

**In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)**

**Appeal No. 251 of 2016 & IA No. 652 of 2017
AND
Appeal No.94 of 2017**

Dated: 6th September, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I. J. Kapoor, Technical Member**

In the matter of :-

**Bhakra- Beas Management Board (BBMB)
Sector 19-B, Madhya Marg,
Chandigarh - 160019**

... Appellant

Versus

**1. Punjab State Electricity Regulatory
Commission (PSERC)
SCO 220-221, Sector 34A,
Chandigarh, 160022**

...Respondent No.1

**2. Punjab State Power Corporation Limited
(PSPCL)
The Mall, Patiala – 147 001**

...Respondent No.2

**Counsel for the Appellant(s): Mr. M.G.Ramachandran
Ms. Poorva Saigal
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan
Mr. Shubham Arya**

**Counsel for the Respondent(s): Mr. Sanjay Sen, Sr. Counsel
Mr. Sakesh Kumar
Ms. Charu Singhal**

Mr. Maninder Singh (Rep.)
Mr. Davinder Singh (Rep.)
Ms. Sheetal (Rep.) for R-1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Sandeep Rajpurohit
Ms. Neha Garg
Ms. Saloni Sancheti for R-2

Ms. Suparna Srivastava for PGCIL

JUDGMENT

PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER

1. The Appeal No. 251 of 2016 is being filed under Section 111 of the Electricity Act, 2003 against the Order dated 27.7.2016 (“**Impugned Order 1**”) passed by the Punjab State Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) in Petition No. 79 of 2015 filed by PSPCL before the State Commission. The Appeal No. 94 of 2017 is also being filed under Section 111 of the Electricity Act, 2003 against the Order dated and 11.2.2017 (“**Impugned Order 2**”) passed by the State Commission in Petition No. 80 of 2016. In the Impugned Order 1, the State Commission has determined the Annual Revenue Requirement (“**ARR**”) and tariff for the distribution and retail supply of electricity by the Respondent No. 2/PSPCL in the State of Punjab for the FY 2016-17, including the cost of generation and transmission of electricity from projects operated and maintained by Bhakra - Beas Management Board (hereinafter referred to as the “**Appellant**” or “**BBMB**”). Vide the Impugned

Order 2, the State Commission has re-affirmed the Impugned Order 1 on the claim of the Appellant under the broad heads i.e. works of capital nature chargeable to revenue, Renovation, Modernization and Upgradation (RM&U) expenditure, expenditure transferred from/to irrigation wing etc. as urged by the Appellant in its petition before the Central Electricity Regulatory Commission (hereinafter referred to as the “**Central Commission**”). The State Commission in the Impugned Order 1 while allowing Operating & Maintenance (O&M) expenses to the Respondent No. 2 pursuant to the order dated 21.3.2016 of the Central Commission has held that the Respondent No. 2 is entitled to a recovery of Rs. 945.82 Cr. from the Appellant. The Impugned Order 2 has been passed by the State Commission pursuant to the order dated 28.11.2016 of this Tribunal in Appeal No. 251 of 2016, directing the State Commission to pass a reasoned Order in light of the clarification dated 28.10.2016 passed by the Central Commission relating to the tariff of the generating stations and transmission system of the Appellant for the tariff of FYs 2009-14.

2. The issues raised by the Appellant in both the appeals and parties to the said appeals are common. Hence, we are proceeding to decide on the present appeals by way of this common judgement.
3. The Appellant, BBMB is a generating company owned and controlled by the Central Government. It is also involved in the Inter-State transmission of electricity. The Appellant falls under the jurisdiction of the Central Commission in terms of Section 79 (1) (a) of the Electricity Act, 2003 (hereinafter referred to as the ‘**Act**’).

4. The Respondent No 1, PSERC is the Electricity Regulatory Commission for the State of Punjab exercising jurisdiction and discharging functions in terms of the Act.
5. The Respondent No.2, PSPCL is the successor entity of the erstwhile Punjab State Electricity Board (**"PSEB"**). Subsequent to the unbundling of PSEB and in accordance with the Punjab Power Sector Reforms Transfer Scheme, 2010, PSPCL has been constituted as a separate corporate entity to take over the generation and distribution businesses of PSEB.
6. Facts of the present Appeal:
 - a) Bhakra and Beas Projects were established as a joint-venture of the erstwhile states of Punjab and Rajasthan. On reorganisation of the erstwhile state of Punjab on 1.11.1966, Bhakra Management Board (BMB) was constituted under section 79 of the Punjab Reorganisation Act, 1966. The administration, maintenance and operation of Bhakra Nangal Project was handed over to Bhakra Management Board with effect from 1.10.1967.
 - b) The Beas Project Works were transferred by Government of India from Beas Construction Board (BCB) to Bhakra Management Board as per the provisions of Section 80 of the Punjab Reorganisation Act, 1966. Pursuant to this, Bhakra Management Board was renamed as Bhakra Beas Management Board (BBMB) with effect from 15.5.1976. Since then, the Appellant is engaged in the supply of Water & Power from Bhakra Nangal and Beas

Projects to the states of Punjab, Haryana, Rajasthan, Himachal Pradesh and Union Territory Chandigarh.

- c) The status of the generation and transmission assets, their ownership, the interest of the participating States, the role of the Appellant in managing the said assets, the ownership of electricity generated are statutorily determined under the Punjab Reorganisation Act, 1966 (in particular dealt under Sections 78 to 80).
- d) The Appellant operates many Hydro Power Stations which are owned by the beneficiary States. Present installed capacity of these Stations are detailed below:

Generating Station	Unit Configuration	Total Capacity
Bhakra Left Bank	2 x 108 MW, 3 x 126 MW	594 MW
Bhakra Right Bank	5 x 157 MW	785 MW
Kotla	1x 28.94 MW, 2x24.2 MW	77.34 MW
Ganguwal	1x27.99 MW, 2x24.2 MW	76.39 MW
Dehar	6 x 165 MW	990 MW
Pong	6 x 66 MW	396 MW
Total		2918.73 MW

The Appellant also manages and operates an Inter-State Transmission System primarily for evacuation of the power from

the above mentioned power houses to the periphery of the beneficiary States.

- e) The Appellant acts as an agent and operator for and on behalf of the participating States. The ownership in the electricity generated and transmission assets vest in the participating States in a fixed proportion as agreed in the historical agreements/determined by the Central Government. All the expenses of the Appellant are paid by the participating States. There is no equity capital contributed by the participating States to the Appellant. In these circumstances, the Appellant had not been maintaining gross block of assets in its books in the past and no capital expenditure including any additional capitalisation takes place in the books of the Appellant. The capital assets were created by the beneficiary States and have been given under the possession and control of the Appellant only for the purpose of O&M. All expenses of O&M are also met by the beneficiary States. Any additional capitalisation required for the Projects including any renovation and modernisation scheme and other upgradation schemes are also funded by the beneficiary States.
- f) On 15.9.2011, the Central Commission, in suo-moto Petition No. 181 of 2011, held that the Appellant is a generating company owned or controlled by the Central Government and is also involved in Inter-State transmission of electricity and directed the Appellant to make appropriate applications/petitions for approval of tariff of its generating stations and transmission systems, in accordance with the CERC (Terms and Conditions of the Tariff),

Regulations, 2009 (hereinafter termed as the “**Tariff Regulations, 2009**”) for the period FYs 2009-14.

- g) Aggrieved by the Order dated 15.09.2011, the Appellant filed Appeal No. 183 of 2011 before this Tribunal challenging the jurisdiction of the Central Commission to determine the tariff of its generating stations and transmission systems. This Tribunal vide judgment date 14.12.2012 in Appeal No. 183 of 2011 upheld the jurisdiction of the Central Commission to determine the tariff of the generating stations and transmission systems of the Appellant. Against the said judgment of this Tribunal, the Appellant has filed a second Appeal being Civil Appeal No. 1352/2013, before the Hon’ble Supreme Court which is pending.
- h) Pursuant to the directions of the Central Commission in suo-motu Petition 15/2012, the Appellant filed Petition No. 200/TT/2013 before the Central Commission for approval of the annual transmission charges for the transmission assets for FYs 2009-14. The Appellant also filed Petition No. 251/GT/2013 for determination of tariff of its generation and transmission activities. Subsequent to filing of tariff petition 251/GT/2013, the Petition No. 200/TT/2013 was termed as infructuous by the Central Commission. In the Petition, the Appellant submitted the peculiar nature of the activities undertaken by it, i.e. the generation and transmission on behalf of the beneficiary States and not owning any of the capital assets and has not submitted complete details required for determination of tariff by the Central Commission.

- i) The Central Commission vide orders dated 12.11.2015 and 21.3.2016 determined only the Operation and Maintenance Expenses of transmission assets and generating assets respectively of the Appellant for FYs 2009-14. The Central Commission further directed the Appellant to file the necessary petition for determination of generation and transmission tariff for the period FYs 2014-19 in accordance with the provisions of the Tariff Regulations, 2014.
- j) The Central Commission vide Order dated 21.03.2016 did not reject any other tariff elements but only determined the O&M Expenditure for FYs 2009-14. The Central Commission also held that in the peculiar circumstances of the case, the Appellant shall develop the requisite details in relation to the fixed assets etc. and file a regular petition for determination of the tariff for all the tariff elements for the tariff period 1.4.2014 to 31.3.2019 in accordance with the Tariff Regulations, 2014. Pursuant to the directions of the Central Commission, the Appellant hired a consultant to prepare an extensive inventory of the assets being operated and maintained by the Appellant and submitted the same before the Central Commission along with the Tariff Petition for determination of tariff for the period FYs 2014-19.
- k) Vide Impugned Order 1 dated 27.07.2016, the State Commission determined the ARR and tariff of PSPCL for FY 2016-17, including the cost of generation and Inter-State transmission of electricity

from projects operated and maintained by the Appellant. The State Commission concluded that the quantum of money that PSPCL is allowed to pay to the Appellant in its capacity as participating State is restricted to the O&M expenses as determined by the Central Commission and rejected all other tariff elements. The State Commission has held that PSPCL is entitled to recover from the Appellant an amount of Rs. 945.82 Cr.

