

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 99 OF 2013

Dated: 29th April, 2015

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF

Power Grid Corporation of India Ltd

Saudamini, Plot No. 2,
Sector 29, Gurgaon – 122001
Haryana

..... Appellant/Petitioner

VERSUS

1. Central Electricity Regulatory Commission
3rd and 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110001
2. Karnataka Power Transmission Corporation Limited
Represented by its Chairman,
Kaveri Bhavan, Bangalore – 560 009
3. Transmission Corporation of Andhra Pradesh Limited
Represented by its Chairman,
Vidyut Soudha, Hyderabad – 500 082
4. Kerala State Electricity Board
Represented by its Chairman,
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram – 695 004
5. Tamil Nadu Electricity Board
Represented by its Chairman
NPKRR Maaligai, 800, Anna Salai,
Chennai – 600 002
6. Electricity Department, Government of Goa,
Represented by Chief Engineer (Electrical),
Vidyuti Bhawan, Panaji,
Goa – 403 001

7. Electricity Department, Government of Pondicherry,
Represented by Chief Secretary,
Pondicherry – 605 001
8. Eastern Power Distribution Company of Andhra Pradesh Limited
Represented by its Managing Director,
APEPDCL, P&T Colony, Seethmmadhara,
Vishakhapatnam-530 013, Andhra Pradesh
9. Southern Power Distribution Company of Andhra Pradesh Limited
Represented by its Managing Director,
Srinivasa Kalyana Mandapam Backside,
Tiruchanoor Road, Kesavayana Gunta,
Tirupati – 517 501, Andhra Pradesh
10. Central Power Distribution Company of Andhra Pradesh Limited
Represented by its Managing Director,
Corporate Office, Mint Compound,
Hyderabad – 500 063, Andhra Pradesh
11. Northern Power Distribution Company of Andhra Pradesh Limited
Represented by its Managing Director,
Opp. NIT Petrol Pump, Chaitanyapuri, Kazipet,
Warangal – 506 004, Andhra Pradesh
12. Bangalore Electricity Supply Company Limited
Represented by its Managing Director,
Corporate Office, K.R. Circle,
Bangalore – 560 001
13. Gulbarga Electricity Supply Company Limited
Represented by its Managing Director,
Station Main Road, Gulbarga-585 102,
Karnataka
14. Hubli Electricity Supply Company Limited
Represented by its Managing Director,
Navanagar, PB Road,
Hubli- 580 025, Karnataka
15. MESCOM Corporate Office,
Represented by its Managing Director,
Paradigm Plaza, AB Shetty Circle,
Mangalore – 575 001
16. Chamundeswari Electricity Supply Corporation Limited
Represented by its Managing Director,
927, L J Avenue, Ground floor,
New Kantharaj Urs Road, Saraswatipuram,
Mysore – 570 009

..... Respondents

Counsel for the Appellant ... Mr. M.G. Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan

Counsel for the Respondent(s)... Mr. Anand K. Ganesan
Ms. Mandakini Ghosh
Ms. Swapna Seshadri
for R-2, 12, 14 & 16

Mr. S. Vallinayagam for R-5

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by Power Grid Corporation of India Ltd (in short, the '**Appellant/PGCIL**'), against the Impugned Order, dated 11.3.2013, passed by the Central Electricity Regulatory Commission (in short, the '**Central Commission**)/Respondent No.1 herein, in Petition No. 190/TT/2011, titled as Power Grid Corporation of India Limited, Gurgaon vs. Karnataka Power Transmission CoOrporation Ltd., Bangalore & Ors., relating to approval of transmission tariff in respect of Hassan – Mysore 400 KV D/C Line and extension of 400/220kV Mysore & Hassan sub-station under System Strengthening-IX in Southern Regional Grid (hereinafter referred to as the "Transmission Project") from the date of commercial operation i.e. 1.7.2011 for the period from 1.7.2011 to 31.3.2014.

2. The Appellant/petitioner, PGCIL herein, discharges the functions of the Central Transmission Utility (CTU) and is engaged in the transmission of electricity and discharging other functions provided under the Electricity Act, 2003. The Appellant, being a CTU, is also a deemed Transmission Licensee under Section 14 of the Electricity Act, 2003 and discharges the functions under the regulatory control of the Central Commission. Respondent No. 1, Central Commission is a Electricity Regulator in the

country. Respondent No.2 to 16 are the transmission/distribution licensees in different States and the Union Territory.

3. The learned Central Commission, by this impugned order, dated 11.3.2013, has determined the transmission tariff for the aforesaid transmission project and has rejected the claim of the Appellant/petitioner for additional return on equity provided under the Regulation 15 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter called, the "Tariff Regulations'2009") and has only partly allowed the expenditure on initial spares without considering the justification given by the Appellant/petitioner for the claim in full.

