Before the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)

Appeal Nos. 285 of 2014, 286 of 2014 and 287 of 2014

Dated : 29th October, 2015

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER

In the Matter of:

(1) Appeal No. 285 of 2014

M/s E.I.D Parry (India) Ltd.,
Sankili Village, Regidi Amdalavalsa (M)
Srikakulam District – 532 440.
(*formerly, unit of Parrys Sugar Industries Ltd.*),
Rep. by its Associate Vice President – Legal Sri Biswa Mohan Rath **... Appellant(s)**

Versus

1. **Andhra Pradesh Electricity Regulatory Commission**
   4th & 5th Floor, Singareni Bhavan,
   Red Hills, Hyderabad – 500 004.

2. **M/s Transmission Corporation of Andhra Pradesh Ltd.**
   Vidyut Soudha, Khairatabad
   Hyderabad – 500 082.
   Rep. by its Chairperson & Managing Director

3. **Eastern Power Distribution Co. of Andhra Pradesh Ltd.**
   Represented by its Managing Director, Sai Shakti,
   Opp. Saraswati Park, Daba Gardens,
   Viskhapatnam – 530 020.

4. **Superintendent Engineer,**
   TK&SS Circle, APTRANSCO,
   Rajahmundry – 533 103.

5. **Deputy Chief Controller of Accounts**
   APPCC, Vidyut Soudha,
   Hyderabad – 500 082 **... Respondent(s)**

Counsel for the Appellant(s) : Mr. Challa Gunaranjan and Ms. M. Indrani

Counsel for the Respondent(s) : Mr. K. V. Mohan and Mr.K.V.Balakrishna, Advs. R.No.1

Mr. Anand K. Ganesan and Ms. Mandakini Ghosh for R.No.2 - 5

(2) Appeal No. 286 of 2014

M/s Ganpati Sugar Industries Ltd.,
Fasalwadi, Sangareddy,
Medak District,
Rep. by its Director (Tech.) Sri. R. Nandakumar **... Appellant(s)**

Versus

1. **Andhra Pradesh Electricity Regulatory Commission**
   4th Floor, Singareni Bhavan,
   Red hills,
   Hyderabad – 500 004.

2. **Telangana Electricity Regulatory Commission**
   5th Floor, Singareni Bhavan,
   Red Hills,
   Hyderabad – 500 004

3. **M/s Transmission Corporation of Telangana Ltd.**
   Vidyut Soudha, Khairatabad,
   Hyderabad – 500 082.
   Rep. by its Chairperson & Managing Director

4. **Southern Power Distribution Co. of Telangana Ltd.**
   Represented by its Managing Director,
   6-1-50, Corporate Office,
   Mint Compound,
   Hyderabad, Telangana – 506 001.

5. **Superintendent Engineer**
   TL&SS Circle, Sangareddy,
   Erragadda, Hyderabad – 500 045 **... Respondent(s)**

Counsel for the Appellant(s) : Mr. Gopal Choudhary and Mr. Challa Gunarajan, Advs.

Counsel for the Respondent(s) : Mr. K. V. Mohan and Mr. K.V.Balakrishna, Advs. For R.No.1
Ms. D. Bharati Reddy and Mr. Sri Harsha Peechra & Mr. Svihausha P. Advs. for R.No.2
Mr. Anand K. Ganesan and Ms Mandakini Ghosh, Advs. for R.Nos. 3 to 5

(3) Appeal No. 287 of 2014

M/s. The Jeypore Sugar Company Ltd.
V.V.S.Sugars, Chagallu, W.G.District,
Andhra Pradesh – 534 342.
Rep. by its Vice President & Chief General Manager
Mr. P. Bhaskara Rao **... Appellant(s)**

Versus

1. **Andhra Pradesh Electricity Regulatory Commission**
   4th & 5th Floor, Singareni Bhavan,
   Red Hills, Hyderabad – 500 004.

2. **M/s Transmission Corp. of Andhra Pradesh Ltd.,**
   Vidyut Soudha, Khairatabad,
   Hyderabad – 500 082.
   Rep. by its Chairperson & Managing Director

3. **Eastern Power Distribution Co. of Andhra Pradesh Ltd.,**
   Represented by its Managing Director, Sai Shakti
   Opp. Saraswati Park,
   Daba Gardens,
   Visakhapatnam – 530 020.

4. **Superintendent Engineer,**
   TL&SS Circle,
   APTRANSCO,
   Rajahmundry – 533 3103 … **Respondent(s)**

Counsel for the Appellant(s) : Mr. Gopal Choudhary, Mr. Challa Gunarajan and Ms. M. Indrani, Advs.

Counsel for the Respondent(s) : Mr. K. V. Mohan, Mr. K.V.Balakrishna, Advs. And Ms. Bharti Reddy (Rep. for APERC) for R.No.1

Mr. Anand K. Ganesan, Ms. Swapna Seshadri and Ms. Mandakini Ghosh, Advs., R.Nos. 2-5

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUIDICIAL MEMBER

The above mentioned appeals, being Nos. 285 of 2014, 286 of 2014 and 287 of 2014, have been filed by each of the appellants against the common order dated 29.09.2014 (hereinafter called the ***Impugned Order***) passed by the Andhra Pradesh Electricity Regulatory Commission (hereinafter referred to as the ***State Commission***) in OP Nos. 5, 6 & 17 of 2014 respectively whereby the said Original Petitions of the appellants have been dismissed by the State Commission holding that the appellants are liable to pay the maintenance charges for the dedicated transmission line of the appellants which is being maintained by the respondents. Each of the appellants filed the aforesaid petitions before the State Commission challenging imposition and recovery of maintenance expenses incurred towards the maintenance of the dedicated

transmission line of the appellants from Commercial Operation Date (***COD***) till the date of demand notices issued to the appellants by the transmission/ distribution licensee.

2) Thus, by the Impugned order, the State Commission has held that the appellants, who are non-conventional bagasse based project developers are liable to pay maintenance charges for the dedicated transmission lines of the appellants, which is being maintained by the respondents. The State Commission has, in the Impugned Order further, held that the claim of the respondents (transmission/distribution licensee) are not barred by limitation as Limitation Act, 1963 does not apply to the said matters. In the Impugned Order, it has also been held by the State Commission that quantification of the maintenance charges is reasonable and in line with the industrial practice because in the case of line maintenance, it is impossible to prove actual costs and expenses incurred in the maintenance of dedicated lines.

3) The main grievances of the appellants in the afore noted appeals are as under:

3.1) That the respondents (transmission/distribution licensee) after a lapse of more than ten years had issued demand letters demanding each appellant to pay the maintenance expenses of the interconnection facilities from Commercial Operation Date (COD) to the date of demand notice without any prior information about the maintenance work having been carried out. The appellants had never been informed about any line stoppage for maintenance and line clearance for such maintenance.

3.2) That demanding line maintenance charges, for a period of in some cases more than ten years at one go and eight years in some other cases, without furnishing any prior information about the maintenance and the expenses incurred on such maintenance of dedicated lines, only on the basis that there was a clause in the Power Purchase Agreement (PPA) and that too even without incurring actual expenditure towards the said maintenance, is against law, unreasonable and arbitrary.

3.3) That relevant clause of the PPA only states that expenses from time to time have to be borne by the company (generating company). The appellants, while objecting to collection of the maintenance charges of dedicated lines, requested the

respondents to provide detailed workings showing actual amount spent by them and the basis for calculating these expenses, further requesting them to withdraw the demand letter pending necessary clarification.

3.4) That without considering the objections of the appellants, the respondents unilaterally deducted the amount of maintenance charges from the export bill and subsequently through letters informed about the said deductions to the appellants.

3.5) that the appellants immediately gave reply objecting the unilateral recovery and also stated that the claim was barred by limitation as the PPA did not provide for unilateral adjustment and requested for refund of the deducted amount.

4) **The relevant facts of Appeal No. 285 of 2014** for the purpose of deciding the appeal are as under:

4.1) That the appellant M/s EID Parry (India) Limited is a public limited company having one of its units consisting sugar, cogeneration of power and distillery situated at Sankili Village, Regidi Amadalavalsa (M) Srikakulam District. Originally M/s Varalakshmi Sugars Ltd. got the industrial license for establishing 2500 tons of sugar crushing per day (TCD) capacity sugar factory, the Government of India issued the industrial license to it which subsequently in the year 1999-2000 merged with GMR Technologies and Industries Ltd. The name of the company was further changed to GMR Industries Ltd. w.e.f. 30.01.2004. The name was further changed from GMR Technologies and Industries Ltd. to Parrys Sugar Industries Ltd. w.e.f. 15.11.2010. The subject unit at District Srikakulam was demerged into the appellant company, from Parrys Sugar Industries Ltd., by virtue of order dated 01.02.2013 of Hon'ble High Court of Karnataka and by order dated 18.02.2013 of the Hon'ble High Court of Madras.