- l) Aggrieved by the Impugned Order 1 passed by the State Commission, the Appellant preferred present Appeal being No. 251 of 2016. On 20.10.2016, after hearing the parties, this Tribunal passed an order directing PSPCL not to take any coercive steps until the next date of hearing.
- m) Subsequent to the passing of the Impugned Order 1 by the State Commission; the Appellant filed an Application being I.A. No. 43 of 2016 before the Central Commission seeking a clarification regarding the Orders dated 12.11.2015 and 21.03.2016. Vide its Order dated 28.10.2016, the Central Commission clarified that the intention of its earlier orders was not to deprive the Appellant of other tariff elements and that the Appellant and its participating States (including PSPCL) were to adjust the tariff of the other elements as per the system that existed before.
- n) Pursuant to the above clarification, on 28.11.2016, this Tribunal remanded the matter and directed the State Commission to pass a reasoned order in light of the clarification given by the Central Commission. Pursuant to the remand order, the State Commission

initiated proceedings by way of Petition No. 80 of 2016. Vide affidavit dated 05.12.2016, the Appellant filed its written submissions before the State Commission. Further, in response to the particular queries raised by the State Commission, the Appellant filed its additional submissions dated 09.12.2016, including on the aspect of apportionment of cost between the power and irrigation works of the Appellant. On the directions of the State Commission the Appellant and PSPCL also filed a joint statement (reconciled accounts) indicating the expenditure under each head capital works, normal works etc. from the FY 2009-10 to FY 2015-16. The Appellant also placed on record a copy of the Bhakra Nangal Agreement, 1959 between the Punjab and Rajasthan Government. After another hearing on 17.01.2017, the State Commission directed the Appellant to submit further information regarding the apportionment of costs between the power and irrigation wings of the Appellant. On 27.01.2017, the Appellant filed an additional Affidavit before the State Commission placing on record the relevant information.

- o) On 11.02.2017, the State Commission passed the Impugned Order 2 re-affirming the stand taken in Impugned Order 1. Aggrieved by the Impugned Order 2 passed by the State Commission, the Appellant has preferred the present Appeal being No. 94 of 2017 before this Tribunal.

7. Questions of Law:

We have clubbed the questions of law raised by the Appellant in Appeal Nos. 251 of 2016 and 94 of 2017. Accordingly the following

questions of law have been raised by the Appellant in the present Appeals:

- a) Whether the State Commission has proceeded to determine the liability of PSPCL for the expenses incurred by the Appellant for the tariff period 2009-14, on an erroneous interpretation of the Orders dated 28.10.2016, 12.11.2015 and 21.03.2016 passed by the Central Commission?
- b) Whether, in the facts and circumstances of the case, the State Commission has failed to appreciate the full import and intent of the clarification issued by the Central Commission regarding other tariff elements of BBMB i.e. capital cost, expenditure on works of capital nature chargeable to revenue, expenditure transferred from/to Irrigation Wing, Renovation, Modernization and Up-gradation (RM&U) expenditure etc. for the tariff period 2009-14?
- c) Whether the Order dated 27.7.2016 passed by the State Commission without any notice to the Appellant and without giving any an opportunity of hearing to the Appellant is in violation of natural justice and contrary to transparency provided for in section 86 (3) of the Electricity Act, 2003?
- d) Whether in terms of Section 79 of the Electricity Act, 2003 read with Rule 8 of the Electricity Rules, 2005, the State Commission has the jurisdiction to examine the methodology being followed

by BBMB (since its inception) regarding apportionment of costs between its power and irrigation wing?

e) Whether the State Commission has exceeded the scope of the order of this Tribunal by going into the issue of apportionment of costs between the power and irrigation wings of BBMB, historical data etc.?

8. We have heard at length the learned senior counsel/ counsel for the rival parties and considered carefully their written submissions, arguments putforth during the hearings etc. Gist of the same is discussed hereunder.

9. The learned counsel for the Appellant has made following arguments/submissions for our consideration on the issues raised by it:

a) The State Commission has erred in determining the liability of PSPCL for the expenses incurred on the Generating Stations and transmission lines operated by the Appellant for the control period FYs 2009-14, on an erroneous interpretation of the orders dated 12.11.2015, 21.03.2016 and the subsequent clarification dated 28.10.2016 passed by the Central Commission. The State Commission, while passing the Impugned Orders, has concluded that the quantum of money that PSPCL is allowed to pay to the Appellant in its capacity as participating State is restricted to the O&M expenses as determined by the Central Commission in the orders dated

12.11.2015 and 21.03.2016. This is inspite of the clarification issued by the Central Commission that *'the intention of above orders passed by the State Commission was not to deprive BBMB of tariff in regard to other elements'*.

- b) The State Commission has failed to appreciate the scope of the Central Commission's decision in the Order dated 28.10.2016. In the said Order, the Central Commission had expressly stated that *'BBMB and the participating States to adjust the tariff of other elements as per the system that existed before'*. The State Commission has taken the hyper-technical view that since the Tariff Regulations, 2009 recognizes tariff elements such as Return on equity, Interest on loan capital, Depreciation, Interest on working capital and Operation and maintenance expenses, therefore, the claim made by the Appellant under the broad heads of (i) Works of capital nature chargeable to revenue, (ii) Renovation, Modernization and Upgradation (RM&U) expenditure, (iii) Expenditure transferred from/to irrigation wing etc. shall not be admissible. The State Commission has relied on mere nomenclature to deny the Appellant the other tariff elements, as expressly provided for in the order dated 28.10.2016. If the above tariff elements had been adjusted in terms of the subsisting arrangement between the Appellant and the participating States, then the same arrangement ought to have been allowed by the State Commission for the tariff period FYs 2009-14. The intent and objective of the Central Commission in passing the order dated 28.10.2016 was to ensure the servicing of the capital cost incurred by the Appellant

- i.e. (i) Works of capital nature chargeable to revenue, (ii) Renovation, Modernization and Upgradation (RM&U) expenditure, (iii) Expenditure transferred from/to irrigation wing etc.
- c) The Central Commission had specifically taken cognizance of the peculiar circumstances of the case and decided that the Appellant shall develop the requisite details in relation to the fixed assets etc. and file a regular petition for determination of the tariff for all the tariff elements for the tariff period 01.04.2014 to 31.03.2019 in accordance with the Tariff Regulations, 2014, leaving the Appellant and the participating States to adjust the tariff of other elements for the period FYs 2009-14, as was existing before. Accordingly, the said elements ought to have been allowed by the State Commission.
- d) The State Commission has failed to appreciate that the Central Commission has the exclusive power to deal with the generating companies owned and controlled by the Central Government which includes the Appellant, in terms of Section 79 (1) (a) of the Act. It is not open for the State Commission to assume jurisdiction and deal the question of cost distribution between the irrigation and power wings of the Appellant. It is in contravention to Rule 8 of the Electricity Rules, 2005. According to these Rules, the role of the State Commission is only to decide whether the tariff determined by the Central Commission is to be approved or not from the point of view of deciding whether the power can be procured from other sources at a

cheaper or in a more economical manner. The examination by the State Commission cannot amount to re-determination of the tariff determined by the Central Commission. The proceedings before the State Commission were related to ARR of PSPCL and thus tariff determination cannot lead to re-determination of tariff determined by the Central Commission for the Appellant. In this regard the Appellant has referred to the judgement dated 4.9.2012 of this Tribunal in Appeal No. 94 of 2012 and batch in case of BSES Rajdhani Power Ltd. Vs. Delhi Electricity Regulatory Commission and Anr. While doing so, the State Commission has questioned the veracity of the methodology being followed since the inception of the Project and the signing of the Bhakra Nangal Agreement in 1959.

- e) The State Commission has extended the scope of the remand order dated 28.11.2016 made by this Tribunal. In terms of the remand order the State Commission was to pass a reasoned order in light of the clarification issued by the Central Commission, after providing the Appellant an opportunity to be heard. The role of the State Commission was circumscribed by the observations/clarifications made by the Central Commission and cannot be extended to include within its scope, the question of apportionment and re-opening of historical facts and figures. In this regard the Appellant has referred to this Tribunal's judgement in case of Meghalaya State Electricity Board Vs. Meghalaya State Electricity Regulatory Commission 2010 ELR (APTEL) 0940 wherein the scope of remand has been dealt in detail, relying upon the decisions of the Hon'ble Supreme Court.