4. The learned Central Commission, in the impugned order, dated 11.3.2013, has not allowed the additional return on equity as claimed by the Appellant on the ground that the line was ready for commercial operation on 17.6.2011 only on considering the letter, dated 17.6.2011, of the Appellant. Further, the Central Commission had partly allowed the expenditure on initial spares only on the ground that the claim of the Appellant on initial spares amounting to Rs.145.52 lakhs exceeds the ceiling limit specified in Regulation 8 of the Tariff Regulations, 2009 by Rs. 111.21 lakhs. According to the Appellant/petitioner, the Central Commission has not accepted the justification given by the Appellant and has proceeded to deduct an amount of Rs. 111.21 lakhs proportionately from sub-station component i.e. sub-station equipment (including PLCC).

5. The main grievances of the Appellant/petitioner against the impugned order are as under:

- (a) that the transmission project of the Appellant was completed in all respect on 15.6.2011, and was ready for energization as per Regulation 15 of the Tariff Regulations, 2009, which provides that if the Transmission project is completed within the time frame stipulated in Appendix-II to the Tariff Regulation, 2009,

the Transmission project will be eligible for additional return on equity @ 0.5%. The Regulation 15, further, has proviso which provides that the additional return on equity of 0.5% shall not be admissible if the project is not completed within the time line specified above for reasons whatsoever, is not applicable, is not applicable.

- (b) that the Transmission project was ready for commissioning within the time schedule provided under the Appendix-II to the Tariff Regulations, 2009 i.e. 28 months from 16.2.2009 (the date of investment approval) hence, the Appellant is eligible for additional return on equity @ 0.5% in accordance with the provisions of Regulation 15 of the Tariff Regulations, 2009.
- (c) that the Central Commission has wrongly proceeded on the basis of the letter, dated 17.6.2011, sent by the Appellant, intimating the Central Electricity Authority (CEA) for inspection and approval to energize the transmission project without considering the date of completion of the project.
- (d) that the initial spare normative provided in Regulation 8 of the Tariff Regulations, 2009, which are generally for green field projects, cannot be mechanically extended to small projects like the present case.
- (e) that the bays at Mysore & Hassan sub-stations have been commissioned as extension of existing substation. While in green field sub-stations/new sub-stations normally a large number of bays are commissioned under single project and the spares are taken for such large numbers of bays but in the case of only two bays, each at Mysore & Hassan sub-station were commissioned thereby the requirement of initial spares will necessarily be more in percentage term.

6. The relevant facts giving rise to the instant Appeal are as under:

- (a) that the Board of Directors of the Appellant on 16.2.2009 approved an investment of Rs.120.62 crores including Interest During Construction (IDC) of Rs.9.56 crores based on 4th quarter of 2008 price levels for implementing the Transmission System being the Hassan-Mysore 400KV D/C Line and extension of 400/220 KV Mysore and Hassan Sub-Station under System Strengthening-IX in Southern Regional Grid.
- (b) that the Appellant filed an application on 23.5.2011 vide Form-A of Central Electricity Authority for statutory inspection of electrical installation under Regulation 43 and 32 of central Electricity Authority (measure Relating to Safety and Electric Supply) Regulations, 2010 for approval of the electrical inspector for energization.
- (c) that the Appellant, further, filed an application on 25.5.2011 vide Form-B before Central Electricity Authority for the same purpose under the said provisions.
- (d) that the Appellant vide a letter, dated 28.5.2011, addressed to the Superintending Engineer, Central Electricity Authority, requested for clearance for energization of 400 KV Mysore 1 and 2 bays and 220 KV line bays at Hassan sub-station annexing an application vide Form No.-A, dated 23.5.2011, along with relevant drawings and documents and also deposited the requisite fees.
- (e) that, on 15.6.2011, the Transmission project of the Appellant was completed in all respect and was ready for energization. M/s. Deepak Cables (India) Limited, the agency which had undertaken the work, also sent a letter to PGCIL confirming that the said work had been completed.
- (f) that Central Electricity Authority carried out inspection of the said transmission project of the Appellant on 29.6.2011. The next day i.e. on 30.6.2011, the Central Electricity Authority had

issued the certificate. Consequently, the Transmission project of the Appellant was put under commercial operation on 1.7.2011.

- (g) that the Appellant filed the said petition before the Central Commission for approval of the transmission tariff for the Transmission project of the Appellant, which has been disposed of by the Central Commission vide impugned order, dated 11.3.2013, as detailed above.

7. We have heard Mr. M.G. Ramachandran, the learned counsel for the Appellant/Petitioner and Mr. Anand K. Ganesan and Ms. Mandakini Ghosh, learned counsel for the Respondent Nos.2, 12, 14 & 16 and Mr. S. Vallinayagam, learned counsel for Respondent No.5. We have deeply gone through the evidence and other material available on record including the impugned order passed by the Central Commission and written submissions.

8. The following issues arise for our consideration:

- (A) ***Whether the Central Commission has properly considered the Regulation 15 of the Tariff Regulations, 2009 while disallowing the additional return on equity to the Appellant?***
- (B) ***Whether the Central Commission is justified in partly allowing the expenditure on initial spares on the ground that the claim of the Appellant on initial spares exceeds the ceiling limit specified in Regulation 8 of the Tariff Regulations, 2009?***

Our issue-wise considerations are as under:

9. ***Issue No.(A): Whether the Central Commission has properly considered the Regulation 15 of the Tariff Regulations, 2009 while disallowing the additional return on equity to the Appellant?***

9.1 On this issue, the following contentions have been made on behalf of the Appellant:

- (a) that the Central Commission has wrongly proceeded on the basis of the letter, dated 17.6.2011, intimating the Central

Electricity Authority for inspection and approval to energize the transmission project that the transmission system was completed only on 17.6.2011 and not on 16.6.2011. The Transmission system ought to be completed prior to 17.6.2011 in order to enable the Appellant to write the letter on 17.6.2011. The Transmission System was in fact completed in all respect on 15.6.2011.