4.2) That the appellant company has been established with the main objective among others of engaging in the business of manufacture and sale of White Crystal sugar, Molasses and generation of electricity.

4.3) That Government of India as well as the State Government in order to encourage generation of power through renewable sources announced policy for establishing

non-conventional energy projects, the appellant in pursuance thereof established non-conventional project i.e. bagasse based project with an installed capacity of 16.1 MW.

4.4) That the appellant company had entered into PPA dated 14.08.2001 with APTRANSCO, as per which the surplus power of 6 MW during season and 14.1 MW during off-season was proposed for sale to APTRANSCO. This agreement was approved by the State Commission. The appellant company thereafter commenced the project and started supplying surplus power to APTRANSCO/DISCOM after meeting its self requirement.

4.5) That after the transfer scheme of the State Government, the functions of purchase of surplus energy in respect of the appellant's bagasse based cogeneration power plant, which were hitherto vested in APTRANSCO stood severed, transferred and vested in the Eastern Power Distribution Company of A.P. Ltd. (distribution licensee).

4.6) That the appellant thereafter entered into a PPA with the respondent No.2, M/s Transmission Corporation of Andhra Pradesh Ltd. on 14.08.2001. As per the PPA dated 14.08.2001, the appellant is duty bound to supply power generated after consuming the same for auxiliary and captive purpose to the transmission licensee only.

4.7) That the clause 3.3 of Article 3 of the PPA dated 14.08.2001, entered into between Transmission Corporation of AP Ltd. and M/s GMR Technologies and Industries Ltd. provides as under:

"the maintenance expenses of the interconnection facilities from time to time have to be borne by the company. The maintenance work on the generating units has to be done in coordination with the APTRANSCO."

4.8) That the respondents, by misconstruing Art. 3.3 of the PPA, for the first time i.e. after ten years issued a demand letter dated 02.01.2011 to the appellant demanding to pay maintenance expenses of the interconnection facilities from 14.08.2001 to 31.03.2011 amounting to Rs.18,03,065/- along with a calculation

sheet showing bay maintenance i.e. interconnection to the grid charges amounting to Rs.5,49,423/-, total being Rs.18,03,065/-.

4.9) That the appellant, immediately after receiving the notice dated 02.01.2011, gave reply dated 21.03.2011 stating that the appellant company had not been informed about any line stoppages for maintenance and Line clearance had not been taken for any such maintenance, further demanding Line maintenance charges for all the years without attending to maintenance, only on the basis that there is a clause in PPA, is not justified. Clause 3.3 of Article 3 of PPA does not mean that the respondents have the right to collect maintenance expenses, without incurring any expenditure on maintenance of Tower Lines not carrying out any maintenance.

4.10) That Superintending Engineer of APTRANSCO issued notice dated 21.01.2013 demanding the appellant to pay Rs.20,59,024.54 towards Line maintenance charge from 2001 to 31.03.2012. Further, respondent Deputy Chief Controller of Accounts, APPCC issued notice dated 06.02.2013 by which it informed the appellant that it had already deducted the amount of Rs.18,03,065/- from the export bill for the month of December, 2012. Immediately thereafter, the appellant on 18.02.2013 sent a letter to respondent Superintending Engineer, APTRANSCO giving reply to the letter and requested to refund the amount deducted unilaterally. The respondent deducted the said amount unilaterally for Line maintenance charges without giving any clarification as to applicability of the Line maintenance charges without furnishing any details which is totally illegal, unjustified and contrary to the terms of PPA.

4.11) That the Line maintenance charges is a common issue for all the cogeneration units in Andhra Pradesh and the same has been brought to the notice of Secretary of the Association when representation was sent to the respondents narrating the circumstances and seeking withdrawal of the demands raised towards Line and interconnection facilities maintenance charges by the respondents.

4.12) That the very imposition of maintenance charges is illegal as the calculation is made without any basis. The methodology adopted in arriving the demand is unjustified. The appellant unit is a seasonal unit generating power only in the

season and supplying electricity after deducting for auxiliary and captive purposes and the respondents calculating the maintenance charges throughout the year and for the previous period namely 14.08.2001 to 31.03.2012 is totally unjustified, arbitrary and illegal as being violative of the contractual obligation under the PPA.

4.13) That the appellant filed Original Petition before the State Commission challenging the action of the respondents in imposing and claiming Line maintenance charges for the period from COD i.e. 14.08.2001 to 31.03.2011 and unilaterally adjusting the same was contrary to the terms of the PPA and the same was barred by limitation seeking further directions to the respondents to refund the said amount along with interest. The said petition has been dismissed by the Impugned Order of the State Commission.

5) **Brief facts of Appeal No. 286 of 2014** are as follows :

5.1) That the appellant M/s Ganpati Sugar Industries Ltd. is engaged in the business of manufacture and sale of sugar and allied products.

5.2) That Government of India as well as State Government, in order to encourage generation of power through renewable sources, had announced a policy for establishing non-conventional energy projects. The appellant in pursuance thereof established non-conventional energy project i.e. bagasse based project with an installed capacity of 15 MW and entered into a PPA on 14.05.2002 with APTRANSCO, as per which the surplus power of 10.36 MW during season and 11.20 MW during off-season had been proposed for sale to APTRANSCO. This PPA was consented to by the State Commission, thus the appellant company has commenced the project and has been supplying surplus power to APTRNSCO/DISCOM after meeting its self requirement.

5.3) That by the State Government Third Transfer Scheme dated 07.06.2005, the function of the purchase of surplus energy in respect of the appellants' bagasse based cogeneration plant, which were hitherto vested in APTRANSCO stood severed, transferred and vested in the Central Power Distribution Company of A.P. Limited.

5.4) That the appellant had entered into PPA, dated 14.05.2002, with respondent M/s Transmission Corporation of Telangana Ltd. in pursuance of division of State of Andhra Pradesh and the State of Telangana. The PPA was amended on 30.06.2004 and since then the appellant is duty bound to supply power generated after consuming the same for auxiliary and captive purposes to it only.

5.5) That by misconstruing Article 3.3 of the PPA that maintenance expenses of the interconnection facilities from time to time have to be borne by the company (generating company), the respondent Superintending Engineer for the first time i.e. after eight years, issued a letter dated 02.01.2011 demanding the appellant to pay the maintenance expenses of the interconnection facilities from 31.12.2002 (COD) to 31.12.2010 totalling to an amount of Rs.22,33,981/- along with calculation sheet showing bay maintenance i.e. interconnection to the grid charges amounting to Rs.4,73,973.53/- the total being, Rs.22,33,981/-.

5.6) That the appellant immediately after receiving the notice gave its reply dated 08.06.2011 stating that the appellant company had never been informed about any line stoppage for Line maintenance and Line clearance had not been taken for any such maintenance, further demanding Line maintenance charges for all the years without attending to any maintenance, only on the basis that there is a clause in the PPA, is not justified.

5.7) That the appellant, vide letter dated 07.02.2012 once again informed the respondent Superintending Engineer that the methodology adopted in arriving the charges was not clear and requested to furnish breakup which had never been replied.

5.8) That the notices issued by respondent, Superintending Engineer dated 06.02.2012 and 15.03.2012 demanding the appellant to pay Rs.26,15,251/- towards Line maintenance charges from the year 2002 to 31.12.2011 were wrongly issued because the Line maintenance charge is a common issue for all cogeneration units in the State of Andhra Pradesh.

5.9) That the imposition of maintenance charges is illegal as calculation is made without any basis and the methodology adopted in arriving the demand is

unjustified. Further the appellant unit is a seasonal unit supplying power only in the season after deducting for the auxiliary and captive purposes and the respondents calculating the maintenance charges throughout the year and for the period 2002 to 31.12.2011 is totally unjustified, illegal and violative of the terms of PPA.

5.10) That the appellant thereafter filed the Original Petition before the State Commission challenging the action of the respondents in imposing and claiming Line maintenance charges for the period from COD till 31.12.2011 as illegal and contrary to the terms of the PPA, barred by limitation. By the Impugned order the State Commission has dismissed the said petition of the appellant.