- f) The State Commission has failed to appreciate that the Appellant will be subject to serious prejudice if the Impugned Orders are given effect to. The Appellant is generating and making available the electricity to PSPCL and other participating States at a cost which is less than any other generating stations from which PSPCL is procuring electricity. The Appellant has no revenue source of its own and as per the Punjab Reorganisation Act, 1966, the entire cost and expenses of the Appellant both capital and revenue have to be made by the participating States in a defined proportion. The Appellant will not be in a position to maintain operation of Power Houses and substations and disbursement of establishment/man power expenditure (salaries & other expenditure) if a significant amount due from PSPCL is not paid to the Appellant. The situation will worsen if PSPCL proceeds to recover or adjust the amount already paid in pursuance of the Impugned Orders passed by the State Commission.
- g) The Appellant has also relied on various orders/judgements of this Tribunal and Hon'ble Supreme Court. These are orders dated 21.12.2000 passed by the Central Commission, this Tribunal's judgements in case of Damodar Valley Corporation Vs. Central Electricity Regulatory Commission- 2007 ELR (APTEL) 1677, Lanco Amarkantak Power Pvt. Ltd. Vs. MPERC & Ors. in Appeal No. 71 of 2008 & Central Power Distribution Company Ltd. Vs. CERC and Anr. in Appeal No. 152 of 2005 and Hon'ble Supreme Court's judgements in case of State of Punjab & Anr. Vs. Jalour Singh & Ors (2008) 2 SCC 660, Jaswant Sugar Mills Ltd. Vs. Lakshmi Chand & Ors. AIR 1963

SC 677 and BSES Ltd. Vs. Tata Power Company Ltd. &Ors. (2004) 1 SCC 195. The Appellant also relied on Black's Law Dictionary Seventh edition regarding interpretation of the term 'determination'.

10. The learned senior counsel for the State Commission has made following arguments/submissions for our consideration on the issues raised by the Appellant:

a) The State Commission has examined the implications of the order passed by the Central Commission on the tariff of the Respondent No. 2 in compliance to the remand order dated 28.11.2016 passed by this Tribunal in Appeal No. 251 of 2016 whereby the State Commission was directed to pass a reasoned order in the matter. The Appellant cannot take a plea that the State Commission does not have jurisdiction to deal with the matter. The Appellant has not raised any issue about jurisdiction before the State Commission. The State Commission has decided the matter after considering all the facts placed before it and after hearing the parties.

b) The State Commission has not performed any function of the Central Commission in terms of section 79 of the Electricity Act, 2003 in its order dated 11.02.2017. The State Commission at Para 19(V) (viii) of the Impugned Order 2 observed that "*The appropriate Commission in case of BBMB is CERC, therefore, the tariff for BBMB is to be determined by the CERC and the same cannot be determined partly by the Commission of the respective participating States.*"

c) The Appellant in the petition filed before the Central Commission for determination of Tariff for the period FYs 2014-19 in respect of its power stations submitted that it had maintained the Fixed Asset Register and same was submitted to the Central Commission on 12.10.2016. On the basis of the Fixed Asset Register, the Appellant has now claimed return on equity, depreciation and interest on loans in the petition before Central Commission on 14.12.2016. Now the Appellant on 5.3.2017 submitted before this Tribunal that there is no concept of return on equity or interest on loan or depreciation or incentive or disincentive in BBMB which are basic tariff elements in case of generation and transmission of electricity. The declaration made by the Respondent before this Tribunal seems to be contradictory to the submissions made before the Central Commission.

d) The State Commission has allowed the elements other than O&M expenses such as depreciation, interest on loans and return on equity of BBMB to PSPCL as per existing practice. Under existing system, these elements are being claimed by PSEB/PSPCL on the amount invested in Fixed Assets of the Appellant. The value of Gross Fixed Assets of PSPCL is being increased by the share of PSPCL in BBMB's assets. This value became part of Gross Fixed Assets of PSPCL. The elements such as return on equity, depreciation, Interest are being allowed by the State Commission based on the value of Gross Fixed Assets of BBMB. The prevalent system of allowing these

elements to BBMB had not been altered/ changed by the State Commission after the Central Commission's Orders dated 12.11.2015 and 21.03.2016. The representative of PSPCL had also confirmed the same view, during the hearing in Petition No. 80 of 2016 of the State Commission. The relevant extract of the Order of the State Commission is reproduced below for reference;

“xiii) Sh. Ved Vyas, Dy. CAO, PSPCL duly confirmed during the hearing dated 17.01.2017 that the State Commission, in its tariff order, dated 27.07.2016 has only withdrawn excess O&M expenses of BBMB i.e. the difference between O&M expenses as per CERC orders and O&M expenses allowed earlier as pass through in the previous tariff orders by the State Commission. All other expenses such as depreciation, interest on loans etc have been already allowed by the State Commission.....

.....
xiv) Thus, it is amply clear that the other Tariff elements such as Return on Equity, Interest on Loan, Depreciation, Incentive had been claimed by PSPCL and the same have been duly allowed to PSPCL as per the system prevailing prior to the CERC orders.”

e) The Capital assets were created by the participating States before the incorporation of the Bhakra Management Board and the Beas Construction Board. After its incorporation, capital

expenditure is being incurred by BBMB on behalf of beneficiary States. Each item of asset is first purchased by BBMB. Each invoice of asset is being raised by supplier in favour of BBMB. Accordingly, BBMB releases payment to its supplier. At the end of month, BBMB raised the demand to participating States in accordance with the books of accounts maintained by BBMB. The participating States as per the demand of BBMB, reimburse the expenses to BBMB, as per the claim. The Gross Fixed Assets of the participating States/PSPCL are increased as per the payment made by them. The State Commission accepts that the ownership of generating stations and transmission assets vests with participating States.

- f) The State Commission determined the Annual Revenue Requirement (“ARR”) and Tariff of PSPCL for FY 2016-17. The State Commission has not concluded that quantum of money which is to be paid by PSPCL to BBMB in its capacity as participating States is restricted to O&M expenses determined by the Central Commission. The State Commission had not denied all other tariff elements such as Return on Equity, Depreciation and Interest on loans in its Impugned Order 1 dated 27.07.2016. Elements other than O&M expenses such as depreciation, interest on loans and return on equity of BBMB are allowed to PSPCL as per the existing practice by the State Commission.
- g) The State Commission has never calculated the money that PSPCL is allowed to pay to the Appellant in its capacity as the

participating State. The State Commission had only determined O&M expenses of PSPCL, to implement the orders of the Central Commission. The State Commission clarified in its Impugned Order 1 that O&M expenses were earlier allowed on actual basis in the absence of tariff orders of BBMB. Now since the Central Commission has determined the O&M expenses of BBMB for transmission charges, generating stations vide its orders dated 12.11.2015 and 21.03.2016 respectively, the State Commission has considered the O&M expenses determined by the Central Commission and had given effect to the O&M expenses only in the light of the said orders of the Central Commission.

- h) The State Commission in the Impugned Order 2 has highlighted the main issue i.e. the expenditure of the Irrigation Wing, which had not been considered by the Central Commission as part of O&M expenses for power generation. The Central Commission in its order dated 21.03.2016 had clearly recorded that *“In the absence of specific details of the basis of transfer to and fro the Irrigation and Power Wing as well as the arrangement made between the petitioner and the beneficiary States, this expenditure cannot also be considered.”*
- i) On the directions of this Tribunal, the State Commission had to hear the Appellant as well as the PSPCL and pass a reasoned order. In order to comply with the directions of this Tribunal, the State Commission examined the decisions taken/notifications issued/agreements entered into by the competent authorities,

from time to time, regarding the transfer of expenditure on account of O&M expenses from the Irrigation Wing to the Power wing and vice versa.

- j) The State Commission in its Impugned Order 2 merely expressed the view that expenses of the Appellant should now be segregated into three categories as per the Bhakra Nangal Agreement (1959) and the decision of meeting held between the Government of Punjab, Government of Rajasthan, Government of Haryana and the Beas Construction Board in the meeting dated the 23.3.1971 in case of Beas Projects.

- k) On the issue of deprivation of the Appellant on other tariff elements in light of the order dated 28.10.2016 of the Central Commission, the State Commission had examined the issue in its Impugned Order 2 after hearing the parties and has been detailed out in the said order.

- l) The State Commission has nowhere restricted PSPCL's liability towards the Appellant for generation of electricity at the generating station and for the use of the transmission system operated by it. Earlier, the State Commission (in the absence of Tariff Orders of BBMB) had allowed all the expenses including capital expenses and Irrigation expenses of BBMB, in its Tariff Orders for PSPCL as O&M expenses. The Central Commission, vide orders dated 12.11.2015 & 21.03.2016, determined only the O&M expenses of the Appellant for the period of FYs 2009-14. Accordingly, the State Commission had re-determined the

O&M expenses of the Appellant in its Impugned Order 1 dated 27.07.2016, based on O&M expenses determined by the Central Commission. The Section 62 (6) of the Act lays down that the excess amount recovered by a generating company/licensee shall be recoverable by the person who has paid such charge with interest.

m) Prior to FY 2009-10, the State Commission was not able to determine the O&M expenses of the Appellant paid for by the consumers of the State of Punjab by way of electricity tariff. The Act casts a duty on the generating and distribution companies to submit true and accurate information to the Appropriate Commission. The State Commission has not determined the liability of PSPCL for the expenses incurred by BBMB in its Tariff Order for FY 2016-17. The Appellant is incurring expenses of varying nature such as capital expenses and revenue expenses of Irrigation and Power Wing. Due to non-availability of Tariff Orders of the Appellant, earlier the State Commission without scrutiny of O&M expenses of the Appellant, allowed the expenses to PSPCL as claimed, till the tariff order of PSPCL for FY 2015-16. The State Commission had given effect to O&M Expenses (only) of the expenses of the Appellant in Impugned Order 1 of PSPCL for FY 2016-17 based on Orders of CERC for the FY 2009-10 onwards so that consumers of the State of Punjab could be charged according to orders of the Central Commission. The effect on O&M expenses of the Appellant for the period FY 2002-03 to FY 2008-09 is still

pending. It will be given effect to after determination of O&M expenses by the Central Commission for the said period.