- (b) that the Central Commission erred in holding that the cut-off date for the Appellant to be entitled for additional return on equity in terms of the Tariff Regulations, 2009 was 1.7.2011. Regulation 3(12)(c) of Tariff Regulations, 2009 defines the date of commercial operation or 'COD' and states that in relation to the transmission system, the date declared by the transmission licensee from 00:00 hour of which an element of the transmission system is in regular service after successful charging and trial operation with a proviso that the date shall be the first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for, from that date.
- (c) that according to Regulation 15 of the Tariff Regulations, 2009, if the project is completed within the time frame stipulated in Appendix-II to the Tariff Regulations, 2009, the Transmission project will be eligible for additional return on equity of 0.5%.
- (d) that Appendix-II to the Tariff Regulations, 2009 provides that for transmission schemes, the qualifying time schedule in months namely; 400 KV D/C Twin Transmission line for plain area would be 28 months and for hilly area, it would be 34 months.
- (e) that the transmission project of the Appellant was ready on 16.6.2011 within the time period prescribe under Appendix II to the Tariff Regulations, 2009, which aspect is also evident from

the fact that the Appellant had admittedly written the letter to the Central Electricity Authority on 17.06.2011 asking for the approval to energise the line.

- (f) that the Central Commission has wrongly proceeded on the basis of the letter, dated 17.6.2011, holding that the Transmission system was completed only on 17.6.2011. The Central Commission has failed to consider that the transmission project ought to be completed before 17.6.2011 when the Appellant wrote the letter, dated 17.6.2011 for energization.
- (g) that Central Commission has erroneously held that the cut-off date for the Appellant to be entitled for additional return on equity of 0.5% in terms of the Tariff Regulations, 2009 was 1.7.2011, the date of the commissioning of the Transmission project, since as per the definition of the date of Commercial Operation in Regulation 3(12)(c) and Appendix-II to the Tariff Regulation, 2009, the Commercial Operation being in the first day of the succeeding month of the project being ready.
- (h) that in view of the legal fiction provided under the definition of date of commercial operation under Regulation 3(12)(c) of the Tariff Regulations, 2009, the term up to the date of commercial operation of the units or block or element of transmission project as applicable in Appendix II would necessarily be 1.7.2011.
- (i) that the approach of the Central Commission, in the impugned order in this regard, is improper and incorrect because in terms of the proviso to Regulation 15, the ingredient for getting additional return on equity of 0.5% is that the project ought to be completed within the time limit. This has nothing to do with Commercial Operation date. The meaning of word “completed” under Regulation 15 is with regard to the physical completion

of the project and not with regard to actual date of commissioning or actual date of commercial operation.

- (j) that the Commercial Operation Date, in terms of Regulation 3(12)(c) can be only from the first day of the calendar month succeeding the date on which the Transmission project is ready. Accordingly, it was not possible for the Appellant to declare Commercial Operation on 16.6.2011, even if the project having being completed. The Appellant could declare commercial operation only on 1.7.2011 in the present case.
- (k) that, it is not justified to deny such benefits of additional return on equity of 0.5% to the Appellant just on the ground that the Appellant had declared the commercial operation on the first day of the succeeding month as per the Tariff Regulations, 2009.

9.2 **Per contra**, the learned counsel for the Respondents taking us, through the reply/counter affidavits, have argued on this issue i.e. **Issue No.(A)** as under:

- (a) that Appendix-II of the Tariff Regulations, 2009 states that the completion time schedule shall be reckoned from the date of investment approval by the Board (Generating Company or Transmission Licensee) or the CCEA clearance as the case may be, upto the date of commercial operation of the unit or block or element of transmission project as applicable.
- (b) that Appendix-II clearly states that the completion schedule means the period from the date of investment approval by the Board upto the date of commercial operation. 28 months period from the date of investment approval, dated 16.2.2009, ends on 17.6.2011. The date of commercial operation of the project, as stated by the Appellant, in its tariff petition is 1.7.2011.

- (c) that the letter, dated 30.6.2011, of CEA's approval for energization of 400 kV bays at 400/220 kV Mysore sub-station, mentions as under:

"The approval for energization of 415 & 418 – 400 kV Hassan 2 & 1 line bay equipments, 414 & 417 – 400 kV tie bay equipments and 416 & 413 – 400 kV Kozhikode – 1 & 2 line bays except line terminal equipments at 400/220 kV Mysore sub-station is hereby accorded subject to consistent compliance of relevant provisions of CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 by Power Grid Corporation of India Ltd".

Thus, it is evident that CEA approval was accorded only on 30.6.2011 that too excluding the line terminal equipments at Mysore sub-station.