6) **Facts of Appeal No. 287 of 2014** in brief are as under :

6.1) That the appellant is engaged in the manufacture of sugar and allied products. The Government of India as well as State Government issued some policy to encourage non-conventional projects and in pursuance thereof the appellant established non-conventional project i.e. bagasse based project with an installed capacity of 25 MW and later on de-rated capacity 17 MW.

6.2) That the appellant company entered into PPA dated 13.01.2000 which was superseded by agreement dated 01.10.2003 with APTRANSCO, as per which the surplus power of 9 MW during season and 13.5 MW during off-season was proposed for sale to APTRANSCO.

6.3) That after the State Government transfer scheme dated 07.06.2005, the function of purchase of surplus energy in respect of the cogeneration power plant, which were hitherto vested in APTRANSCO stood severed, transferred and vested in the Eastern Power Distribution Company of A.P.Limited, respondent.

6.4) That the respondent Superintending Engineer of the said licensee issued a letter dated 21.01.2011 demanding the appellant to pay the maintenance expenses of the interconnection facilities from 11.12.2003 to 31.03.2010 totalling to an amount of Rs.20,60,876/-. The appellant gave reply dated 05.02.2011, stating that the appellant had paid total amount for the entire cost of new 132 kV Line and bay extension at sub-station and despite the same the respondents have

allotted old Line to the appellant, giving the new Line to M/s The Andhra Sugars Ltd.. The said notice remained un-replied from the respondents. The respondent Superintending Engineer again issued notice dated 14.11.2011 demanding the appellant to pay Rs.3,79,055/- for the year 2010-11.

6.5) That M/s Transmission Corporation of A.P. Ltd., respondent herein, on 06.02.2013 has unilaterally deducted an amount of Rs.24,39,931/- from the bill of the appellant. The Superintending Engineer further vide letter dated 26.07.2013 demanded an amount of Rs.4,11,803/- for the period 2011-12 and Rs.4,38,400/- for the year 2012-13 towards maintenance expenses, without furnishing the details of actual expenditure incurred.

6.6) That the appellant filed Original Petition, challenging the demand before the State Commission which has been dismissed by the State Commission by the Impugned Order.

7) We have heard Mr. Challa Gunaranjan, learned counsel appearing for the appellant in each of the appeals. We have also heard Mr. Anand K. Ganesan, learned counsel for the respondents. We have also gone through the written submissions filed on behalf of both the parties and perused the impugned order including the material available on record.

8) After hearing the learned counsel for the contesting parties, the following issues arise for our consideration:

(a) Whether the State Commission is justified in allowing the maintenance charges allegedly incurred towards the maintenance of the dedicated transmission lines of the appellants claimed by the respondents from the commercial operation date (COD) till the demand notice i.e. for more than six years on the ground that Limitation Act 1963 is not applicable?

(b) Whether the State Commission is justified in holding that the respondents are entitled to demand Line maintenance charges/ expenses from the appellants as per the PPA and the procedure adopted

by the respondents for calculating such charges/expenses is permissible under law?

(c) Whether action of the respondents, by imposing the additional charges, without furnishing the actual expenditure and even without informing the appellants about the extent of the maintenance work on the dedicated transmission lines, without giving any opportunity to the appellants and further without having undertaken maintenance of the said lines and further unilaterally deducting the maintenance charges from the monthly power/export bills of the appellants without giving any details of the maintenance and expenditure in the shape of a notice is illegal and unjustified?

9) Since all these issues are interconnected, we deem it proper to consider and decide them simultaneously. The following contentions have been made by the appellants on the said issues:

9.1) That the State Commission has committed illegality in observing in the Impugned Order that the claims of the respondents (transmission/distribution licensees) are not barred by limitation as the Limitation Act does not apply to the said matters.

9.2) That the State Commission has wrongly and illegally held in the Impugned Order that quantum of the said maintenance charges incurred towards the dedicated transmission line is reasonable and in line with industrial practice because in case of Line maintenance, it is impossible to prove actual costs and expenses incurred in the maintenance of dedicated lines by the transmission/distribution licensee.

9.3) That the learned State Commission has committed an illegality by dismissing the petitions of the appellants by the Impugned Order holding that the appellants are liable to pay maintenance charges for the dedicated transmission line of the appellants which is being maintained by the respondents.

9.4) That the maintenance expenses have wrongly been claimed by the licensee from the appellants by sending demand notices for the period of more than eight years and in some cases ten years and the said maintenance charges cannot legally be recovered beyond a period of three years.

9.5) That the respondents, after a lapse of unreasonably long period in some cases eight years and in some cases more than ten years, had issued demand letters demanding each appellant to pay maintenance expenses of the interconnection facilities from the COD to the date of demand notices without any prior information about the maintenance work having been carried out. Further, the appellants had never been informed by the respondents about any Line stoppage for the purpose of maintenance and no line clearance had ever been taken from the alleged maintenance of transmission lines.

9.6) That demanding Line maintenance charges for more than six years at one go without even furnishing any prior information about the maintenance and the expenses incurred on such maintenance of dedicated lines just on the basis that there was a clause in the PPA and that too without incurring actual expenditure towards the said maintenance is against law, unreasonable and arbitrary. The relevant clause of the PPA regarding each of the appellants only states that the maintenance expenses from time to time have to be borne by a generating company (the appellants herein). The appellants while objecting to the said maintenance charges of the dedicated transmission lines requested the respondents to provide details of the maintenance works showing actual amount spent by them and the basis for calculating the said maintenance expenses but the said details were never furnished by the respondents to the appellants.

9.7) That the respondents unilaterally deducted the amount of maintenance charges from the export bills of the appellants and subsequently informed the appellants about the said deductions. This approach of the respondents is quite illegal and improper.

9.8) That the State Commission has failed to appreciate that the PPA nowhere provides for unilateral adjustments without giving any prior information to the appellants.

9.9) That the appellants, who are non-conventional bagasse based energy project developers, were required to be encouraged as per the policy of Government of India and the State Government and in pursuance of the said policy meant for promotion of non-conventional sources of energy, had set up non-conventional

bagasse based projects to whom, the respondents in an illegal way, had sent demand notices claiming maintenance charges from the date of COD till the date of the notices covering the period in some cases of eight years and in some cases more than ten years without mentioning any reason for recovery of the said maintenance charges after such a long gap. The system adopted by the respondents is quite illegal and capricious. Thus the appellants, instead of being encouraged, are being discouraged by the State Commission in allowing the said maintenance charges for a period of eight years or ten years. The project of the appellants was set up eight years ago or ten years ago and after such a long gap of eight or ten years, the said demand notices claiming maintenance charges from the COD had been sent to the appellants. The learned State Commission without interpreting and correctly appreciating the Limitation Act 1963 has wrongly recorded the findings in the Impugned order that the said claims regarding maintenance charges of the dedicated transmission lines of the appellants are not barred by the law of limitation just on the ground that Limitation Act 1963 does not apply to the proceedings before the State Commission.

9.10) The State Commission has erred in not considering that the principle of delay and laches is absolutely applicable in the present cases.

10) **Per contra**, the following contentions have been made on behalf of the respondents:

10.1) That the appellants had executed PPA with respondents for supply of electricity. The dates of the PPAs are as under:

M/s EID Parry (India) Limited	14/08/2001
M/s Ganpati Sugar Industries Ltd.	15/05/2002
M/s Jeypore Sugar Co. Ltd.	13/01/2000

10.2) That the PPA, *inter alia*, provides as under:

"3.1 Upon receipt of a requisition from the Company the APTRANSCO will prepare an estimate for arranging interconnection facilities for power evacuation at the voltage level as per Article 1.13. The Company has to bear the entire cost of the interconnection facilities as per the sanctioned estimate. APTTRANSCO shall evaluate, design, install, own,

operate and maintain the Interconnection Facilities and perform all work, at the Company's necessary to economically, reliably and safely connect the APTRANSCO's existing system to the Project switch yard.

3.2 APTRANSCO may also permit the Company to execute the interconnection facilities for power evacuation as per the sanctioned estimate at it's discretion duly collecting the supervision charges as per procedure in vogue.

3.3 ***The maintenance expenses of the interconnection facilities from time to time have to be borne by the company. The maintenance work on the Generating units has to be done in coordination with the APTRANSCO.***"

10.3) That in terms of the PPA, the cost of interconnection facilities to be laid down either by the respondents at the cost of the appellants or otherwise, the appellants can lay down the line. In such an event, the appellants lay down the line, the same is required to be under the supervision of the respondents to ensure that line is constructed properly as it would also affect the system of the respondents and in compliance with the Grid Code and Grid Standards.

10.4) That the interconnection facility from the appellants generating station up to the nearest sub-station of the licensee is the dedicated transmission line. The metering for export/import is at the sub-station ends.

10.5) That the dedicated transmission line is actually maintained by respondents, who are in the business of operating and maintaining the transmission and distribution lines. It is only the cost of the maintenance of the line that is to be paid by the appellants in terms of the agreement.

10.6) That the maintenance of transmission lines involves routine checks, maintenance works, repairs if any etc. to ensure that the line operates on a continuous basis. This includes, line checks based on expected weather forecasts and also post inclement weather conditions, cutting/trimming trees and vegetation near the lines, thermal scanning, rectification of hot spots, changing of insulators, which are all carried out on lines without interrupting the power supply. Such preventive maintenance works are necessary for providing uninterrupted evacuation of power from the appellants.

10.7) That the appellants are confusing the issue of maintenance with repair work. Repair work is done when the line is faulty and not functioning. Maintenance work is done routinely to ensure that the line does not become faulty. For the purpose, the resources and the time of respondents are expanded, for which the maintenance charges are to be paid by the appellants. If not for the respondents, the day to day maintenance would have to be made by the appellants for which the appellants would incur expenditure.

10.8) That the Line maintenance charges are levied all over the country, wherein the line of one party is maintained by a third party. Even in the case of respondents, when the transmission lines are maintained by Powergrid/CTU for which Powergrid levies maintenance charges. The maintenance charges are levied based on the length of the line and the number of bays being maintained.

10.9) That in the present case also, the PPA does not quantify the maintenance expenses, which have to be recovered in a reasonable manner. In the present case, the respondents are collecting expenses strictly based on the procedure being adopted by the CTU/PGCIL for recovery of maintenance expenses. The respondents are also paying PGCIL line and bay maintenance charges as per the calculations adopted by PGCIL, which is widely accepted and is an industry practice in the country.

10.10) That the respondents are required to carry out periodical maintenance which consists of diverse activities which are difficult to individually account for. **As regulatory guidelines have not been framed for collection of line and maintenance charges, the PGICL methodology is being followed by the respondents.**

10.11) That irrespective of flow of power on lines and amount/period of usage by the appellants, the interconnection facilities are to be maintained by the respondents to ensure uninterrupted power flow. It is not that the lines are to be maintained only when there is power flow. The line and bay maintenance is to ensure that the system is available as and when it is to be used. Maintenance of interconnection facilities is carried out throughout the year.

10.12) That the appellants have not given any evidence or raised any contention that the charges levied are unreasonable or excessive. **The only contention of the appellants is that actual charges are not shown, which according to the respondents is impossible to provide because the maintenance charges for transmission lines are dependent on the length of the line and number of bays.**

10.13) That so far as the appellants' contention that they had never been informed before carrying out maintenance work, there is no procedure to inform the appellants or the third party about the maintenance work being carried out. Such maintenance work is carried out on a routine basis. It is only when there is a line shutdown to be taken that the parties are to be intimated and there cannot be any generation of electricity during such time.

10.14) That maintenance works that are regularly carried out include cutting/trimming trees and vegetation, carrying out preventive maintenance works such as thermal scanning, rectification of hot spots, changing of insulators, which are all carried out on lines without interrupting the power supply. Such preventive maintenance works are necessary to provide uninterrupted evacuation of power from the appellants. Therefore, it is not necessary that all lines and bay maintenance activities have to be carried out only after informing the consumers/generating stations. It is the statutory obligation on the respondents as licensees to maintain an efficient and coordinated system in the country and the same cannot be subject to the consent of the appellants.

10.15) That the appellants' dedicated transmission line being grid connected and any hindrance or problem with the said line affecting the grid, the maintenance work cannot be subject to information or consent of the appellants.

10.16) That **regarding the point of limitation, the question of limitation does not arise in the present case**. It is now a settled position of law that the Limitation Act does not apply to the proceedings before the State Commission under the Electricity Act, 2003 as held in the *Tamil Nadu Generation & Distribution Corpn. Ltd. v PPN Power Generation Co. Ltd. (2014) 11 SCC 53* and *Lafarge India Pvt. Ltd. v*

Chhattisgarh State Electricity Regulatory Commission, Appeal No. 127 of 2013 dated 13.03.2015 (full bench).

10.17) That by a recent judgment, this Appellate Tribunal in the case of *M/s Aditya Industries v. Himachal Pradesh Electricity Regulatory Commission,* Appeal No. 73 of 2014 dated 09.09.2015, allowed the claim of a consumer in regard to line losses for the period from 2005 when the petition was filed only in 2012.

10.18) That the limitation does not affect the recovery of expenses or charges but only limits any proceedings to be initiated to recover such expenses as held in:

(a) *CIT v. Sugauli Sugar Works (P) Ltd., (1999) 2 SCC 355*, as under:

> ***12. The principle that expiry of the period of limitation prescribed under the Limitation Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt, has been well settled. It is enough to refer to the decision of this Court in Bombay Dyeing & Manufacturing Co. Ltd. V. State of Bombay (AIR 1958 SC 328: 1958 SCR 1122: (1958) 1 LLJ 778).*** *If that principle is applied, it is clear that mere entry in the books of accounts of the debtor made unilaterally without any act on the part of the creditor will not enable the debtor to say that the liability has come to an end. Apart from that, that will not by itself confer any benefit on the debtor as contemplated by the section.*

(b) In the case of *Punjab National Bank v Surendra Prasad Sinha (1993) Supp 1 SCC 499*, *the Hon'ble Supreme Court has held as under:*

> *"5. Admittedly, as the principal debtor did not repay the debt. The bank as creditor adjusted at maturity of the F.D.R., the outstanding debt due to the bank in terms of the contract and the balance sum was credited to the Savings Bank account of the respondent.* ***The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act 36 of 1963, for short "the Act" only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation is that the right itself is destroyed. For example under Section 27 of the Act a suit for possession of any property becoming barred by limitation, the right to property itself is destroyed. Except in such cases which are specially provided under the right to which remedy relates in other case the right subsists. Though the right to enforce the debt by judicial process is barred under Section 3 read with the relevant article in the schedule, the right to debt remains. The time barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to***

enforce the liability is destroyed. *What Section 3 refers is only to the remedy but not to the right of the creditors.* ***Such debt continues to subsist so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time barred debt. It is also equally settled law that the creditor when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody. Undoubtedly the respondent and his wife stood guarantors to the principal debtor, jointly executed the security bond and entrusted the F.D.R. as security to adjust the outstanding debt from it at maturity. Therefore, though the remedy to recover the debt from the principal debtor is barred by limitation, the liability still subsists.*** *In terms of the contract the bank is entitled to appropriate the debt due and credit the balance amount to the savings bank account of the respondent. Thereby the appellant did not act in violation of any law, nor converted the amount entrusted to them dishonestly for any purpose. Action in terms of the contract expressly or implied is a negation of criminal breach of trust defined in Section 405 and punishable under Section 409 IPC. It is neither dishonest, nor misappropriation. The bank had in its possession the fixed deposit receipt as guarantee for due payment of the debt and the bank appropriated the amount towards the debt due and payable by the principal debtor. Further, the F.D.R. was not entrusted during the course of the business of the first appellant as a Banker of the respondent but in the capacity as guarantor. The complaint does not make out any case much less prima facie case, a condition precedent to set criminal law in motion. The Magistrate without adverting whether the allegation in the complaint prima facie makes out an offence charged for, obviously, in a mechanical manner, issued process against all the appellants. The High Court committed grave error in declining to quash the complaint on the finding that the Bank acted prima facie high-handely."*

10.19) That the Hon'ble Supreme Court clearly held that even if the amount is barred by limitation, the same can be adjusted if there are other means to do so.

10.20) That the appellants cannot contend that the actual recovery made is not correct as the same is barred by limitation. The PPA does not prohibit adjustments or set-off claims of the respondents against the amounts payable to the appellants.

10.21) That the appellants are liable to pay the bay and maintenance charges from the date of commissioning of their respective generating stations. The lines and bays have been maintained by respondents from the date of commercial operation of the generating stations.

10.22) That the obligation to pay the charges does not get eclipsed by the fact that the demand is not raised in time. The only consequence of delay in the claim or payment can be with regard to the carrying cost/interest which has already been disallowed by the Commission in the Impugned Order. In the circumstances, the appellants having grievance over delayed payment of the maintenance charge is without merit and there is no incidence of delayed payment surcharge/carrying cost/interest on the appellants.

10.23) That the contention of the appellants, that the maintenance charges are payable only when there is export of electricity, is misconceived. The actual use of the line is not relevant criteria for availability of a transmission line.

10.24) That the transmission lines are to be maintained to be able to keep them ready for use, whenever required. This is in case of inter-State transmission lines, intra-State transmission lines/dedicated transmission lines and distribution lines.

10.25) That the unit price of tariff determination for the appellants includes the cost of interconnection facilities. The appellant recovers the said costs in their tariff.

10.26) That the dedicated transmission line connects the generating station and the nearest sub-station. The tariff that is paid for generation as well as the HT tariff that is recovered from the appellants, is not for the use of the dedicated transmission line.

10.27) That the maintenance of dedicated transmission line is to ensure that the line is available both for import and export of power. In the circumstances, the contention of the appellants, that the line is not used during all times, or that no maintenance charges are to be levied when there is import of electricity, is misconceived.

11. **Our discussion and conclusion:**

11.1) We have already cited the relevant facts of each of the appeals mentioned above, the rival contentions of the parties raised before us and the relevant part of the

power purchase agreement etc. in the upper part of this judgment. We do not feel reiteration of the same once again necessary.

11.2) We now directly proceed to decide issues before us in these appeals. First we deal with the **issue of limitation and Doctrine of delay and laches**. The main question is whether the State Commission is justified in allowing the maintenance charges allegedly incurred towards the maintenance of the dedicated transmission lines of the appellants as claimed by respondents from the commercial operation date beyond a period of three years prescribed under the Limitation Act 1963. This legal position is by now settled that the Limitation Act 1963 is not applicable to the proceedings before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission. The **Full Bench of this Appellate Tribunal**, vide judgment dated 13.03.2015, in Appeal No. 127 of 2013, in the case of *M/s Lafarge India Pvt. Ltd. Vs. Chhattisgarh State Electricity Regulatory Commission & Anr.* has recently observed having referring the law laid down by Hon'ble Supreme Court in its judgment dated 04.04.2014 in Civil Appeal No.4126 of 2013 in the matter of *Tamil Nadu Generation & Distribution Corporation Ltd. Vs. PPN Power Generation Co. Pvt. Ltd.* as under:

> ***"9. It may also be mentioned here that this Tribunal in GRIDCO LIMITED ODISHA VS. BHUSHAN POWER & STEEL LIMITED reported in 2014 ELR (APTEL) 1344 after referring to Tamil Nadu Generation and Distribution Corporation Limited held that the Limitation Act, 1963 is not applicable to the proceedings before the State Commission.***
>
> ***10. Hence, we answer the reference as under:***
> ***The Limitation Act 1963 is inapplicable to the matters pending before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission."***

11.3) The Hon'ble Supreme Court in a recent judgment dated 04.04.2014 (supra) while dealing with statutory appeal under Section 125 of the Electricity Act, 2003 has observed as under:

> *"48. The next submission of Mr. Nariman is that the claim of the respondents would have been held to be time barred on reference to arbitration. We are not able to accept the aforesaid submission of Mr.Nariman. On the facts of this case, in our opinion, the principle of*

delay and laches would not apply, by virtue of the adjustment of payments being made on FIFO basis. The procedure adopted by the respondent, as observed by the State Commission as well as by the APTEL, would be covered under Sections 60 and 61 of the Contract Act. APTEL, upon a detailed consideration of the correspondence between the parties, has confirmed the findings of fact recorded by the State Commission that the appellant had been only making part payment of the invoices. During the course of the hearing, Mr. Salve has pointed out that the payment of entire invoices was to be made each time which was never adhered to by the appellant. Therefore, the respondents were constrained to adopt FIFO method. Learned senior counsel also pointed out that there was no complaint or objection ever raised by the appellant. The objection to the method adopted by the respondents on the method of FIFO, was only raised in the counter affidavit to the petition filed by the appellant before the State Commission. According to learned senior counsel, the plea is an afterthought and has been rightly rejected by the State Commission as well as the APTEL. ***We also have no hesitation in rejecting the submission of Mr. Nariman on this issue. In any event, the Limitation Act is inapplicable to proceeding before the State Commission."***

11.4) **Thus in view of the recent judgment dated April 4, 2014 of the Hon'ble Supreme Court and the Full Bench judgment dated 13.03.2015 of this Appellate Tribunal, we uphold that the provisions of the Limitation Act 1963 are not applicable to the proceedings before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission.**

11.5) Now the applicability of principle of delay and laches is to be decided on consideration of the facts and circumstances of the present cases. This Appellate Tribunal, while dealing with the applicability of provisions of Limitation Act 1963, has also to consider the applicability of principle of delay and laches to the matters in hand. The Hon'ble Supreme Court in its judgment dated 04.04.2014 (supra) in paragraph 48 thereof has clearly held: "*that in our opinion, the principle of delay and laches would not apply by virtue of adjustment of payment being made on FIFO basis."*

11.6) Now we proceed to decide also whether the principle of delay and laches is applicable to the maintenance charges claimed by respondents (transmission/distribution licensee) allegedly incurred by them towards the maintenance of dedicated transmission lines of the appellants from the commercial operation date till the date of the demand letter/notice.

11.7) **The Doctrine of laches, according to CHITTY, J. In *In re Birch [(1884) 27 Ch.D. 622. 627]* means doing nothing. Lapse of time or delay in suing, unaccounted for by disability or ignorance or other circumstances constitutes laches.** Courts refuse to assist a person who sleeps upon his rights and neglects to enforce them within a reasonable time and with reasonable diligence. The equitable principle of laches requires that a plaintiff seeking an equitable remedy must come to court quickly once he knows that his rights are being infringed. **Delay in seeking an equitable remedy is technically known as laches and will disentitle the claimant to come in and establish his claim even if the claim is not disputed.** Laches only applies to equitable claims not covered by statutory prescriptions either directly or by way of analogy. It is but an application of the principle that delay defeats equities. The doctrine of laches in Courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as an equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy put the other party in a situation in which it could not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect to either party and cause a balance of justice or injustice in taking the one course or the other so far as relates to the remedy. The Limitation is distinguished from laches as limitation is founded on considerations of public policy; the doctrine of laches is based on equitable considerations. Limitation rests upon express law; laches depends upon general principles. Rules of limitation are inflexible; laches represents conclusions drawn from the facts of each particular case. Laches may be adapted to the facts of a case; limitation however is a matter of inflexible law irrespective of whether there is laches or not. Like limitation, delay or laches destroys the remedy, but not the right.

11.8) As held in ***Gouri Shankar Gaur v. State of U.P., (1994) 1 SCC 92: AIR 1994 SC 169*** laches may be a ground for refusing a discretionary relief where innocent persons would be unduly prejudiced by such relief being granted. The settled law on the applicability on the principle of delay and laches is that they are to be

decided upon the particular facts and circumstances of a particular case and no general law can be laid down for that.

11.9) The Hon'ble Supreme Court vide its judgment dated 10.11.2006 in Civil Appeal No.4790 of 2006 in the matter of ***Chairman, U.P. Jal Nigam & Anr. Vs. Jaswant Singh & Anr.*** While dealing with the proposition to grant relief to the persons who were not vigilant and did not wake up to challenge their retirement and accepted the same by filing writ petitions after a very long delay. While dealing with question of delay and laches held that the delay and laches is an important factor to be considered in the exercise of discretionary relief. When a person who is not vigilant of his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to them as was granted to person similarly situated. The Hon'ble Supreme Court in the case of ***M/s Rup Diamonds & Ors. v. Union of India & Ors.*** *reported in (1989) 2 SCC 356* observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, cannot be given the benefit. Similarly, in the case of ***Jagdish Lal & Ors. v. State of Haryana & Ors.*** *reported in (1997) 6 SCC 538,* the Hon'ble Supreme Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. Observing that the delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution of India. In determining whether there has been a delay as to amount to laches, the chief points to be considered are (i) acquiescence on the claimant's part and (ii) any change in the position that has occurred on the defendant's part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.