- n) The Appellant wrongly interpreted the clarification issued by the Central Commission that other tariff elements are capital cost, expenditure on works of capital nature chargeable to revenue, expenditure transferred from/to Irrigation Wing, Renovation, Modernization and Up-gradation (RMU) expenditure etc. The said expenditure are expenses in the nature of capital expenses. These expenses cannot be considered as part of O&M expenses.
- o) The State Commission had examined the documents provided by the Appellant as per directions of this Tribunal dated 28.11.2016. Since the Appellant failed to provide to the Central Commission, specific details with regard to the basis of transfer to and from the Irrigation and Power Wing as well as the arrangement made between the Appellant and the beneficiary States for apportioning the expenses during determination of O&M expenses for FYs 2009-14, the Central Commission had not considered these expenses as O&M expenses of BBMB. In order to examine the details of Irrigation expenses, the State Commission studied the Bhakra Nangal Agreement (1959), record of discussion (2nd February and 23rd March, 1971) of Beas Construction Board and participating States regarding the distribution of expenses between Irrigation Wing and power, the Punjab Re-organisation Act, 1966, the Government of India

notification dated 31.10.2011, so that the orders of this Tribunal could be complied with.

- p) The State Commission in its Impugned Order 2 highlighted the issue of Irrigation expenses and its impact on the finances of the Appellant so that the agreement/ GOI notifications/decisions taken by the competent authorities, from time to time, are honoured by the Appellant to protect the interest of consumers of the participating States i.e. PSPCL in the case of Punjab. The State Commission found that the Appellant had not followed the decisions/ notifications/ agreements held between the partner States, the Bhakra Beas Board, Gol and order of the Hon'ble Supreme Court of India in true spirit. Further, the State Commission, in compliance of Order of this Tribunal, keeping in mind the relevant provisions of the Act found that the Central Commission has correctly disallowed the addition of the Irrigation expenses to power consumers. Tthe State Commission has not decided anything afresh and only held that the clarification by the Central Commission has no effect on the tariff of the PSPCL.
- q) In the present Appeal, the Appellant wants the State Commission, who has no jurisdiction over the Appellant, to allow 'other elements'. This appears to be narrow scope of the Appeal. The Appellant ignoring the legal position that the Central Commission has the jurisdiction over the Appellant continues to take position as if the order of this Tribunal in Appeal No. 183 of 2011 does not exist. The Appellant cannot

come to the State Commission directly/indirectly to seek tariff or any elements thereof. The State Commission has accepted the determination of O&M expenses by the Central Commission for FYs 2009-14 in respect of the Appellant. There is no scope for allowing any expense/ tariff elements of the Appellant which has not been allowed by the Central Commission, which is the appropriate commission for tariff of the Appellant.

- r) The reliance of the Appellant on Rule 8 of Electricity Rules, 2005 is misplaced as this rule does not require the State Commission to determine an element of tariff or allow a cost/ expense which has not been determined by the Central Commission. The Appellant wants to negate the effect of adjustment of excess O&M expenses by claiming other elements of tariff, when there is in fact no such unrecovered other elements.
- s) On the issue of natural justice i.e. passing the Impugned Order 1 without hearing the Appellant it may be noted that the procedure adopted by the State Commission for issuing public notice and hearing in relation to the tariff of PSPCL is in line with the provisions of the Act, read with applicable Conduct of Business Regulations.
- t) The Central Commission has gone into matters of tariff and has disallowed certain elements of tariff. The Appellant cannot now ask for the denied elements to be made an additional pass through in the ARR of PSPCL, more so when all expenses has already been allowed in the Impugned Orders. PSPCL in the

Review Petition before the State Commission also did not make any allegations that any element of tariff on account of the Appellant claimed by PSPCL has been disallowed. The Central Commission's initial orders and subsequent clarification do not envisage a situation that requires the State Commission to exercise regulatory jurisdiction to scrutinise and allow other elements of tariff of the Appellant who is otherwise within jurisdiction of the Central Commission.

- u) The Central Commission has already exercised tariff jurisdiction and there is no recourse to "as was existing before" route for collection of tariff related expenses. There is no tariff/ regulatory jurisdiction of "as was existing before" route for determination of tariff once the tariff is determined on a cost plus basis under Section 62 of the Act. The Appropriate Commission has to apply the regulations for determination of tariff. As admitted by the Appellant, that there is no additional determination of other tariff elements, the question of any appropriation of such expenses to the account of the consumer does not arise.
 - v) Nothing prevents the participating States from adjusting tariff or providing support to the Appellant. However, there cannot be a regulatory recognition of "as was existing before" after Central Commission has exercised jurisdiction in the matter and denied elements of tariff.
11. After having a careful examination of all the arguments and submissions of the rival parties on various issues raised in the present Appeals, our observations are as follows:-

- a) The main issues raised by the Appellant in the present Appeals are related to disallowance of works of capital nature chargeable to revenue, RM&U expenditure, expenditure transferred from/to irrigation wing etc. in the ARR of PSPCL thereby effecting the recovery of Rs. 945.82 Cr. by PSPCL from the Appellant for FYs 2009-14, jurisdiction of the State Commission for determination of the liability of PSPCL for the expenses incurred by the Appellant affecting its finances, failure of the State Commission to implement the clarification issued by the Central Commission regarding other tariff elements and exceeding the scope of the order of this Tribunal by going into the issue of apportionment of costs between the power & irrigation wings of the Appellant, historical data etc.
- b) On Question No. 7 a) i.e. Whether the State Commission has proceeded to determine the liability of PSPCL for the expenses incurred by the Appellant for the tariff period 2009-14, on an erroneous interpretation of the Orders dated 28.10.2016, 12.11.2015 and 21.03.2016 passed by the Central Commission? and on Question No. 7 b) i.e. Whether, in the facts and circumstances of the case, the State Commission has failed to appreciate the full import and intent of the clarification issued by the Central Commission regarding other tariff elements of BBMB i.e. capital cost, expenditure on works of capital nature chargeable to revenue, expenditure transferred from/to Irrigation Wing, Renovation, Modernization and Up-gradation (RM&U) expenditure etc. for the tariff period 2009-14?, we observe as below;

- i. To understand the whole issue it is essential to go into its genesis. The whole issue can be traced from the order dated 15.9.2011 in Petition (suo-motu) No. 181 of 2011 issued by the Central Commission. The relevant extract of the said order is reproduced below:

“6. It is evident from the provisions of 1966 Act that the BBMB is functioning under the control of the Central Government and has been vested with the responsibilities to supply power from the projects to the States of Punjab, Rajasthan, Haryana, Himachal Pradesh Delhi and Union Territory of Chandigarh through wide network of transmission lines and sub-stations. In other words, the functions assigned to BBMB under 1966 Act establishes beyond doubt that BBMB is a generating company owned or controlled by the Central Government and is also involved in inter-state transmission of electricity. Accordingly, after coming into effect of the EA 2003, regulation and determination of tariff for generation and inter-State transmission of electricity by BBMB are vested in the Central Commission by virtue of the provisions of section 174 of the said Act.

7. BBMB is, therefore, directed to make appropriate applications before the Central commission for approval of tariff of its generating stations and transmission systems, in accordance with the Central

Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for the period 2009-14.”

Although very late after the enactment of the Act, by the above order, the Central Commission has held that by virtue of the provisions of Section 174 of the Act, regulation and determination of tariff for generation and transmission of electricity by the Appellant is vested in the Central Commission.

- ii. The Appellant filed an Appeal No. 183 of 2011 before this Tribunal against the said order. This Tribunal vide judgment dated 14.12.2012 dismissed the said appeal and upheld the jurisdiction of the Central Commission to determine the tariff of the generating stations and transmission systems of the Appellant. Pursuant to this Tribunal's judgment, the Central Commission vide order dated 10.1.2013 in Petition (Suo Motu) No. 181/2011 directed the Appellant to file the tariff petitions in accordance with the provisions of the Tariff Regulations, 2009 separately for the generating stations and for the transmission systems by 28.2.2013.

The Appellant has filed an Appeal with Hon'ble Supreme Court against the said judgement of this Tribunal which is pending.

- iii. Thereafter the Appellant filed a tariff Petition No. 251/GT/2013 (combined petition for transmission and

generation tariff) for FYs 2009-14 with the Central Commission and the Central Commission vide orders dated 12.11.2015 and 21.3.2016 determined only O&M expenses for transmission (allowed normative O&M expenses) and generation assets (allowed actual O&M expenses) of the Appellant. The State Commission while issuing tariff order for PSPCL for FY 2016-17, taking cognisance of these orders of the Central Commission, vide its Impugned Order 1 dated 27.7.2016 has restricted O&M expenses payable by PSPCL to the Appellant as determined by the Central Commission thereby disallowing the other major expenses on account of capital cost, works of capital nature chargeable to revenue, Renovation, RM&U expenditure, expenditure transferred from/to irrigation wing etc. by the Appellant which has effected the recovery of amount to the tune of Rs. 945.82 Cr. The State Commission vide Impugned Order 1 effected recovery to be done by PSPCL from the Appellant for FYs 2009-14. Further, the State Commission vide Impugned Order 1 while true-up for FY 2014-15, review for FY 2015-16 and approval of ARR for FY 2016-17 of PSPCL has considered only O&M expenses in respect of the Appellant as allowed by the Central Commission for FYs 2009-14.

