

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO. 168 of 2015**

**Dated : 20<sup>th</sup> September, 2018**

**PRESENT: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER  
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

**IN THE MATTER OF :**

Power Grid Corporation of India Ltd  
Saudamini, Plot No. 2,  
Sector 29, Gurgaon – 122001  
Haryana

.....Appellant

VERSUS

1. Central Electricity Regulatory Commission  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath, New Delhi – 110001
2. Karnataka Power Transmission Corporation Limited,  
(KPTCL), Kaveri Bhavan,  
Bangalore-560 009
3. Transmission Corporation of Andhra Pradesh Limited,  
(APTRANSCO), Vidyut Soudha,  
Hyderabad-500 082
4. Kerala State Electricity Board (KSEB),  
Vaidyuthi Bhavanam, Pattom,  
Thiruvananthapuram-695 004
5. Tamil Nadu Generation and  
Distribution Corporation Limited,  
(Formerly Tamil Nadu Electricity Board-TNEB),  
NPKRR Maaligai, 800, Anna Salai,  
Chennai-600 002

6. Electricity Department,  
Govt. of Goa, Vidyuti Bhawan,  
Panaji, Goa-403 001
7. Electricity Department,  
Govt. of Pondicherry,  
Pondicherry-605 001
8. Eastern Power Distribution Company  
of Andhra Pradesh Limited (APEPDCL),  
Seethmmadhara, Vishakhapatnam,  
Andhra Pradesh
9. Southern Power Distribution Company  
of Andhra Pradesh Limited, (APSPDCL),  
SrinivasasaKalyanaMandapam Backside,  
Tiruchanoor Road, KesavayanaGunta,  
Tirupati-517 501, