reply to para 6B in regard to the contention that impugned notice is in violation of Section 56(2) of the 2003 Act: -

- m. It is stated that the section 56 (2) of the 2003 Act is not applicable to the facts and circumstances of the present case. The Apex Court of India has explained the scope of section 56 (2) of the 2003 Act in M/S Prem Cottex vs Uttar Haryana Bijli Vitran Nigam (decided on 5 October, 2021). The relevant paragraph of the judgment is extracted below for convenience: -

“26. The matter can be examined from another angle as well. Sub-section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person neglects to pay any charge for electricity. The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to

disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect.”

- n. It is stated that it thus become very much clear that the limitation under section 56 (2) of the Act 2003 starts running from the date of raising of bill. In the present case the impugned notice demanding the GSCs came to be issued on 07.01.2021 and hence the claim of the 1st respondent is within the time prescribed under Section 56 (2) of the Act 2003.
- o. It is stated that the amount claimed towards GSC were not shown as arrears in the account of the petitioner for the reason that the GSC determined by APERC were itself questioned and the same was sub judice before the Hon'ble Supreme Court till 29.11.2019. Unless and until decision in regard to the determination of GSC by APERC is decided, the respondents could not have claimed the amount under GSC. Since the Hon'ble Supreme Court restored the order dated 08.02.2002 of APERC in O. P. No. 01 / 1999, by judgment of Supreme Court dated 29.11.2019, the order of APERC (whereby GSC were determined) became operative from the date of judgment of Supreme Court i.e., 29.11.2019 paving way to the 1st respondent to raise demand of GSC. In such view of the matter the contentions raised by the petitioner in its written submissions about limitation to claim the amount of GSC becomes untenable and unsustainable and hence the same deserve no consideration.

Reply to Para 6C regarding levy of Surcharge / interest: -

- p. It is stated that there is absolutely no dispute regarding the settled principles of Law that interest is payable only after the dues are finally determined; and that interest would be payable only when there is a failure to pay as per crystallized liability.
- q. It is stated that in the present case the claim of the respondent is in respect of the crystallized and determined dues and it is an admitted fact that the petitioner failed to pay the same. Therefore, the petitioner is

liable to pay the amount claimed by the respondent through the impugned notice with surcharge/interest up to the date of payment. Hence, the cited decisions in NTPC Ltd v. M.P.SEB, (2011) 15 SCC 580 and Ranchi Club Ltd. v. CIT & Others, 1995 SCC OnLine Pat 508, [as affirmed in CIT v. Ranchi Club Ltd., (2013) 15 SCC 545]] cannot be made applicable to the present case.

- r. It is stated that it is pertinent to mention here that the petitioner while relying upon the cited decisions did not choose to take a firm stand that the dues payable by it are not determined and crystallized. Admittedly, as per Article 2.5 of PPA, the petitioner is liable to pay GSC as determined by the Commission. When the APERC determined GSC, the same was challenged and the Hon'ble High Court set aside the order of the APERC, which order of the Hon'ble High Court was challenged before the Hon'ble Supreme Court. Once the order of APERC stood restored, the petitioner becomes liable to pay GSC as agreed by it. The respondents could not claim / demand GSC because the GSC determined by APERC was under challenge and ultimately it was sub judice before the Hon'ble Supreme Court. Had the GSC determined by APERC, not challenged; Had the Hon'ble High Court did not set aside the order of APERC determining GSC, the respondents would have claimed GSC. Anyway, the liability of the petitioner to pay GSC stood determined, the movement APERC determined GSC and the movement the order of APERC stood restored by the Hon'ble Supreme Court on 29.11.2019. Therefore, the contention of the petitioner raised in para 6C becomes untenable and unsustainable. Hence the present petition is liable to be dismissed.

Reply to Para 6D regarding applicability of Section 14 of Limitation Act: -

- s. It is stated that it is true that section 14 of Limitation Act has to be invoked by plaintiff / petitioner in cases of mistaken remedy or selection of a wrong Forum. Inadvertent reference of section 14 of Limitation Act by 1st respondent in its counter does not debar the 1st respondent from claiming / demanding GSC in the present case.
- t. It is stated that it is true that the petitioner did not challenge the order of APERC whereby GSC were determined, but the fact remains that other

developers challenged the order of APERC before the Hon'ble High Court and got the same set aside, disabling the 1st respondent from claiming/demanding GSC from the petitioner and other developers. Therefore, the petitioner is estopped from contending that the respondents failed to demand the GSC within the period of limitation and hence the claim of respondents is time-barred.

- u. It is stated that the petitioner cannot blame these respondents for not pursuing the matters before the Hon'ble Supreme Court of India for a long duration for the reason that the respondents had / have to wait till listing of the matter.

Reply to Para 6E: -

- v. It is stated that there is absolutely no dispute regarding settled principle of Law that time-barred dues / debts cannot be recovered.
- w. It is stated that the respondent No.2 is justified in refusing to renew the PPA since the petitioner failed to pay the GSC.
- x. It is stated that since the submissions made in the present case pertain to disposal of main petition, the question of making out prima facie case and balance of convenience does not arise. Prima facie case and balance of convenience would be seen while disposing of an interim application. However, the petitioner did not make out any case much less the only case of time-barred claim of GSC by the respondents.
- y. Hence, it is prayed that the Commission may be pleased to dismiss the petition with exemplary cost for wasting the precious time of the Commission by abusing the process of Law.

13. The petitioner has submitted objections to the written submissions filed by the respondent, which are extracted below.

- a. It is stated that the Petitioner is filing the present written submission in furtherance to the written submissions dated 15.06.2024 filed by the respondents.
- b. It is stated that at the outset, it is submitted that the written submissions dated 15.06.2024 filed by the respondents has been filed at a belated stage and are not in compliance with the Commission's order dated

06.05.2024 wherein both the parties were directed to file their written submissions on or before 06.06.2024.

- c. It is stated that on 06.06.2024, the Commission was not inclined to grant any further time to the respondent, however, liberty was given to the respondent to file written submission within six days that is on or before 12.06.2024. However, the present written submissions have been filed with a delay of three days without seeking condonation of delay from the Commission.
- d. It is stated that at the further outset, the contentions raised in the written submission dated 15.06.2024 have neither been pleaded in the counter nor during the oral arguments by the respondent before the Commission. Thus, the petitioner did not have adequate opportunity to contest such contentions. It is a settled principle that the parties are barred from raising new contentions at the stage of the written submissions. Thus, on this basis alone the written submissions dated 15.06.2024 filed by the respondent ought not to be considered and rejected by the Commission.
- e. It is stated that the petitioner has made out a prima facie case and the balance of convenience is in its favour for the Commission to intervene and exercise its powers. It is further submitted that the petitioner will suffer irreparable loss and injury, if the written submissions dated 15.06.2024 filed by the respondent are taken on record and considered by the Commission.
- f. It is stated that it is in the interest of justice and equity that these written submissions filed by the respondent ought not to be allowed.
- g. It is stated that in view of the afore said, the Commission may be pleased to reject the written submissions dated 15.06.2024 filed by the respondent and pass any other or further order as deemed fit and proper in the interest of justice.

14. The petitioner in this case is questioning the recovery of grid support charges sought, claimed and to be enforced by the distribution licensee originally grid support charges have been levied by orders dated 08.02.2002 in O.P. No. 1 of 1999. The said order had been challenged before the Hon'ble High Court vide CMA No. 1104 of 2002 which was disposed of on 02.05.2003. further appeal has been filed in Civil Appeal

No. 8969 of 2003 and batch the said batch of appeals came to be disposed of on 29.11.2019. These facts are agreed by the parties and basis, or the impugned proceedings is the continuation of decision of the Hon'ble Supreme Court. It is noticed that the petitioner has not stated anywhere that it is not liable for the levy of GSC, however the main grievance appears to be the imposition of the surcharge for nonpayment over the years. It is not clear from the record whether the licensees have issued no notice prior to the year 2021 as claimed by the petitioner.

15. Several contentions have been raised on behalf of parties adverting to the claim being barred by limitation as also contrary to section 56 of the Act, 2003. It is not out of place to state that the petitioner if it had availed the facility of standby operation otherwise known as parallel operation of the captive power plant established by it, then the petitioner is bound to pay the charges in that context. The petitioner ought to have diligently paid the amount even if there was no notice or demand having availed the services of the distribution licensee.

16. Since the petitioner has due towards payment of GSC and contra is entitled to payments for the energy supplied, the licensee in order to facilitate itself to recover the GSC dues had adjusted the same against the power purchase cost payable to the petitioner.

17. The licensee sought to rely on the principle that the claims made by it by raising the demand notice is sustainable as the issue of GSC had been sub-judice before Hon'ble Supreme Court. The Commission finds this argument to be reasonable as the petitioner assuming that it has availed the facility of parallel operation thus bound to pay the same even if proper invoices have been raised by the distribution licensee. Having paid the amounts, the petitioner has caused financial stress to the licensees by withholding the amount due including GSC. Therefore, the petitioner is liable for payment of the interest apart from the original charges due to the distribution licensee.