- (d) that the definition of commercial operation date in Regulation 3(12)(c) of Tariff Regulations, 2009 is that *"The date shall be the first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for, from that date"*. Thus, the COD is applicable for claiming transmission charge and accounting availability of the system. **Regulation 15(2) of the Tariff Regulations, 2009 provides that the additional return on equity of 0.5% shall not be admissible if the project is not completed within the timeline specified for the reasons whatsoever.** Thus, the learned Central Commission was right in disallowing the additional return on equity of 0.5% as the completion date of the Transmission system was 30.6.2011.
- (e) that since, the Appellant/petitioner has put the assets under commercial operation on 1.7.2011, which is 28 months and 15 days from the date of investment approval and it exceeds the time line of 28 months prescribed in Appendix-II of the Tariff Regulations, 2009, the claim of the Appellant/petitioner for additional return on equity should be summarily rejected.

- (f) that in the Record of Proceeding for the hearing, dated 15.5.2011, of the Central Commission, the Commission had directed the Appellant/petitioner to submit documents showing that the assets were completed within 28 months from the date of investment approval (i.e. before 16.6.2011) in order to qualify for additional return on equity.
- (g) that the contention of the Appellant, that irrespective of the date of the commissioning of the assets, the date of commercial operation of the assets shall be the first day of the succeeding month and transmission charges shall be payable from the date of commercial operation and the qualifying timeline of 28 months should be reckoned from the 1st of the succeeding month in which the approval was granted, has no merit.
- (h) that the said provision of Regulation 3(12)(c) of the Tariff Regulations, 2009, cannot extend the period of execution of the project prescribed in the Appendix-II to the Tariff Regulations, 2009 for the purpose of admissibility of additional return on equity as it would dilute the timelines specified by extending the period from the due date computed with reference to the investment approval till the 1st of the succeeding month. Therefore, this provision cannot be pressed into service for the purpose of determining the timeline for additional return on equity. It needs to be seen whether the asset was ready for commissioning within the timeline recommended as per Appendix-II irrespective of the actual date of commercial operation, for the purpose of admissibility of additional return on equity.
- (i) that the Appellant/petitioner, in its letter, dated 28.5.2011, requested Regional Inspectorial Organization (RIO) for inspection of the transmission line and the electrical system executed so that the same could be energized. Subsequently, the Appellant requested the RIO, CEA (vide letter, dated

17.6.2011) to make it convenient to inspect the installation for approval to energize 400 kV Mysore – 1 & 2 Bays, 2 Nos. 220 kV line bays at Hassan sub-station and 400 kV D/C twin conductor Hassan-Mysore transmission line as the works had been completed in all respect for energization. Therefore, the subject transmission line was ready for inspection on 17.6.2011 and it was not ready for energization on 16.6.2011. Inspection was carried out by CEA on 29.6.2011 and certificate was issued on 30.6.2011. Transmission line was put under commercial operation only on 1.7.2011. Therefore, it cannot be said that the transmission line was ready for commercial operation as on 16.6.2011 which would entitle transmission asset for additional return on equity.

- (j) that the settled position for declaration of commercial operation in terms of Regulation 3(12) of the Tariff Regulations, 2009 is '*regular service after successful charging and trial operation*'. In the absence of the certificate from the Central Electricity Authority after conducting inspection and authorizing the energization of the transmission project, the transmission project cannot be said to be under commercial operation.

9.3 **Our consideration and conclusion on Issue No. (A):**

- (a) The learned Central Commission, as mentioned above, by the impugned order, dated 11.3.2013, has determined the transmission tariff for the aforesaid transmission project of the Appellant and has rejected the claim of the Appellant/petitioner for additional return on equity under Section 15 of the Tariff Regulations, 2009. The learned Central Commission, in the impugned order, has not allowed the additional return on equity on the ground that the said transmission line was ready for commercial operation only on 17.6.2011 and not on 16.6.2011.

- (b) To examine the legality and validity of the impugned order, dated 11.3.2013, we reproduce the relevant part thereof as under:

“31.

.....According to the above regulation, the date of commercial operation shall be the first day of the month and the transmission charges shall be payable and availability shall be accounted for accordingly. However, the provision cannot extend the project the period of execution of the project prescribed in the Appendix-II to the 2009 Regulations for the purpose of admissibility of additional RoE as it would dilute the timelines specified by extending the period from the due date computed with reference to the investment approval till the 1st of the succeeding month. Therefore, provision of Regulation 3(12)(c) of the 2009 Tariff Regulations, cannot be pressed into service for the purpose of determining the timeline for additional RoE. It needs to be seen whether the asset was ready for commissioning within the timeline recommended as per Appendix-II irrespective of the actual date of commercial operation, the purpose of admissibility of additional RoE.

32. The petitioner has submitted a copy of the letters dated 28.5.2011 and 17.6.2011 addressed to Regional Inspectorial Organization (RIO), Central Electricity Authority along with the affidavit dated 21.6.2012, regarding “Clearance for Energisation of 400 kV Mysore- 1 & 2 Bays & 220 kV line bays at Hassan sub-station”. The petitioner in that letter has requested RIO for inspection of the Transmission Line and the electrical system executed so that the same could be energized. Subsequently, the petitioner has requested the RIO, CEA (vide letter dated 17.6.2011) to make it convenient to inspect the installation for approval to energize 400 kV Mysore-1 & 2 Byas, 2 Nos. 220 kV line bays at Hassan sub-station and 400 kV D/C twin conductor Hassan-Mysore transmission line as the works have been completed in all respect for energisation. Therefore, the subject transmission line was ready for inspection only on 17.6.2011 and it was not ready for energisation as on 16.6.2011. Inspection was carried out by CEA on 29.6.2011 and certificate was issued 30.6.2011. The line was put under commercial operation only on 1.7.2011. Therefore, it cannot be said that the line was ready for commercial operation as on 16.6.2011, which would entitle the asset for additional RoE. In view of our discussion, we are of the view that the petitioner is not entitled for additional RoE in terms of Regulation 15(2) of the 2009 Tariff Regulations and accordingly, the request for additional RoE is rejected.”

- (c) The regulation 15 of the Tariff Regulations, 2009, dealing with return on equity, provides as under:

“15. Return on Equity. (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation:

*Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in **Appendix-II**:*

Provided further that the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever”

- (d) It is evident from the cautious and deeply scrutiny of the Regulation 15 of the Tariff Regulations, 2009 that if the project is commissioned on or after 1.4.2009, and additional return on equity of 0.5% shall be allowed if the project is completed within the time frame specified in Appendix-II. **There is a proviso to Regulation 15 that such additional return on equity of 0.5% shall not be admissible if the project is not completed within the time line specified for reasons whatsoever.** Thus, this proviso does not allow any kind of relaxation or watering down on the aspect of allowing additional return on equity. The clear wordings of the proviso are that such additional return on equity of 0.5% shall not be admissible if the project is not completed within the specified time for any reasons whatsoever. Thus, for allowing additional return on equity, the completion of the project should be within the time line specified in Appendix-II of the Tariff Regulations, 2009 and no excuse, at any cost, shall be allowed. It means that any kind of reason, even though, lucrative cannot be considered in case the project is not completed within the time line specified in Appendix-II for allowing additional return on equity.

- (e) The finding of the Central Commission in the impugned order on this issue is that the said proviso to Regulation 15 of the Tariff Regulations, 2009 cannot extend the period of commissioning of the said transmission project prescribed in Appendix-II of the Tariff Regulations, 2009 for the purpose of admissibility of additional return on equity as it would dilute the timelines specified by extending the period from the due date computed with reference to the investment approval till the 1st of the succeeding month. The Central Commission has clearly observed that the provision of Regulation 3(12)(c) of the 2009 Tariff Regulations, cannot be pressed into service for the purpose of determining the timeline for additional return on equity.
- (f) It is clear cut finding of the Central Commission in the impugned order that the Appellant/petitioner, in its letter, dated 28.5.2011, addressed to Regional Inspectorial Organization (RIO) had requested RIO for inspection of the transmission line and electrical system executed so that the same could be energized. Subsequently, the Appellant/petitioner, vide its letter, dated 17.6.2011, further requested the RIO to make it convenient to inspect the installation for approval to energize 400 kV Mysore-1 & 2 Bays, 2 Nos. 220 kV line bays at Hassan sub-station and 400 kV D/C twin conductor Hassan-Mysore transmission line as the works had been completed in all respect for energization. On this basis, the Central Commission held that the subject transmission line was ready for inspection only on 17.6.2011 and it was not ready for energization as on 16.6.2011. Inspection was carried out by CEA on 29.6.2011 and certificate was issued 30.6.2011 and the subject transmission line was put under commercial operation only on 1.7.2011. On this basis, the learned Central Commission, in the impugned order, has concluded that it cannot be said that the said transmission

line was ready for commercial operation as on 16.6.2011, which would entitle the asset for additional return on equity. The Central Commission has expressed the view that the Appellant/petitioner is not entitled for additional return on equity in terms of Regulation 15(2) of the Tariff Regulations, 2009 and, accordingly, rejected the claim of the Appellant for additional return on equity.

- (g) The main contention of the Appellant before us is that the transmission project of the Appellant was completed in all respect on 15.6.2011, and was ready for energization and as per Regulation 15 of the Tariff Regulations, 2009, if the Transmission project is completed within the time frame stipulated in Appendix-II to the Tariff Regulation, 2009, the Transmission project would be eligible for additional return on equity @ 0.5%. According to the Appellant, proviso to the Regulation 15, which provides that the additional return on equity of 0.5% shall not be admissible if the project is not completed within the said time line, is not applicable. According to the Appellant the said transmission system was, in fact, completed in all respect on 15.6.2011 and the Central Commission erred in holding that the cut-off date for the Appellant to be entitled for additional return on equity was 1.7.2011. Appendix-II to the Tariff Regulations, 2009 provides that for transmission lines, the qualifying time schedule in months namely; 400 KV D/C twin transmission line for plain area would be 28 months and for hilly area, it would be 34 months. In the case in hand, the transmission project was made ready for commissioning within the time schedule provided under Appendix-II to the Tariff Regulations, 2009 i.e. 28 months from 16.2.2009 (the date of investment approval) hence, the Appellant should be found eligible for additional return on equity @ 0.5% in accordance with the provision of Regulation 15 of the Tariff Regulations, 2009.

- (h) The basis of this contention of the Appellant is that since the Appellant had admittedly written the letter, dated 17.6.2011, addressed to the Regional Inspectorial Organization (RIO), Central Electricity Authority (CEA) asking for approval to energize the line that the transmission line of the Appellant was ready on 16.6.2011 and not on 17.6.2011.
- (i) After going through the material and counter submissions on this issue, we do not agree to the contentions of the Appellant on this issue because the proviso to Regulation 15 of the Tariff Regulations, 2009 clearly provides that the additional return on equity of 0.5% shall not be admissible, if the project is not completed within the time frame specified for any reasons whatsoever. As we have mentioned above that the Appellant/petitioner wrote two letters, dated 28.5.2011 and 17.6.2011, to the Regional Inspectorial Organization (RIO), Central Electricity Authority (CEA) requesting in the first letter to make it convenient to inspect the installation for approval to energize the said project. As the said letter was written on 17.6.2011 itself, hence, the said project cannot be said to be completed on the earlier date namely on 16.6.2011. We agree to the findings recorded by the Central Commission in the impugned order on this issue i.e. Issue No. (A) and we are also of the firm view that the said project of the Appellant was not ready on 16.6.2011 but was actually ready on 17.6.2011 and in view of proviso to Regulation 15 of Tariff Regulations, 2009, the Appellant is not legally entitled to additional return on equity because the said transmission project was not made ready within the time frame fixed in Appendix-II to the Tariff Regulations, 2009. We are further unable to agree to the contention of the Appellant that the meaning of the word 'completed' under Regulation 15 is with regard to the physical completion of the project and not with regard to the actual date of commissioning or actual date of commercial operation.

Further, Appendix-II to the Tariff Regulations, 2009 clearly states that the completion schedule means the period from the date of investment approval by the Authority up to the date of commercial operation. 28 months from the investment approval date i.e. 16.2.2009 ended on 17.6.2011 hence, the commercial date of operation of the project, as stated by the Appellant in its tariff petition, is 1.7.2011. The Central Electricity Authority approval was accorded only on 30.6.2011 that too excluding the line terminal equipments at Mysore sub-station. The system was ready to use only after the statutory clearance of Electrical Inspector on 30.6.2011. As per Regulation 3(12)(c) of Tariff Regulations, 2009, the date of commercial operation shall be 1st day of succeeding month and transmission charge for element shall be payable and its availability shall be accounted-for from that date. Thus, the COD is applicable for claiming transmission charge and accounting availability of the system. We hold that the learned Central Commission was right in disallowing the additional return on equity of 0.5% as the completion date of transmission system was 30.6.2011, when COD approval was accorded to the transmission project of the Appellant. We clearly hold that the said transmission system of the Appellant was not ready for commissioning within the time frame specified in Appendix-II to Tariff Regulations, 2009. **In view of the above discussions, this issue i.e. Issue No.(A) is decided against the Appellant as the findings recorded by the Central Commission in the impugned order on this issue do not suffer from any perversity or illegality.**

10. **Issue No.(B):** *Whether the Central Commission is justified in partly allowing the expenditure on initial spares on the ground that the claim of the Appellant on initial spares exceeds the ceiling limit specified in Regulation 8 of the Tariff Regulations, 2009?*

10.1 On this issue, the following contentions have been made on behalf of the Appellant:

- (a) that the initial spare normative provided in Regulation 8 of Tariff Regulations 2009 are generally for green field projects and the same cannot be mechanically extended to small projects like the present project of the Appellant. The Central Commission ought to have relaxed the norms and provided the additional amount towards initial spares as claimed by the Appellant.
- (b) that the bays at Mysore & Hassan sub-stations have been commissioned as extension of existing substation. While in green field sub-stations/new sub-stations normally a large number of bays are commissioned under single project and the spares are taken for such large number of bays but in the case of only two bays each at Mysore & Hassan sub-station were commissioned hence, the requirement of initial spares will necessarily be more in percentage term. Further, the population of equipments and total capital cost for green field project is much higher than the project cost of an extension project.
- (c) that even though, similar type of spares have been procured for the extension project system as is normally done for green field project, the percentage of cost of initial spares with respect to the project capital cost for this system is higher because of less project capital cost due to lesser number of equipments in the extension project for each substation compared to project having assets in green field substations.

10.2 **Per contra**, the learned counsel for the Respondents taking us, through the reply/counter affidavits, have argued on this issue i.e. **Issue No.(B)** as under:

- (a) that in case of initial spares, the Tariff Regulations, 2009 specify the norms for spares for transmission line or sub-station of a project as a percentage of capital cost. There is no distinction between the projects having more number of equipments or less number of equipments for the purpose of initial spares. The Central Commission has rightly held the same in its impugned order and allowed 2.50% of the project cost for initial spares as per the norms. There is no justification in the claim of the Appellant to allow the initial spares over and above the norms specified in the Tariff Regulations, 2009.
- (b) that the Appellant's contention that the normative initial spares provided for in the Tariff Regulations, 2009 are only for green field projects is without merit. There is no such distinction provided for in the Tariff Regulations, 2009.
- (c) that this Appellate Tribunal, in its judgment, dated 20.1.2011, in Appeal Nos. 169 of 2009 and 127 of 2009 held as under:

"55. Now, the Appellant claims for relaxation of norms pertaining to initial spares on the ground that up gradation work involved high technology, imported items and higher quantity of spares procured since no contractor/supplier was agreeable to supply a few imported items. This can hardly be considered to be a special factor justifying relaxation of the norms as already held earlier, the actual capital expenditure would include capitalized initial spares subject to the ceiling of 1.5% of the original project cost. Therefore, the Central Commission did not commit any wrong in restricting itself to its own regulations.

56. Power to relax as is conferred on the Commission under Regulation 13 of the Tariff Regulations 2004 is one to be judicially exercised only when it is necessary to meet the end of justice. It is true that it is impossible to lay down universal norms and parameters in invoking the regulation 13, but it is equally true that it is not the case where relaxation of norms was necessarily to be done which it had been done would have caused imbalance and hardship to the Appellant. It is not the case where inherent exercise of power of the Commission in terms of the regulations 111 of CERC(Conduct of Business Regulations) 1999 was necessary to prevent the abuse of the process.

57. Mr. M.G. Ramachandran referred to a decision in *Hindustan Steels Ltd. v/s A.K. Roy*(*ibid*) which we find to be inapplicable to the facts and circumstance of the present case. It was the case of award of compensation instead of reinstatement which was caused where the Tribunal exercised discretions mechanically was deprecated by the Supreme Court. Reference to case of *NTPC Ltd. (ibid)* is of no avail on the ground of the decision in the said case being the factuality having no connection to the facts, circumstances of the present case and the legal position obtaining in the given situation. Similarly, the case of *M.P. Trading Co. Ltd.(ibid)* was on the different factual matrix and is not applicable to the instant case. For us, it is not necessary again to discuss the Tribunal's decision in *PGCIL v/s CERC (ibid)* which has been relied on by the contesting

Respondents. In that case the observation of this Tribunal was in connection with construction of the term 'Agency' as it occurs in para 5 of Appendix III to the Tariff Regulations 2004 nor it is necessary for the purpose of disposal of the Appeal to refer to the clauses of the Accounting Standards as was argued by the contesting Respondent.

58. Situated thus, the Appeal is devoid of merit is disposed of without cost."

- (d) that the project size, population of equipment, etc have no relevance in the present case. The initial spares have been specified as a normative percentage of the capital cost and would be allowed to the Appellant in this case like in all other cases. There may be some cases where the actual may be much lower than the normative. However, the principle is that once the norms are notified, the same will be applicable.

10.3 **Our consideration and conclusion on Issue No. (B):**

- (a) Now, we have to consider whether the Central Commission is justified in partly allowing the expenditure on initial spares on the ground that the claim of the Appellant on initial spares exceeds the ceiling limit specified in Regulation 8 of the Tariff Regulations, 2009
- (b) The main contention of the Appellant on this issue is that the Central Commission has wrongly and illegally partly allowed the claim of the Appellant only on the ground that the claim of

the Appellant for initial spares amounting to Rs.145.52 lakh exceeds the ceiling limit specified in Regulation 8 of the Tariff Regulations, 2009 by Rs. 111.21 lakhs.

(c) Regulation 8 of the Tariff Regulations, 2009 provides as under:

"8. **Initial Spares.** Initial spares shall be capitalised as a percentage of the original project cost, subject to following ceiling norms:

(i)	Coal-based/lignite-fired thermal generating stations	-	2.5%
(ii)	Gas Turbine/Combined Cycle thermal generating stations	-	4.0%
(iii)	Hydro generating stations	-	1.5%
(iv)	Transmission system		
	(a) Transmission line	-	0.75%
	(b) Transmission Sub-station	-	2.5%
	(c) Series Compensation devices and HVDC Station	-	3.5%

Provided that where the benchmark norms for initial spares have been published as part of the benchmark norms for capital cost under first proviso to clause (2) of regulation 7, such norms shall apply to the exclusion of the norms specified herein."

(d) Before we proceed to consider this issue, we deem it proper to reproduce the relevant part of the impugned order on this issue which is reproduced as under:

"15. We are of the view that 2009 Tariff Regulations specify the norms for spares for transmission line or sub-station of a project as a percentage of capital cost. The regulations do not distinguish between the projects having more number of equipments or less number of equipments for the purpose of initial spares. Therefore, there is no justification for allowing initial spares over and above the norms only because the project has less number of equipments. Accordingly, the petitioner's claim for initial spares has been restricted to the admissible amount based on the ceiling norms specified for sub-station i.e. 2.50% under Regulation 8 of the 2009 Tariff Regulations. Hence, the excess initial spares amounting to Rs.111.21 lakh has been deducted proportionately from the sub-station component i.e. sub-station equipment, PLCC as on the date of commercial operation as per the details given hereunder:

<i>(Rs. In lakh)</i>					
Description	Project cost as on cut-off date	Apportioned initial spares claimed	Ceiling limits as per Regulation 8 of 2009 Tariff Regulation	Initial spares worked out and allowed as part of capital cost	Excess initial spares claimed and deducted
	(a)	(b)	(c)	(d)=*(a-b)*c	(e)=(d)-(b)
Sub-station (including PLCC)	1483.76*	145.52	2.50%	34.31	111.21

*Cost pertaining to sub-station is inclusive of sub-station equipment, land, building, civil works and PLCC.