- iv. While issuing the orders dated 12.11.2015 & 21.3.2016, the Central Commission has made some observations which are discussed subsequently. Aggrieved by the Impugned Order 1, the Appellant filed Interlocutory Application (IA) No. 43 of 2016 in Petition No. 251/GT/2013 for clarifications from the Central Commission on other tariff elements. The Appellant

also filed an Appeal No. 251 of 2016 against the Impugned Order 1 with this Tribunal which is also being dealt with vide this judgement. The Central Commission vide order dated 28.10.2016 disposed of the IA clarifying that *“The intention of the above orders passed by the Commission was not to deprive BBMB of tariff in regard to other tariff elements. Though not explicitly stated in the above orders, it was left to the BBMB and participating States to adjust the tariff of other elements as per the system that existed before.”*

- v. Based on the above clarifications issued by the Central Commission, this Tribunal vide order dated 28.11.2016 in Appeal No. 251 of 2016 directed the State Commission to hear the Appellant as well as Respondents and pass a reasoned order after taking into account the order of the Central Commission dated 28.10.2016. Pursuant to the said order of this Tribunal, the State Commission after hearing the parties passed Impugned Order 2 dated 11.2.2017 and re-affirmed the findings in its Impugned Order 1.

- vi. Now let us examine the system, which was in practice for payment to the Appellant by PSPCL for the past years. It has been brought to our notice and also accepted by the State Commission that the status of the generation and transmission assets, their ownership, the interest of the participating States, the role of the Appellant in managing the said assets, are determined under the Punjab Reorganisation Act, 1966 which are dealt under Sections 78

to 80. The relevant extracts of the Punjab Reorganisation Act, 1966 are reproduced below:

“78 Rights and Liabilities in Regard to Bhakra Nangal and Beas Projects

(1) Notwithstanding anything contained in this Act but subject to the provisions of sections 79 and 80, all rights and liabilities of the existing State of Punjab in relation to Bhakra Nangal Project and Beas Project shall, on the appointed day, be the rights and liabilities of the successor States in such proportion as may be fixed, and subject to such adjustments as may be made, by agreement entered into by the said States after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day as the Central Government may by order determine having regard to the purposes of the Projects :

Provided that the order so made by the Central Government may be varied by any subsequent agreement entered into by the successor States after consultation with the Central Government.

(2) An agreement or order referred to in subsection (1) shall, if there has been an extension or further development of either of the projects referred to in that subsection after the appointed day, provide also for the rights and liabilities of the successor States in relation to such extension or further development.

(3) The rights and liabilities referred to in subsections

(1) and (2) shall include

(a) the rights to receive and to utilise the water available for distribution as a result of the projects, and

(b) the rights to receive and to utilise the power generated as a result of the projects, but shall not include the rights and liabilities under any contract entered into before the appointed day by the Government of the existing State of Punjab with any person or authority other than Government.

(4) In this section and in sections 79 and 80,

(A) "Beas Project" means the works which are either under construction or are to be constructed as components of the Beas Sutlej Link Project (Unit I) and Pong Dam Project on the Beas river (Unit II) including

.....
.....

79 Bhakra Management Board

.....

(5) The Governments of the successor States and of Rajasthan shall at all times provide the necessary funds to the Bhakra Management Board to meet all expenses (including the salaries and allowances of the staff) required for the discharge of its functions and such amounts shall be apportioned among the successor States the State of Rajasthan, and Electricity Boards of the said States in such proportion as the Central Government may, having regard to the benefits to each of the said States or Boards, specify.

80 Construction of Beas Project

(1) Notwithstanding anything contained in this Act or in any other law, the construction (including the completion of any work already commenced) of the Beas Project shall, on and from the appointed day, be undertaken by the Central Government on behalf of the successor States and the State of Rajasthan :

Provided that the Governments of the successor States and the State of Rajasthan shall at all times provide the necessary funds to the Central Government for the expenditure on the Project [including the expenses of the Board referred to in sub-section (2)] and such amounts shall be apportioned among the successor States and the State of Rajasthan in such proportion as may be fixed by the Central Government after consultation with the Governments of the said States.

.....

.....

(6) The Bhakra Management Board constituted under section 79 shall be renamed as the Bhakra Beas Management Board when any of the components of the Beas Project has been transferred under sub-section (5) and the Beas Construction Board shall cease to exist when all the components of the Beas Project have been so transferred.

From the above, the contention of the Appellant is confirmed that it acts as an agent and operator for and on behalf of the

participating States. The ownership in the electricity generated and transmission assets vest in the participating States in a fixed proportion as agreed in the historical agreements/determined by the Central Government. All the expenses of the Appellant required for discharge of its functions are paid by the participating States. There is no equity capital contributed by the participating States to the Appellant. The capital assets were created by the beneficiary States and have been given under the possession and control of the Appellant only for the overall management including its O&M. All expenses including O&M are also met by the participating States. Any additional capitalisation required for the Projects including any RM&U scheme etc. are also funded by the participating States. The same was being done by allowing all the expenses incurred by the Appellant in the ARR of PSEB/PSPCL and the same was in turn recovered by PSEB/PSPCL from the consumers of the State. The State Commission in its submissions in the present Appeal has also admitted this position.

- vii. The Central Commission in Petition No. 251/GT/2013 vide its orders dated 12.11.2015 and 21.3.2016 in absence of detailed information in requisite formats has determined only O&M expenses of the Appellant after applying prudence check on the data submitted by the Appellant by considering the expenses which can be considered as O&M expenses. The relevant extracts of the said orders are reproduced below:

The relevant extract from the order dated 12.11.2015 of the Central Commission:

“18.....Therefore, for the purpose of determination of the annual transmission charges, it is imperative that the petitioner furnish complete information as required under the provisions of the 2009 Tariff Regulations. It is however noticed that the petitioner vide affidavit dated 19.4.2012 in Petition No.200/TT/2013 while pointing out that it is not feasible to file tariff petition as per formats specified under the 2009 Tariff Regulations, except for O&M expenses and Interest on Working Capital, had submitted that the Commission can take the depreciated value of BBMB’s transmission system in books of the participating states as the capital value. It had also submitted that BBMB is taking steps to get such capital value of the said transmission systems from the participating stations and would submit the same immediately upon being made available to BBMB. Despite these submissions, no visible steps appear to have been taken by the petitioner to submit the said information. In our view, the non furnishing of the information and reiteration of the submissions which have been rejected by both, the Commission and the Tribunal amounts to violation of the findings of the Tribunal and the directions of the Commission. Therefore, BBMB is directed to file all necessary information regarding its transmission assets as per the applicable Tariff Regulations. Since

the tariff period 2009-14 is already over, we direct BBMB to file necessary petition for determination of transmission tariff for the period 2014-19 in accordance with the provisions of the 2014 Tariff Regulations. However, for the tariff period 2009-14, we grant the O&M expenses for the transmission elements covered in the petition for the period 2009-14, as stated in the subsequent paragraphs.

.....
.....”

The Central Commission in absence of complete details to determine the transmission tariff of the Appellant’s transmission assets determined only normative O&M expenses.

Now lets us examine the Central Commission’s subsequent order on generating assets of the Appellant. The relevant extracts from the order dated 21.3.2016 of the Central Commission:

“16. In our view, the non submission of the required information and the reiteration of the submissions which have been rejected by both, the Commission and the Tribunal, is contrary to the findings of the Tribunal and the directions of this Commission. Therefore, BBMB is directed to file all necessary information

regarding its generating stations as per the applicable Tariff Regulations.

Since the tariff period 2009-14 is already over, we direct BBMB to file necessary petition for determination of generation tariff for the period 2014-19 in accordance with the provisions of the 2014 Tariff Regulations. However, for the tariff period 2009-14, we proceed to examine the O&M expenses for the generating stations of the petitioner for the period 2009-14, as stated in the subsequent paragraphs.

18. Regulation 19 (f) of the 2009 Tariff Regulations provides the following O&M expense norms in respect of the existing hydro generating stations for the period 2009-14:

“19(f) (i) Operation and maintenance expenses, for the existing generating stations which have been in operation for 5 years or more in the base year of 2007-08, shall be derived on the basis of actual operation and maintenance expenses for the years 2003-04 to 2007-08, based on the audited balance sheets, excluding abnormal operation and maintenance expenses, if any, after prudence check by the Commission.

(ii) The normalized operation and maintenance expenses after prudence check, for the years 2003-04 to 2007-08, shall be escalated at the rate of 5.17% to arrive at the normalized operation and maintenance expenses at the

2007-08 price level respectively and then averaged to arrive at normalized average operation and maintenance expenses for the 2003-04 to 2007-08 at 2007-08 price level. The average normalized operation and maintenance expenses at 2007-08 price level shall be escalated at the rate of 5.72% to arrive at the operation and maintenance expenses for year 2009-10:

Provided that operation and maintenance expenses for the year 2009-10 shall be further rationalized considering 50% increase in employee cost on account of pay revision of the employees of the Public Sector Undertakings to arrive at the permissible operation and maintenance expenses for the year 2009-10.