11.10) The Division Bench of Hon'ble Delhi High Court in its judgment dated 30.05.2008 in the matter of ***Shiv Charan vs High Court of Delhi and Anr.*** had clearly held that:

"*13. On examination of the principles of law laid down aforesaid, we are of the considered view that the petitioners are not entitled to any relief on grounds of delay and latches. No doubt the petitioners are identically positioned as Mr. M.S.Rohilla but for the last twelve years took no steps to challenge their reversion. They accepted the reversion and the pay package as a consequence thereof and retired from service accepting the retirement and pensionary benefits which accrued to them as a consequence of the reversion. The benefits are personal to the petitioner and there is no explanation as to why the petitioners did not join in and file writ petitions challenging their reversion. They, in fact, acquiesced and accepted their reversion without being vigilant of their rights. The services which were rendered by the petitioners were also of the subordinate judicial service for which they have been paid.*"

11.11) The Hon'ble Supreme Court vide its judgment dated 29.10.2010 in the case of ***Tamil Nadu Housing Board, Chennai vs. M. Meiyappan and Ors.*** held that:

"*the High Court was not justified in entertaining the writ petition. The writ petition failed on the short ground that the writ petition had been filed 16 years after the award was announced by the Collector. It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution.*

In the present case, as already stated, the Respondents did not furnish any explanation as to why it took them 16 years to challenge the acquisition of their lands, when admittedly they were aware of the acquisition of their lands and had in fact participated in these proceedings before the Land Acquisition Collector. The High Court should have dismissed the writ petition at the threshold on the ground of delay and laches on the part of Respondent."

11.12) That the Hon'ble Supreme Court considered the effect of delay and laches in the case of ***S.S.Balu and another Vs. State of Kerala & others*** *reported in 2009 (2) SCC 479 and* has observed that it is also well settled principle of law that "delay defeats equity."

11.13) Similarly, the Hon'ble Supreme Court in the matter of ***Yunus (Baboobhai) A. Hamid Padvekar vs. State of Maharashtra & others reported in (2009) 3 SCC 281*** held:

"Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extra ordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Controller of Imports and Exports. Of Course, the discretion has to be exercise judicially and reasonably."

11.14) In the matter of ***State of M.P. vs. Nandlal Jaiswal reported in (1986) 4 SCC 556*** it was observed by the Hon'ble Supreme Court that :

"*The High Court in exercise of its jurisdiction does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised and unreasonable delay, it may have the effect or inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weights with the High Court in deciding whether or not to exercise such jurisdiction."*

11.15) The learned Single Judge of Delhi High Court in its decision dated 29.05.2009 in a writ petition (Civil) No. 1259 of 2008 in the matter of ***M.B. Goswami Vs. NTPC***, while dealing with the reversion of an officer of NTPC, had observed as under:

"*8. I have considered the rival contention of the parties and perused the record.*

9. The respondent has vehemently contended that the writ petition be dismissed on the ground of inordinate delay and latches. There is no doubt that a party must come to the Court invoking the writ jurisdiction as expeditiously as possible and certainly without unreasonable loss of time. What will be the period which will be considered to be reasonable in a given fact situation cannot be laid down in a straight jacket formula. The learned counsel has placed reliance on case titled State of Madhya Pradesh & Anr. Vs. Bhailal Bhai 1964 SC 1007. It has been observed in this case that ordinarily where a writ petition is filed claiming a particular relief and for a similar relief a limitation is prescribed under the Limitation Act that should be considered as the

guiding factor as a reasonable time within which the writ must be filed, though in a given fact situation this period can be less also. This judgment does not help the petitioner in any manner."

Thus the learned Single Judge clearly observed that the doctrine of delay and laches would not apply in a case when there is continuous cause of action.

12) Having cited various rulings/case laws propounded by Hon'ble Supreme Court and High Court, we now proceed to decide whether Doctrine of delay and laches is applicable to the facts and circumstances of the matters of the appellants pending before us. It is evident from the facts of the matters before us that the appellants had executed the PPAs with respondents for supply of electricity. The dates of the PPAs are as under:

M/s EID Parry (India) Limited	14/08/2001
M/s Ganpati Sugar Industries Ltd.	15/05/2002
M/s Jeypore Sugar Co. Ltd.	13/01/2000

13) Each of the PPAs with respect to the respective appellant provides that maintenance expenses of the inter-connection facilities from time to time have to be borne by a generating company, namely the appellants. The maintenance work on the generating units has to be done in coordination with the APTRANSCO (said transmission licensee/respondent). In this way, the appellants are bound to pay maintenance charges incurred on the maintenance of their respective dedicated transmission lines laid by the transmission/distribution licensee for evacuation of power from the respective generation station to the sub-station of the licensee. Regarding the fact that the maintenance charges are to be paid by the generating company to the licensee for maintenance of the dedicated transmission line of the generating company, there is no dispute between the generating companies/ appellants and the licensee/respondents.

14) The facts established from the record are that the respondents (transmission/ distribution licensee) after a lapse of more than 8 years or 10 years had issued demand letters demanding each appellant to pay the maintenance expenses/charges from the Commercial Operation Date of the respective generation station of the appellants to the date of demand notice without any prior

information about the maintenance work having been carried out. The appellants had never been informed about any line stoppage and line clearance for such line maintenance. Further it is established from record that the demand notice for line maintenance charges, for a period of in some cases for more than 8 years and in some cases for more than 10 years at one go, without furnishing the details of the works allegedly done and even without furnishing work-wise expenses on the said dedicated transmission lines of the appellants and the expenses incurred on such maintenance on dedicated lines, had been issued by the transmission/distribution licensee only on the basis of a clause in the respective PPAs of the appellants to the effect that line maintenance expenses from time to time have to be borne by the generating company/appellant and that each of the appellants was bound to pay maintenance charges, incurred by the licensee, for the maintenance of dedicated transmission lines of the appellants.

15) The correspondence between the appellants/generating companies and the respondent licensee clearly indicates that the appellants gave response to the said demand notices issued by the licensee and objected to the imposition/collection of maintenance charges of dedicated transmission lines requesting the respondents to provide details of the works of maintenance made on the said dedicated lines, showing actual amount spent by the respondents and the basis for calculation of the said expenses. It is further established from record that the respondents/licensee, namely transmission/distribution licensee even without considering the objections of the appellants and without furnishing the required details, as required by the appellants, unilaterally deducted the amount of maintenance charges from the export bill/power bill of the appellants and subsequently informed the appellants of the said deductions of the maintenance charges.

16) There is ample material on record to establish that the Government of India as well as the State Government in order to encourage generation of power through renewable energy sources had announced policy for establishing non-conventional energy projects. The appellants in pursuance of the said policy, had established their respective non-conventional bagasse based power projects with different capacity. Thereafter, each of the appellants had entered into PPA with APTRANSCO which PPA was approved by the State Commission. Record further

establishes that after the transfer scheme of the State Government, the functions of purchase of surplus energy in respect of each of the appellant's bagasse based power generation plant, which were hitherto vested in APTRANSCO stood severed, transferred and vested in the respective distribution licensee/respondents.

17) It is clearly evident from the record that the appellant, namely M/s E.I.D Parry (India) Ltd. of appeal No. 285 of 2014 had been issued demand letter dated 02.01.2011 of the line maintenance charges for the period from COD namely, 14.08.2001 to 31.02.2011 for the first time i.e. after about ten years from the COD. The appellant namely, M/s Ganpati Sugar Industries Ltd. of appeal No. 286 of 2014 had also been issued demand letter dated 02.01.2011 for the first time requiring him to pay line maintenance expenses from COD namely 31.12.2002 to 31.12.2010 i.e. after a gap of about 8 years. Likewise, the appellant, M/s. The Jeypore Sugar Company Ltd., of appeal No. 287 of 2014 had been issued a demand letter dated 21.01.2011 for the first time requiring him to pay line maintenance expenses from COD i.e. from 11.12.2003 to 31.02.2010 i.e. after a lapse of more than 6 years.

18) As stated above, in this judgment, each of the appellants filed the original petition before the State Commission challenging the said action of the respondents in imposing and claiming line maintenance charges from the COD of the respective power station of the appellants. On receipt of demand letter when the appellants, responded as stated above, the respondents without giving any details of the works done towards maintenance of the dedicated transmission lines of the appellants, even without giving item-wise expenses and the method of calculation of the maintenance expenses, unilaterally adjusted/deducted the alleged line maintenance charges from the power bills of the respective appellants.