(e) Now, we examine the validity of the impugned order in the light of the rival contentions of the parties and Regulation 8 of Tariff Regulations, 2009. The proviso to Regulation 8 of the Tariff Regulations, 2009 clearly provides that "where the benchmark

norms for initial spares have been published as part of the benchmark norms for capital cost under first proviso to clause (2) of regulation 7, such norms shall apply to the exclusion of the norms specified herein". Hence, it is necessary to have a look at clause (2) of regulation 7 of the Tariff Regulations, 2009, which provides as under:

"7. Capital Cost.

(1) Capital cost for a project shall include:

(a)

(b)

(c)

(2) The capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff:

Provided that in case of the thermal generating station and the transmission system, prudence check of capital cost may be carried out based on the benchmark norms to be specified by the Commission from time to time:

....."

- (f) A conjoint reading of Regulation 8 of Tariff Regulations, 2009 and first proviso to clause (2) of regulation 7 of Tariff Regulations, 2009 makes it evident that where the benchmark norms for initial spares have been published as part of the benchmark norms for capital cost, such norms shall apply to the exclusion of the norms specified herein. It means that the capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff, provided in case of thermal generating station and transmission system, prudence check of capital cost may be carried out based on the bench mark norms to be specified by the Commission from time to time.
- (g) In para 15 of the impugned order, the Central Commission has held that the Tariff Regulations, 2009 do not distinguish between the projects having more number of equipments or less number of equipments for the purpose of initial spares and there is no justification for allowing initial spares over and above the norms only because the project has less number of equipments. The learned Central Commission has, accordingly, restricted the Appellant/petitioner's claim for initial spares to the admissible amount based on the ceiling norms specified for said sub-station

i.e. 2.50% under Regulation 8 of the Tariff Regulations, 2009. On this analogy, the learned Central Commission has legally deducted the excess initial spares amounting to Rs. 111.21 lakhs proportionately from the sub-station component i.e. sub-station equipment, PLCC as on the date of commercial operation as per the details given in the tabular form in the aforementioned para 10.3(d) of this judgment.

- (h) Thus, the learned Central Commission, by applying the provision of regulation 8 of Tariff Regulations, 2009 considering the same as per the first proviso to the clause (2) of Regulation 7 of Tariff Regulations, 2009 has correctly allowed only 2.5% of the initial spares claimed by the Appellant. We find that the approach of the Central Commission is legal, just and proper and there is no perversity in the said approach on this issue i.e. Issue No.(B). According to Regulation 8 of Tariff Regulations, 2009, the initial spares are capitalized as 2.5% of the original project cost, subject to the ceiling norms provided under the said Tariff Regulations.
- (i) We, thus, observe that the Central Commission has rightly allowed 2.5% of the project cost for initial spares as per the norms to the Appellant and there is no justification in the Appellant's claim to allow the initial spares over and above the norms specified in the Tariff Regulations, 2009.
- (j) We are unable to accept the Appellant's contention that the normative initial spares provided for Tariff Regulations, 2009 are only for green field projects because there is no distinction provided-for in the Tariff Regulations, 2009. We are fortified in this view by the judgment, dated 20.1.2011, in Appeal Nos. 169 of 2009 and 127 of 2009 of this Appellate Tribunal.
- (k) We further find the present case not to be a fit case where the Central Commission was required to relax the said norms and provided the additional amount towards initial spares as claimed

by the Appellant. Since, the norms are specified regarding initial spares in the Tariff Regulations, 2009, the same would have to be applied. We do not find merit in any of the contention of the Appellant on this issue. **Consequently, this issue i.e. Issue No. (B), is also decided against the Appellant.**

11. In view of the above discussions, we agree to all the findings and conclusions drawn by the Central Commission in the impugned order and we do not find any perversity or illegality in the impugned order. Consequently, all the issues having been decided against the Appellant, this Appeal is liable to be dismissed.

12. **SUMMARY OF OUR FINDINGS:**

12.1 The Central Commission has properly and legally considered the Regulation 15 of Tariff Regulations, 2009 and has legally and rightly disallowed the additional return on equity to the Appellant. The Central Commission has also rightly allowed in part the expenditure on initial spares on the ground that the claim of the Appellant on initial spares exceeds the ceiling limit specified in Regulation 8 of Tariff Regulations, 2009.

13. In view of the above, we do not find any merits in this Appeal and the instant Appeal, being Appeal No. 99 of 2013, is hereby dismissed without any order as to costs. The impugned order, dated 11.3.2013, passed by the learned Central Commission in Petition No. 190/TT/2011, is hereby affirmed.

PRONOUNCED IN THE OPEN COURT ON THIS 29TH DAY OF APRIL, 2015.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ **REPORTABLE/NON-REPORTABLE**

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