(ii) The operation and maintenance expenses for the year 2009-10 shall be escalated further at the rate of 5.72% per annum to arrive at permissible operation and maintenance expenses forth subsequent years of the tariff period..."

21. In order to work out the admissible O&M expenses for 2009-14 in line with Regulation 19(f) of the 2009 Tariff Regulations, the "Revenue received and expenditure of Power wing" data submitted by the petitioner for the period 2003-04 to 2007-08 has been examined. It is observed that the break-up details consists of following categories:

- a. *Works of capital nature chargeable to revenue including suspense.*
- b. *Normal operation and maintenance works including losses written off.*
- c. *Expenditure transferred from Irrigation Wing.*
- d. *Expenditure transferred to Irrigation Wing.*
- e. *RM&U expenditure.*
- f. *Revenue receipt*

22. Out of above, the expenses under the head "Normal operation and maintenance works including losses written off" (hereinafter referred to as "the Actual O&M expenditure") have only been examined. In the absence of any details in respect of the losses written off as a distinct element, these have been considered at zero value, for the purpose of working out the admissible O&M expenditure (hereinafter referred to as "the Normative O&M expenditure") as per the 2009 Tariff Regulations. The expenses under other heads have however not been considered for the following reasons:

(a) *Works of capital nature chargeable to revenue: The accounting head indicates that this expenditure is of "capital nature" which has been charged to revenue by the petitioner. Thus, by its nature, such expenditure cannot be treated as part of O&M expenditure.*

Further, in the absence of accounting/regulatory treatment of the same in the books/ARR of the beneficiaries, the expenditure cannot be considered.

(b) *Expenditure transferred from/to Irrigation Wing: The year on year expenditure under this head show huge variations. In the absence of specific details of the basis of transfer to and fro the Irrigation and Power Wing as well as the arrangement made between the petitioner and the beneficiary States, this expenditure cannot also be considered.*

(c) *RM&U expenditure: As the expenditure is of a "capital nature", the same cannot be considered for the purpose of arriving at the Normative O&M expenditure.*

(d) *Revenue receipt: The respondent, UT of Chandigarh has submitted that the power supplied as ad hoc assistance of 1 LU/day to UT of Chandigarh at Common Pool rates w.e.f, 1.1.1973 is decided by the Board of the petitioner from time to time. It has also submitted that the power supplied as Special Assistance of 10 LU/day is being charged at Badarpur Thermal Power Station rate which varies on month to month basis. It has further been submitted that the energy bill rendered by the petitioner for the month of April, 2015 is @ Rs. 7.17 per KWh. This being a revenue receipt on sale of energy cannot be considered for the purpose of working out the Normative O&M expenditure for the period 2009-14.*

24. The year on year variation in the O&M expenses during the period had taken into consideration the various events like annual maintenance, major overhauling, capital overhauling, etc., which occur after

a definite interval/period of time. Accordingly, the above expenditure has been considered for the calculation of Normative O&M expenditure for the period 2009-14.

27. It is observed that the Actual O&M expenditure indicated in table above includes adjustment of salary arrears. The salary arrears pertaining to the period prior to 2009-10 have been paid during the period 2011-14. On overall basis, the Normative O&M expenditure of Rs. 59215.84 lakh in the table under para 25 above, is higher than the Actual O&M expenditure of Rs. 56123.48 lakh incurred by the petitioner, as above. In the absence of the (i) basis of transfer of expenditure to and fro the Irrigation and Power Wing (ii) salary details, specifically related to the Power Wing (iii) amount of losses written off and (iv) other details mentioned in preceding paragraphs, we are inclined to allow the Actual O&M expenditure incurred by the petitioner, as above, as against the Normative O&M expenditure worked out in terms of the 2009 Tariff Regulations. We order accordingly.

28. The actual O&M expenditure allowed for the generating stations of the petitioner are in deviation of the methodology adopted by the Commission in order dated 12.11.2015 wherein the Commission had allowed the Normative O&M expenses for the transmission elements of the petitioner. It is pertinent to mention that the normative O&M expenses allowed for transmission elements are based on the technical

parameters like line length, ckt km etc., and thus cannot be compared.

29. Also, the specific prayer of the petitioner for grant of Normative Interest on Working Capital limited to one month has not been allowed, as the same is dependent upon the determination of other components of tariff, the details for which has not been made available by the petitioner, despite repeated directions of the Commission.”

From the above it is clear that the Appellant has not submitted the required information to the Central Commission in requisite formats as per the Tariff Regulations, 2009 for determination of complete tariff of its generation and transmission assets. The Appellant based on the information submitted by it before the Central Commission prayed for determination of O&M expenses and Interest on Working Capital. The Central Commission after clearly observing inadequate data provided by the Appellant for determination of annual transmission charges / annual capacity charges has only determined normative O&M expenses for transmission assets and actual O&M expenses for generation assets of the Appellant. The Central Commission in its orders clearly mentioned that it is determining O&M expenses only as per Tariff Regulations, 2009 and while doing so it has clearly mentioned that the other claims of the Appellant are either of capital nature, RM&U expenditure, works of capital nature chargeable to revenue, expenditure transferred from/to irrigation wing etc.

could not form part of O&M expenses. Accordingly, the Central Commission has analysed other claims of the Appellant in light of O&M expenses only i.e. whether they can form a part of O&M expenses or not. The Central Commission has not rejected the other claims of the Appellant out rightly.

The Central Commission also observed that since the tariff period for FYs 2009-14 is already over, the Appellant was directed to file tariff petition for FYs 2014-19 based on the Tariff Regulations, 2014 of the Central Commission. The Appellant has already filed the requisite details before the Central Commission for determination of its tariff for FYs 2014-19.

- viii. Further, the Central Commission vide its order dated 28.10.2016 also clarified the intention of the Central Commission in its earlier orders. The relevant extract of the said order is reproduced below:

“9. From the observations as quoted above, it is evident that other components of tariff, except the normative O&M expenses, for the period 2009-14 was not determined by the Commission since BBMB could not submit the required information and that the tariff period 2009-14 had already come to a close. In other words, the tariff elements other than O&M expenses in respect of the generation and transmission systems of the petitioner were not rejected by this Commission.”

Accordingly, it is clarified that this Commission's orders dated 12.11.2015 and 21.3.2016 in Petition No. 251/GT/2013 only determined the O&M expenses of the generation and transmission of BBMB and did not decide that BBMB would not be entitled to consideration of tariff elements other than O&M expenses. The intention of the above orders passed by the Commission was not to deprive BBMB of tariff in regard to other tariff elements. **Though not explicitly stated in the above orders, it was left to the BBMB and participating States to adjust the tariff of other elements as per the system that existed before.**

From the above it is clear that the Central Commission has clearly brought out that the intention of the Central Commission in tariff orders dated 12.11.2015 & 21.3.2016 was not to deprive the Appellant of tariff in regard to other tariff elements and it was left to the Appellant and participating States to adjust the tariff of other elements as per the system that existed before. This clearly indicates that the Central Commission has not insisted on application of Tariff Regulations, 2009 and also recognised the system of tariff in practice for the past years between the Appellant and the participating States. Hence, this does not mean that the Appellant is eligible to get reimbursement of O&M expenses only as determined by the Central Commission. Therefore, we find substance in the submissions of Mr. M. G. Ramachandran, the learned counsel for the Appellant that the other claims of the Appellant ought to have been

considered by the State Commission in right perspective as per the system that existed before.

- ix. We have gone through the Impugned Order 1 and Impugned Order 2 issued by the State Commission. While discussing on the issue of liability of payment by PSPCL to the Appellant, the State Commission has made certain observations. The relevant observations from Impugned Order 2 are reproduced below:

“IV.i) Earlier, the State Commission (in the absence of Tariff Orders of BBMB) had allowed all the expenses including capital and Irrigation expenses of BBMB, in its Tariff Orders of PSPCL as O&M expenses. CERC, vide orders dated 12.11.2015 & 21.03.2016, determined only the O&M expenses for the period of FY 2009-14. Accordingly, the State Commission has re-determined the O&M expenses of BBMB in its order dated 27.07.2016, based on O&M expenses determined by the CERC in its Orders dated 12.11.2015 and 21.03.2016.”

From the above and also admitted by the State Commission in its submissions before this Tribunal, it can be inferred that the State Commission earlier has been allowing all the expenses of the Appellant including expenses of capital nature, works of capital nature chargeable to revenue, RM&U expenditure, expenditure transferred from/to irrigation wing etc. as O&M expenses in tariff orders of PSPCL. As per the

provisions of the Punjab re-organisation Act, 1966, the Appellant is being reimbursed by the participating States for the expenses made by it. Thus the expenses incurred by the Appellant are reimbursed by the participating States including PSPCL which in turn are claimed by PSPCL in its ARR. The State Commission allows the same to PSPCL after due diligence and after hearing all the concerned. After approval of the State Commission, PSPCL recovers the same from its consumers. Accordingly, it is clear that the reimbursement by participating States actually means reimbursement by the consumers in the State in the form of tariff. The State Commission earlier has never questioned / gone into the claims of PSPCL in respect of the Appellant even after being aware of the regulatory position of the Appellant as per the Act.