19) We have considered the main grievances of the appellants in these three appeals, that the respondents (transmission/distribution licensee) after a lapse of more than 10 years, 8 years and 6 years had issued demand letters requiring each appellant to pay the maintenance charges of the dedicated transmission line from the respective CODs of the appellants without any prior information of any such expenses just on the ground that there is a clause in the respective PPA of the appellants that the appellants are bound to pay the maintenance charges of the

dedicated transmission lines of the appellants which lines had been laid by the respondents. The respondents, without giving any details of the aforesaid works etc., unilaterally deducted the said maintenance charges from the power bills of the appellants giving subsequent information of the said deductions/unilateral adjustments.

20) The learned counsel for the respondents has vehemently contended before us that the dedicated transmission line is actually maintained by respondents who are in the business of operating and maintaining the transmission and distribution lines and it is only the cost of the maintenance of the said lines that is to be paid by the appellants in terms of the PPA. The line maintenance charges are levied all over the country, wherein a line of one party is maintained by a third party. Even in the case of respondents, when the transmission lines are maintained by Powergrid, Central Transmission Utility (CTU), the Powergrid levies maintenance charges which are levied based on the length of the line and the number of bays being maintained. The respondents in the case before us are collecting maintenance expenses strictly based on the procedure adopted by PGCIL/CTU. The respondents are also paying PGCIL line and pay maintenance charge as per the calculation adopted by PGCIL, which is widely accepted and is an industry practice in the country. Further contention of the respondents is that the respondents are required to carry out periodical maintenance of the dedicated transmission lines which consist of diverse activities which are individually accounted for. As regulatory guidelines have not been framed for collection of line and maintenance charges, the PGCIL methodology is being followed by the respondents.

21) More emphasis is being made by learned counsel for the respondents on the contentions of the appellant that actual charges are not shown, which is impossible for the respondents to provide because the maintenance charges for transmission lines are dependent on the length of the line and number of bays. The reply of the respondents on the appellants' contentions that they had never been informed about the maintenance work or the expenses incurred on them, is that there is no procedure to inform the appellants about the details of the maintenance works thereof. It is thus evident from the rival contentions of the parties and also from the record including the Impugned Order that the appellants

had never been informed about the works allegedly carried out by the respondents towards the maintenance of dedicated transmission lines of the appellants and no details of the works as well as the respective expenditure on the said works and the methodology for calculating the said maintenance expenses had been furnished. When the demand letters were sent to the appellants in 2011 requiring them to pay maintenance charges for the maintenance of dedicated transmission line of the appellants from the COD of the respective power plant of the appellants after a lapse of more than 6 years or 8 years or 10 years, the appellants raised objections to the said demand letters requiring the respondents to give details of the works allegedly done towards maintenance of the said dedicated transmission lines, item-wise expenses, allegedly incurred by the respondents on the said lines and the methodology of computation of the said maintenance line charges, the respondents did not give any response, what to say of any reasonable response and unilaterally had deducted the respective maintenance expenses/charges for the dedicated transmission lines of the respective appellants. The respondents subsequently informed the appellants of the said unilateral deductions from the respective power bills of the appellants.

22) The learned counsel for respondents transmission/distribution licensee has vehemently argued on the nature of works required to be done towards maintenance of the dedicated transmission lines of the appellants throwing light that it is impossible to give details of the works done towards the said maintenance and the item-wise expenses incurred by the respondent on the maintenance of the said lines. Learned counsel for the respondents is totally unable to indicate the formula for computation/calculation of the maintenance expenses for the dedicated transmission line of the appellants saying that the respective PPA does not provide for quantifying the line maintenance expenses and the same have been recovered /unilaterally deducted from the power bills of the appellants as per the procedure adopted by PGCIL methodology, since there are no regulatory guidelines for collection of line maintenance charges. According to the learned counsel for the respondents, the said maintenance charges had been unilaterally deducted from the power bills of the appellants as per the methodology followed by PGCIL/CTU which charges are recovered by the PGCIL/CTU from the respondents.

23) After considering the aforementioned issues and giving our thoughtful consideration to the said issues, we find that the Doctrine of delay and laches is fully applicable to the cases of the appellants before us because the respondents did nothing from the date of commercial operation of the respective generating station of the appellants till the date of demand letter and the said demand letters had been issued after a lapse of more than 10 years, 8 years and 6 years, respectively for which no reason has at all been cited by the respondents for sleeping over the matter of line maintenance expenses for such extra ordinary long delay. The lapse of such a long time or delay in sending demand letters to the appellants, which is unaccounted for, is constituting laches. The settled law on the point of delay and laches is that the Courts refuses to assist a person who sleeps upon his rights and neglects to enforce them within reasonable time and with reasonable diligence. The learned counsel of the respondents has been totally unable to point out not a single circumstance for waiting for 10 years, 8 years or 6 years for issuing the said demand letters to the appellants requiring them to pay the line maintenance charges from the COD of the respective generating station of the appellants. The respondents adopted quite negligent, careless attitude towards the appellants and did not provide the details of the workings required to be done or really done towards the maintenance work of dedicated transmission line of the appellants. Further the respondents did not give the actual expenses item-wise, allegedly incurred by them towards the line maintenance of the appellants and no methodology or procedure for calculating or computing the said line maintenance charges had ever been informed by the respondents to the appellants. It is thus established from the record that the respondents showed quite reckless and negligent attitude in not reasonably responding to the details sought by the appellants. Since the respondents were in a dominating position hence they preferred not to respond to the details sought for by the appellants and deducted the said line maintenance charges form the power bills or export bills of the appellants. The appellants having been left with no alternative had to approach the State Commission by way of filing the aforesaid petitions before the State Commission showing their grievance with certain prayers which had been rejected by the state Commission vide Impugned Order.

24) The learned State Commission while passing the Impugned Order has noted that even though the respondents did not raise the claims in time in respect of each of

the appellants, their right over the claim remains as per the PPA. The respondents have been maintaining the sub-station lines and equipments all through the period so that the petitioners could use the lines uninterruptedly. Facilitating such uninterrupted use of lines is possible only by resorting to the preventive action taken by the respondents from time to time. The respondents had incurred some expenditure while undertaking regular maintenance of the equipment and lines and **it is very difficult to evaluate each cost incurred**. While agreeing with the liability to pay the cost of maintenance as per PPA, it is not open to the appellant petitioners to raise the limitation issue. Organization like that of the respondents, could not be made to suffer losses for the mistake of its employees. Having taken advantage of uninterrupted usage of lines, the appellants/petitioners are liable to pay for such usage. The Commission has passed the Impugned Order even after observing that "however, the Commission notes that the respondent concerned ought to have served a notice before affecting the deductions from bill amount unilaterally." It appears, from paragraph 34 of the Impugned Order, that it was admitted by the respondents before the State Commission that such charges/expenses had to be claimed regularly for each financial year but due to inadvertence of the respondents, the said line maintenance charges could not be charged year after year. However, lapses and laches on the part of the employees of the respondents does not absolve the appellants/petitioners from the liability to pay the said charges/expenses from the date of commissioning of their respective projects. The State Commission in the Impugned Orders further held that the respondents were entitled to collect the line maintenance and bay maintenance charges from the appellant/petitioners as per the PPA without interest as the delay in collection was due to respondent's inaction in raising the bills in time.

25) A close and careful perusal of the Impugned Order makes it evident that the State Commission was of the opinion while passing the Impugned Order, that the respondents/distribution licensees since are required to carry out periodical maintenance, therefore, it is difficult for them to individually account for in all such cases. The respondents before the State Commission clearly admitted that due to inadvertence of the licensees the said line maintenance charges were not claimed year after year and on consideration of the same the State Commission expressed the view that however, the lapses and laches on the part of the respondents do not absolve the appellant petitioners form liability to pay the

maintenance charges from the COD/ dates of commissioning of the respective power project of the appellants. The Impugned Order, as stated above, has been passed by the State Commission in spite of recording finding that the respondents ought to have served a notice before affecting the deductions from power bills of the appellants unilaterally and for the lapses or mistakes or inadvertence of the employees of the respondents, the organization like the respondents could not be made to suffer losses.

26) Before coming to our own individual conclusion, we deem it proper to cite the provisions of Section 56 of the Electricity Act, 2003 which we reproduce as under:

"***56. Disconnection of supply in default of payment.*** *– (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) An amount equal to the sum claimed from him, or

(b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

Whichever is less, pending disposal of any dispute between him and the licensee."