18. From the pleadings it is noticed that the distribution licensee referred to two Judgements in respect of limitation aspect rendered by the Hon'ble Supreme Court in the matter of M/s Prem Cottex Vs Uttar Harayana Bijili Vitran Nigam (decided on 5th October, 2021) and M/s K.C Ninan Vs Kerala Electricity Board & Ors . In both the cases section 56 of the act, 2003 stood interpreted and the issue of limitation has been

explained with reference to start date. Paragraph 26 of the judgements of M/s Prem Cottex clearly explains when the limitation starts rolling against the debtor. The judgement in the matter of K.C Ninan Vs Kerala Electricity Board & Ors has pointed out that section 56 restricts the remedy of disconnection, as otherwise it leaves way for other remedies being perceived by the licensees to recover the amounts due them. Thus, in this case it is appropriate to state though notice has not been issued earlier, it would not make the demand raised towards principal and interest of GSC unrecoverable as the distribution licensee raised the bill only in the year 2021 from where the limitation starts.

19. Per contra the petitioner sought to rely on the following judgements

- (i) NTPC Ltd Vs M.P SEB (2011) 15 SCC 580
- (ii) CIT Vs Ranchi Club Ltd & Others, (2013) 15 SCC 545
- (iii) Consolidated Engg. Enterprises Vs Irrigation Dept. (2008) 7 SCC 169
- (iv) A.P Power Co-ordination Committee Vs Lanco Kondapalli Power Ltd (2016) 3 SCC 468.

In the matter of NTPC Ltd Vs M.P SEB the petitioner sought to rely on that interest is payable only when there is substantive provision in the governing act, rule and regulation. Also, the Hon'ble Supreme Court was considering the levy of interest in context of tariff revision which is not the case with the instant petition. In the instant petition the charges have been already decided and affirmed by the Hon'ble Supreme Court. Since the petitioner has not paid the amount by equity it is liable to pay the same.

20. In the matter of CIT Vs Ranchi Club Ltd & Others the core issue in the appeal decided by the Hon'ble Supreme Court by affirming the judgement of Hon'ble High Court of Patna arising out of the Income Tax Act where specific provision is made towards the payment of interest for noncompliance of particular provision relating to filing of tax return or delayed payment of advance tax. Neither the situations are envisaged on the case on hand. In the matters of taxation, it is a thumb rule that that courts have no discretion in interpreting the provisions under relevant tax laws. Therefore, the findings rendered in the judgment is of no avail to the petitioner.

21. In the matter of Consolidated Engg. Enterprises Vs Irrigation Dept the Hon'ble Supreme Court was considering Arbitration and Conciliation Act coupled with Limitation act in the context of invoking the limitation for initiation of proceedings pursuant to arbitration award in the context of specific provision fixing the time period, which cannot be extended invoking the general provisions by the apply the maxim "*Generalia Specialbus non derogant*". In the present case before the Commission nothing of this sought is applicable as issue is with regard to levy of GSC and it becoming time barred according to the petitioner. The said judgement provides filing or initiation of proceedings and not otherwise. Therefore, the petitioner cannot take support of the said judgement. The Hon'ble Supreme Court went on to observe that the limitation act does not apply to appeals, applications and other proceedings before the Tribunal unless expressly provided thereof. Thus the judgment has no consequences on the instant proceedings.

22. In the matter of A.P Power Co-ordination Committee Vs Lanco Kondapalli Power Ltd the Hon'ble Supreme court was concerned with applicability of limitation to the proceedings before the Commission it has been interpreted that limitation would apply to the judicial power exercised by the Commission under section 86 (1) (f) of Act, 2003 and not in respect of other power and functions which may administrative and regulatory. In the present case the distribution licensee raised demand notice for payment of GSC dues and also levied interest for nonpayment for the period when it actually become due. Therefore, the facts and circumstances as available in the reported judgment do not support the claim of the petitioner as the said case involved recovery of capacity charges and MAT which was claimed beyond the reasonable timeframe and application of principle of money decree to the matter. Therefore, the judgments referred above do not aid the petitioner in so far as the claims made by the petitioner.

23. The distribution licensee contended that in the matter of fuel surcharge adjustment vide Civil Appeal No. 5542 of 2016 decided on 05.07.2016, held that interest is payable and if no rate is decided at 8% for the delay caused in payment. Therefore, in this case also the petitioner is liable to pay interest as demanded by the distribution licensees since it has failed to pay the GSC claims in time.