- x. From perusal of the Impugned Orders, it is observed that the State Commission earlier after applying prudence check has been allowing expenses related to the Appellant in the form of O&M expenses (which also includes O&M expenses now determined by the Central Commission) and also allowed return on equity, depreciation, etc. on the assets which are capital in nature related to the transmission lines/generating stations managed by the Appellant as reflected in the books of accounts of PSPCL. This was in line with the Punjab re-organisation Act, 1966 and historical agreement between the various governments involved. The said amount has been recovered by PSPCL from its consumers and the Appellant is at no fault in this regard. The Appellant was just executing /

managing the assets on behalf of the participating States and getting reimbursement for the same. The Central Commission only determined the O&M expenses based on the Tariff Regulations, 2009. The Central Commission also clarified that the **other tariff elements were to be adjusted as per the system that existed before**. In light of Central Commission's order dated 28.10.2016, it was not open to the State Commission to go into the details on the observations made by the Central Commission in its orders dated 12.11.2015 and 21.3.2016 like apportionment between power and irrigation wings of the Appellant in view of the fact that the Central Commission for FYs 2009-14 determined only O&M expenses of the Appellant as per its Regulations and for other expenses, the Central Commission made it abundantly clear that the same are to be dealt with as per the past practice. The State Commission was only required to compare and adjust the O&M expenses as determined by the Central Commission along with adjusting the other tariff elements as per the system existed before. As discussed above, we are clear that as per the earlier system, all expenses/other tariff elements of the Appellant were claimed by the respective distribution companies in their ARR's and was allowed by their State Commission's including PSPCL. The other claims of the Appellant apart from return on equity, depreciation, interest on loan etc. are to be seen in this perspective.

xi. We have also gone through the various judgements/ orders submitted by the Appellant for consideration. After perusal of the same, we observe as below:

(a) The Central Commission in its order dated 21.12.2000 in petition nos. 4, 31, 32, 34, 85, 86 & 88 of 2000 related to NTPC/ NHPC/ NLC/ PGCIL observed that the terms and conditions covered by the this order and other orders of the Central Commission could have been applied from 15.5.1999. The Central Commission has earlier granted either provisional tariff or continuation of existing tariff for stations/lines pending finalisation by it of its tariff norms etc. The Central Commission further observed that it would like to minimise uncertainty and hardship regarding tariff. The Central Commission would also like to avoid determining tariff retrospectively. Accordingly, the terms and conditions and norms notified in this order shall be applied uniformly w.e.f. 1.4.2001. It also stated that in all cases where the tariff ere determined earlier under Government notification or provisionally shall continue to apply till 31.3.2001.

(b) This Tribunal vide judgement dated 23.11.2007 in case of Damodar Valley Corporation (DVC) Vs. Central Electricity Regulatory Commission- 2007 ELR (APTEL) 1677, has observed as below:

“36. Accordingly, the petitioner Corporation has prayed that without prejudice to other contentions, a transition period may be allowed to enable the petitioner Corporation to get into the new dispensation. The petitioner Corporation has requested for continuation of the existing Tariff till the year 2007-08. The petitioner Corporation has further prayed that the Plant Operational Norms for the year 2004-05 and 2005-06 as fixed by the one-member bench of the Commission for the existing units be made applicable from the years 2007-08 and 2008-09 respectively and onwards. According to the petitioner, requisite improvement will be possible only from the year 2007-08, after the augmentation and improvement of the existing thermal units which has been initiated during the current year 2006-07.

37. We appreciate the need for such a transition period. In the past, the Commission had recognized the need for such transition for Central Sector Utilities such as NTPC Limited, NHPC, Power Grid Corporation Limited for the period till 31.3.2001. Though this Commission was established in 1998 and started exercising jurisdiction, the norms as earlier applied by the Central Government was continued to be applied. It is also noteworthy that the above mentioned companies were commercial entities and were

not carrying any social and other activities as is the case with the petitioner Corporation in the instant case.

38. We are also seized of the matter that the petitioner Corporation requires an overall Extension & Improvement of the old generating station. Under this situation, adoption of tariff based on the 2004 regulations since 1.4.2004 will unsettle the position already settled. We are therefore, convinced that the petitioner Corporation should be allowed to continue with the existing tariff for a reasonable period to readjust itself with the tariff norms before enforcement of generation and inter-State transmission tariff under the prevailing norms. In the absence of such a special dispensation, the petitioner Corporation is likely to suffer substantial loss and this is not considered to be in public interest, especially in the light of the socio-economic activities entrusted to the petitioner Corporation.

39. We have given our thoughtful consideration to the issue. We find some merit in the contentions of the petitioner. Firstly, we are in agreement that it would not be possible for the petitioner Corporation to rationalize O&M expenses from the back date or to improve norms from the back date. These are possible only prospectively. Further, in the light of the

sudden change in the approach and methodology of tariff setting by applying the Commission's Regulations, with effect from 1.4.2004, it would not be possible for the petitioner Corporation to make amends for the loss in revenue if any, by cutting costs.”

From the above, it can be seen that on the request of DVC regarding providing transition period to enable it to get into the new dispensation, while appreciating the need for such transition period this Tribunal has observed that in the past, the Commission had recognized the need for such transition for Central Sector Utilities such as NTPC Limited, NHPC, Power Grid Corporation Limited for the period till 31.3.2001. This Tribunal further observed that it would not be possible for DVC to rationalise O&M expenses from back date or to improve norms from back date.

- xii. The learned senior counsel for the State Commission has raised the issue that the Central Commission has exercised its power under the Act and has determined the tariff of the Appellant by rejecting various other costs under O&M expenses and the same cannot be allowed by the State Commission. The Appellant has produced the definition of the term 'determination' which states that “*A final decision by a court or administrative agency<the court's determination of the issues>*”. Further on the issue of 'determination', Hon'ble Supreme Court has observed that “*the expression*

‘determination’ in the context in which it occurs in Article 136 signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under valid law for disposal”

After perusal of the above details, in the present Appeal it can be concluded that the Central Commission vide its Orders has not determined the complete tariff of the Appellant for its transmission and generation assets. The Central Commission also observed that the tariff period for FYs 2009-14 has come to an end. Further, the Central Commission vide its order dated 28.10.2016 has left to the Appellant and participating States to adjust tariff of other elements as per the system that existed before. We do not accept the argument of Shri Sanjay Sen, the learned senior counsel for the State Commission that for the other expenses as discussed above, the Appellant shall claim the same from the participating States in the form of assistance, etc. and should not form part of the regulated tariff determined by the State Commission because of the fact that for all the previous years, these expenses are allowed by the respective State Commissions as pass through in the ARR/tariff of the respective distribution licensee. Even after the clarification issued by the Central Commission and on remand order, the State Commission vide its Impugned Order 2 re-affirmed the Impugned Order 1 which has resulted in recovery of huge money by PSPCL from the Appellant. This has led to uncertainty not only in the revenues of the Appellant but also that of PSPCL as the

Appellant is completely dependent for its revenue on the participating States i.e. the consumers of the States.

In the present case the Appellant is also in similar condition / circumstances in which NTPC/NHPC/PGCIL/DVC were at a certain point of time. The Central Commission and this Tribunal has allowed the existing regime to continue till such time the uncertainty is over which in the present case tantamount to the similar situation where the Impugned Orders of the State Commission has effected the recovery of Rs. 945.82 Cr. by PSPCL from the Appellant thereby affecting the finances of the Appellant retrospectively from FY 2009-10 to FY 2013-14. This becomes more important in case of the Appellant as it is totally dependent on the participating States for its revenues. Accordingly, the Central Commission has rightly held that the tariff of other elements for FYs 2009-14 is to be adjusted as per the practice existing before and has directed the Appellant to submit complete details for determination of tariff for FYs 2014-19 as a forward looking measure.

- xiii. In view of our foregoing discussions we are of the considered opinion that the State Commission is not justified in disallowing the other claims of PSPCL under O&M expenses for the period FYs 2009-14 and thereby putting the Appellant under huge financial burden for no fault of it. The State Commission has erred in interpreting the orders of the Central Commission while disallowing the other claims to PSPCL. Furthermore, the Appellant has also submitted tariff

petition with the Central Commission along with requisite details for determination of tariff for FYs 2014-19.

xiv. In view of the above discussions we decide these issues in favour of the Appellant.

c) On Question No. 7 c) i.e. Whether the Order dated 27.7.2016 passed by the State Commission without any notice to the Appellant and without giving any an opportunity of hearing to the Appellant is in violation of natural justice and contrary to transparency provided for in section 86 (3) of the Electricity Act, 2003?, we observe as below;

i. It is a fact that the Appellant was not a party to the proceedings before the State Commission in Petition No. 79 of 2015 on which Impugned Order 1 was passed which affected the financials of the Appellant. The Appellant has contested that this kind of approach adopted by the State Commission does not provide transparency as mandated under Section 86 (3) of the Act.

ii. Let us now examine the provisions of the Section 86 (3) of the Act which is reproduced below:

“86 Functions of the State Commission

(1) The State Commission shall discharge the following functions, namely: -

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

.....
(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.”

The State Commission while deciding on Petition No. 79 of 2015 has also dealt with the effect of Central Commission’s orders dated 12.11.2015 and 21.3.2016 which had an adverse impact on the financials of the Appellant. The petition was related to ARR of PSPCL in which generally the generating companies are not made the parties. The Appropriate Commission for the Appellant as per the Act is the Central Commission. However, considering the uniqueness of the case in which the decision made by the State Commission has impacted the finances of the Appellant adversely, the State Commission ought to have impleaded the Appellant while deciding on the said petition.

Hence, this issue is decided accordingly.