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

27) Section 56 of the Electricity Act, 2003 clearly provides that Where any person neglects to pay any charge for electricity or **any sum other than a charge for electricity due from him** to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee

or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and **without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity**. The wordings of the Section 56 clearly specifies that if any person neglects to pay the charges of electricity or any sum other than a charge, the licensee may after giving 15 days clear notice in writing without prejudice to his rights to recover such charge or other sum by a suit cut off the supply of electricity. The amount due has to be demanded in writing and disconnection can be affective only after giving not less than 15 days clear notice in writing. **Sub-section 2 of Section 56 of the Electricity Act, 2003 clearly provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. Thus sub-section 2 of Section 56 provides that no due from any consumer under this section shall be recoverable after a period of two years when such sum became first due unless the same is shown continuously as recoverable as arrear of charges for the supplied electricity.** Further a perusal of the Section 56 of the Act will show that limits have been put on the amount that can be claimed from any person who is in default of payment of any charge for electricity or any sum other than the charge for electricity due from him to a licensee or a generating company, which was not there in the earlier statutes.

28) Thus under Section 56 of the Electricity Act, 2003 two options were given either the respondents namely, transmission/distribution licensee either could have filed a suit for recovery of the charges for maintenance of dedicated transmission lines of the appellant or the respondents could have disconnected the supply in default of payment of such charges of the appellant petitioners. But none of the two options had been resorted to by the licensee.

29) Now we have a look at the afore noted demand notices sent by the respondents to the respective appellants. The said demand notices issued to appellants simply mention the relevant clause of the PPAs, annexing the so called calculation sheet, requested the respective appellants to arrange to pay the said amount mentioned

in the notices to APTRANSCO by way of Demand Draft drawn at a scheduled or Nationalised Bank in favour of Superintending Engineer, TLCC Circle. Thus the language of the demand notices clearly depicts that two options, provided under section 56 of the Electricity Act, 2003, had not been resorted to by the respondents against the appellants. The respondents could have either filed a suit for recovery of the said outstanding sum in the competent Court or issue notices to disconnect the supply of electricity to the respective appellants. By the demand notices the respondents simply requested the respective appellants to pay the amount given in the demand letters.

30) Having considered and analyzed the aforementioned facts and rulings and having perused the Impugned Order in the respective appeal, we find that the State Commission is totally unjustified in allowing the maintenance charges allegedly incurred towards the maintenance of the dedicated transmission lines claimed by the transmission/distribution licensees (respondent herein) from the Commercial Operation Date of the respective power generating company of the respective appellant to the date of demand notices. The power generating company, appellants herein, had taken the plea before the State Commission that the said charges for the maintenance of the dedicated transmission lines of the appellants, from the Commercial Operation Date of the respective power project of the appellants was barred by limitation. Contrary to it, the plea of the transmission/distribution licensee (respondent herein) before the State Commission was that due to inadvertence, they could not claim the said maintenance charges annually and hence, lapses/laches on the part of employees of the respondent/licensee did not absolve the appellants/petitioners from the liability to pay the said charges/expenses from the date of commercial operation of the power plants. The learned counsel for the respondents also took the plea before the State Commission that there was no limitation or prohibition on demanding payment for maintenance/expenses of the said dedicated transmission line of the appellants and the said liability of the appellant did not cease to exist automatically due to lapse of time. Thus the State Commission, in the Impugned Order, found that the said claims of the respondent/licensees were not barred by law of limitation and since the appellants became agreed to pay the cost of the maintenance as per the respective PPA, it was not open to the

appellants/petitioners to raise the limitation issue and the organizations like the licensees' could not be made to suffer for the mistakes of the employees. The State Commission, while passing the Impugned orders clearly held that the respondents/licensees are entitled to demand the said line maintenance and bay maintenance expenses from the appellants/petitioners and the procedure adopted for the calculation of the said expenses was permissible under law.

31) The learned State Commission in the Impugned Order had rightly held that the claims of the maintenance charges made by the respondents (distribution/transmission licensee) were not barred by law of limitation and we agree to the extent only that the Limitation Act 1963 is not applicable to the proceedings before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission. After going through the legal authorities mentioned above in this judgment, we find that the said maintenance charges/expenses claimed by the respondents (distribution/transmission licensee) are absolutely barred by the principle of delay and laches and the said principle is clearly applicable to the facts of the matters before us. Every Court or Tribunal is required, while considering the limitation, to also consider the effect of principle of delay and laches in the facts and circumstances of a particular case. Thus the demands or claims of the said maintenance charges towards the maintenance of the dedicated transmission lines of the appellants are clearly and completely barred by the Doctrine of delay and laches and every finding or reasoning recorded by the State Commission in the respective Impugned Order to the contrary is required to be quashed or set aside as the State Commission's findings are based on total incorrect and illegal approach which is not warranted in law. Thus all the findings recorded in the Impugned Orders directing the transmission/distribution licensee (respondents herein) to collect line maintenance and bay expenses from the appellant/petitioners are liable to be set aside being based on quite illegal and improper appreciation of the evidence and other material available on record and we cannot allow such illegal findings to prevail in such kind of matters where the said demand or claim is absolutely barred by Doctrine of Delay and Laches. When any Tribunal or Court holds any particular claim or demand as not barred by law of limitation, then it is required to consider the impact of delay and laches in the facts and circumstances of that particular case.

32) Further we hold that the State Commission was not justified in holding that the respondents (distribution/transmission licensee) are entitled to demand line maintenance charges/expenses from the appellants from Commercial Date of Operation till date of notice. Further, we hold that the action of the transmission/distribution licensee (respondents herein) claiming and imposing the maintenance charge/expenses incurred towards maintenance of the dedicated transmission lines of the appellants from the date of Commercial Operation of respective power plant till the date of demand notice, which is more than 10 years, 8 years and 6 years in these appeals respectively is quite illegal and against the provisions of law and the same are hit by the principle of delay and laches. Further we find that the unilateral deduction of the said maintenance charges from the monthly power bills of the respective power plant of the appellants was also illegal and the same cannot be allowed to be appreciated by any stretch of imagination. The learned State Commission, even after observing in the Impugned Orders that the distribution/transmission licensee (respondents herein), ought to have served a notice before affecting the deduction from the bill amount of the appellants unilaterally had illegally passed the Impugned Orders because once the finding is recorded by the State Commission, its impact should have been considered by the State Commission in a legal and judicial way. Hence, the State Commission had committed illegality and adopted illegal approach in not considering the impact of the finding recorded on the facts that the respondents ought to have served a notice upon the appellants before making deductions from the power/export bill of the appellants unilaterally. We further are of the considered view that the State Commission had committed illegality and perversity in dismissing the aforesaid petitions filed by the appellant/petitioners before the State Commission. In view of the above, all the issues, (a) to (c), are decided in favour of the appellants and against the respondents, namely the transmission/ distribution licensee and all the findings recorded by the State Commission to the contrary in the Impugned Orders are hereby set aside/quashed as being perverse and illegal. Consequently, all the appeals are liable to be allowed and the aforesaid petitions filed by the respective appellants before the State Commission are liable to be allowed to the extent indicated by us above.

33) We further observe that since the amounts mentioned in the respective demand notices sent by respondents to the respective appellants had been deducted unilaterally and illegally without there being any provision for the same in the PPA or any other regulations. The respondents are liable to be directed to refund the said amounts along with interest @ 9% per annum till from date of unilateral deductions till the date of actual payment.

O R D E R

In view of the above, the appeal Nos. 285 of 2014, 286 of 2014 and 287 of 2014 are hereby allowed and respective Impugned Orders are here by quashed/set aside. The respective petitions filed by each of the appellants before the State Commission, whereby the appellants/petitioners had challenged the imposition and demand of the maintenance charges allegedly incurred by the respondents (transmission/distribution licensee) towards maintenance of the dedicated transmission lines of the respective appellants being *per se* illegal, whimsical and arbitrary and without any basis giving no methodology for calculating the said line maintenance charges/expenses from the Commercial Operation Date are hereby allowed. The said recovery or unilateral deductions of the amounts of the said demand notices is not barred by Law of Limitation as provided under the Law of Limitation Act, 1963 but are barred by the Doctrine of Delay and Laches. We further direct the respondents (transmission/distribution licensee) to refund the amount of the said demand bills unilaterally deducted from the power bills of the respective appellants along with interest @ 9% per annum from the date of unilateral deduction till the date of actual payment within three months from today.

No costs.

Pronounced in the open court on this 29th day of October, 2015.

(I.J.Kapoor)
Technical Member

(Justice Surendra Kumar)
Judicial Member

✔ **REPORTABLE / ~~NON-REPORTABLE~~**