24. It is at this stage appropriate to state that nonreceipt of claims, invoice, demand notice or bills towards amount due for the supply made or services availed is no excuse for nonpayment of the same. If the claim is not questioned or disputed within time the entity availing such supply or service is bound to pay the amount due even if it has not received any intimation without any demur. In that view of the matter also the petitioner cannot sustain that the GSC cannot be claimed by the distribution licensee.

25. The Commission notices the judgement rendered by the Hon'ble High Court of Andhra Pradesh as it then was, had decided a matter on the issue of levy interest and surcharge filed by M/s. Venkateshwara Rice Mill Vs Superintending Engineer, APSEB, Hyderabad and others. as reported in 1998 (4) ALD 101. It has been held by raising the following points-

- “(1) When the electricity charges are permitted to be paid in instalments, whether in addition to interest under para 34 of the Terms and Conditions of Supply, additional charge (also called as 'surcharge') as contemplated by para 32.2.1 is payable simultaneously on the outstanding amount ?
- (2) How and in what manner the interest has to be calculated under para 34 i.e., whether the entire amount payable on the date of grant of instalments should bear interest and surcharge at the prescribed rate till the last date of payment or whether it should be calculated with reference to the remaining amount payable after deducting the amount paid in instalments from time to time ?”

It has been observed as follows in the findings.

“The learned Counsel for the petitioners have cited certain decisions in a bid to make good their submission that the contracts entered into by the State or its instrumentalities especially the contracts superimposed by the statutory provisions are not immune from attack on the ground of infraction of [Article 14](#), that is to say, on the ground that the contractual clause is arbitrary and unreasonable. We are spared of the necessity to probe into this aspect as we are not in a position to say that an element of arbitrariness or unreasonableness will be writ large on the face of clause 34 if we reject the interpretation placed by the learned Counsel on the said clause.

In this context, we must bear in view the nature of functions and modus

operandi of the Electricity Board as highlighted by the Supreme Court in [Ferro Alloys](#) case (supra) apart from other considerations adverted to supra. An infraction of [Article 14](#) does not arise merely because a customer is visited with a penalty or extra liability of being called upon to pay interest and surcharge which together works out to a high-rate to enable him to defer the payment and at the same time avail of the electricity supply without interruption. The reasonableness of such extra payment cannot be judged from the stand point of a set formula or uniform yardstick. It is pointed out that under the terms and conditions of the supply of Tamil Nadu State Electricity Board, the liability to pay surcharge on the amounts allowed to be paid in instalments is not fastened on the consumer. But, the degree of fairness with which a consumer is treated may vary from State to State and would also depend upon the peculiar problems of the particular Board. The fact that the A.P.S.E.B. could have been more fair to the consumer by falling in line with its counter-part in Tamil Nadu does not per se give rise to violation of [Article 14](#). The reasonableness of the impugned clause cannot, in our view, be judged by the Law Court on its own notions or relative standards of fairness. It is not necessary for us to go into the question whether unreasonableness by itself, without a potential for discrimination would be a ground of attack under Article 14 as we have not been able to perceive an element of palpable unreasonableness in clause 34 as interpreted by us.

.....

In the result, we answer question No.1 formulated by us against the writ petitioners and Question No.2 as per the discussion in the judgment. The bills impugned in the writ petitions shall be duly revised taking into account the legal position enunciated by us with reference to Question No.2.”

Taking cues from the judgement rendered by the Hon'ble High Court as extracted above if instalments properly granted would attract interest, there is no gain say in imposing surcharge for nonpayment of the GSC which was not the making of the TGTRANSCO or TGSPDCL but due to the litigation kept pending by the petitioner itself or otherwise. Inasmuch as imposition of surcharge is sort of a penalty as the revenue which was due long ago stood withheld by the petitioner. The levy of surcharge is prime facie the loss of revenue caused by the petitioner at the relevant time, thus it has become a carrying cost for the delay in payment of the original penalty.

Accordingly, for the reasons set out and the explanations given including the interpretation made out supra, the Commission is not inclined to interfere in the claims made by the distribution licensee both towards principal and interest claimed thereof.

26. Since the original petition itself has been taken up and is being disposed by the instant order, nothing survives in respect of the interlocutory applications filed along with this main petition, as such they stand closed.

27. Keeping in view the findings arrived the petition fails and is accordingly dismissed, but in the circumstances without any cost.

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

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M. D. MANOHAR RAJU)
MEMBER

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

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