- d) On Question No. 7 d) i.e. Whether in terms of Section 79 of the Electricity Act, 2003 read with Rule 8 of the Electricity Rules, 2005, the State Commission has the jurisdiction to examine the methodology being followed by BBMB (since its inception) regarding apportionment of costs between its power and irrigation wing? and on Question No. 7 e) i.e. Whether the State

Commission has exceeded the scope of the order of this Tribunal by going into the issue of apportionment of costs between the power and irrigation wings of BBMB, historical data etc.?, we observe as below;

- i. Let us examine the Section 79 of the Act and Rule 8 of the Electricity Rules, 2005 quoted by the Appellant. The relevant extract of the same are reproduced below:

“79. (1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;
.....”

The Rule 8 of the Electricity Rules, 2005 quoted by the Appellant is reproduced below:

“8. Tariffs of generating companies under section 79- The tariff determined by the Central Commission for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of subsection (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process

with such generating companies based on the tariff determined by the Central Commission.”

From the conjoint reading of the above provisions, it is clear that it is not open to the State Commission to re-determine the tariff of the generating companies whose tariff is determined by the Central Commission under Section 79 of the Act. What is left to the State Commission is that they may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.

- ii. Now let us examine the order dated 28.11.2016 of this Tribunal. The relevant extract is reproduced below:

“Our attention is drawn by learned counsel for the parties to Order dated 28.10.2016 passed by the Central Commission in I.A. No. 43 of 2016, which was filed by the Appellant for clarification and directions. We have gone through the said order.

In view of this development, we direct the State Commission to hear the Appellant as well as the Respondent and pass a reasoned order taking into account the order of the Central Commission dated 28.10.2016 within a period of four weeks from today. We make it clear that we have not expressed any

opinion on any of the issues involved in this appeal.....”

According to the above order of this Tribunal, the State Commission was to pass a reasoned order by taking into account the order dated 28.10.2016 of the Central Commission.

- iii. The State Commission vide Impugned Order 1 plainly replaced the O&M expenses earlier allowed by it with the O&M expenses as determined by the Central Commission without assigning any detailed reasons except quoting the Central Commission's order and held that money is recoverable from the Appellant. Pursuant to this Tribunal's order dated 28.11.2016, the State Commission issued the Impugned Order 2. In this order the State Commission based on the observations of the Central Commission in its orders dated 12.11.2015 and 21.3.2016 has gone into details of apportionment of costs between power and irrigation wings of the Appellant by seeking various details from the Appellant, historical agreements, joint statement with PSPCL etc. and reaffirmed its Impugned Order 1. The intent of this Tribunal's order was that the State Commission was required to pass a reasoned order by taking into account the order dated 28.10.2016 of the Central Commission. While doing so the State Commission ought to have considered the observations of the Central Commission with respect to other claims of the Appellant as discussed by us in the foregoing

paragraphs in light of observations of the Central Commission's order dated 28.10.2016. The State Commission has wrongly proceeded in the Impugned Order 2 that only the other tariff elements like return on equity, interest on loan, depreciation etc. have been allowed to PSPCL for corresponding gross block as per their share in the Appellant and compared it with other tariff elements like return on equity, interest on loan, depreciation etc. in the Tariff Regulations, 2009. By doing so the State Commission has left out the other claims of the Appellant which were to be adjusted in light of observations made by the Central Commission in its orders. The relevant extracts of the Impugned Order 2 are reproduced below:

“V.i) The only issue that remains for examination is that “the tariff elements other than O&M expenses in respect of the generation and transmission systems of the petitioner” in the view of clarification issued by the CERC.

.....

.....

vii) Now, CERC in its order dated 28.10.2016 has clarified as under:

“the tariff elements other than O&M expenses in respect of the generation and transmission systems of the petitioner were not rejected by this Commission”.

viii) From a plain reading of the BBMB petition, CERC Orders and its clarification, it is very much evident that the other (other than O&M) tariff elements are Return

on Equity, Interest on Loan, Depreciation, Incentive etc. specified in CERC Regulations according to the Electricity Act, 2003. The appropriate Commission in case of BBMB is CERC, therefore, the tariff for BBMB is to be determined by the CERC and the same cannot be determined partly by the Commission of the respective participating States.

ix) CERC, in its Order dated 28.10.2016, has further clarified that the other tariff elements are to be adjusted as per system existing before. Accordingly, the State Commission directed PSPCL to provide the details regarding depreciation on BBMB assets, interest on loans on BBMB assets and O&M expenditure claimed by PSPCL in the tariff petitions during FY 2009-14 showing the impact of CERC's Orders."

.....

.....

xiv) Thus, it is amply clear that the other Tariff elements such as Return on Equity, Interest on Loan, Depreciation, Incentive had been claimed by PSPCL and the same have been duly allowed to PSPCL as per the system prevailing prior to the CERC orders.

Conclusion

The Commission is of the considered opinion that the O&M expenses determined by CERC have been fully accepted by it in its Tariff Order dated 27th July, 2016. Also, the other elements as specified under Regulation 14 of CERC Regulations, 2009 have been claimed by

PSPCL in its earlier petitions and allowed by the State Commission as per prevailing system existed before the said Tariff order. Thus, the order dated 27th July, 2016 issued by the State Commission stands.”

Although the order dated 28.10.2016 of the Central Commission has been complied with by the State Commission only to the extent as discussed above as per the Tariff Regulations, 2009 but the other expenses incurred ought to have been allowed by the State Commission as per our observations at 11 b & c above wherein we have already concluded that the State Commission is not justified in disallowing the other claims to the Appellant as claimed by it in the Petition No. 251/GT/2013.

- iv. On the issue of jurisdiction, the Appellant has brought to our notice the judgement dated 4.9.2012 of this Tribunal in Appeal No. 94 of 2012 in case of BSES Rajdhani Power Ltd. Vs. Delhi Electricity Regulatory Commission and Anr. The relevant extract is reproduced below:

“97. Summary of the findings:

i) The State Commission does not have jurisdiction under section 86(1)(f) of the 2003 Act to adjudicate upon the dispute between a licensee and generating company in the matter of terms and conditions of tariff of a generating section owned and controlled by the Central Government, including the Regulation of supply

by the generating company in the event of default in payment.

ii) Only Central Commission has jurisdiction under section 79(1) (f) of the 2003 Act to adjudicate upon the dispute involving generating companies owned and controlled by Central Government in the matter of terms and conditions of tariff and Regulation of supply. The jurisdiction of State Commission under Section 86(1)(f) is subject to Section 79(1)(f) of the Act.

From the above it is clear that the Central Commission has the jurisdiction in the matters of tariff related to the Appellant and the State Commission is not supposed to adjudicate the tariff matters of the Appellant.

- v. This Tribunal vide judgement dated 10.8.2010 in Appeal No. 37 of 2010 in case of Meghalaya State Electricity Board Vs. Meghalaya State Electricity Regulatory Commission 2010 ELR (APTEL) 0940 has dealt in detail the scope of remand order and has concluded that when a matter is remanded by the Appellate forum to the lower court/lower authority with limited direction the lower court/lower authority shall restrict itself to the extent prescribed in the order of "Limited Remand".
- vi. The State Commission has gone into the details of the submissions made by the Appellant/PSPCL based on which it has re-affirmed Impugned Order 1 affecting the revenue/receivables by the Appellant from PSPCL. This

amounts to re-determination of the tariff of the Appellant which falls under the jurisdiction of the Central Commission for determination of the tariff. In view of our discussions as above and provisions of the Act & Electricity Rules, 2005 as discussed above, we are of the considered opinion that the State Commission has overstepped its jurisdiction while limiting the liability of PSPCL towards the Appellant and also has exceeded the scope of the order of this Tribunal by going into the issue of apportionment of costs between the power and irrigation wings of BBMB, historical data etc.

vii. In view of the above these issues are decided in favour of the Appellant.

e) PSPCL has also filed an IA No. 652 of 2017 for impleadment of Power Grid Corporation of India Ltd. (PGCIL) and directions to PGCIL which is a Central Transmission Utility (CTU) to stay the Regulation of Power Supply notice issued by CTU to PSPCL. The said Regulation Notice has been issued by CTU due to default in payment of Rs. 120 Cr. by PSPCL to CTU. The amount of Rs. 120 Cr. defaulted by PSPCL relates to charges payable to the Appellant as Point of Connection charges. PSPCL is facing hardships as it is not able to recover Rs. 945.82 Cr. from the Appellant as decided by the State Commission in the Impugned Orders related to ARR of PSPCL wherein the State Commission has disallowed the expenses related to works of capital nature, capital nature chargeable to revenue, RM&U expenditure, expenditure transferred from/to irrigation wing etc. of the Appellant. CTU in reply has contested

that the IA is not maintainable and the subject matter of the present Appeals are not related to it directly. The issue in the present Appeals is a bilateral matter between the Appellant and PSPCL. To support its cause, the CTU has quoted various orders of the Central Commission. In view of our decision in the present Appeals as discussed above, this IA stands disposed of.

ORDER

We are of the considered opinion that the issues raised in both the Appeals have merits as discussed above. These Appeals are hereby allowed.

The Impugned Orders dated 27.7.2016 and 11.2.2017 as passed by the State Commission are hereby set aside. The State Commission is hereby directed to pass consequential order within a period of 3 months.

No order as to costs.

Pronounced in the Open Court on this **6th day of September, 2017.**

(I.J. Kapoor)
Technical Member

√

REPORTABLE/NON-REPORTABLE

mk

(Mrs. Justice Ranjana P. Desai)
Chairperson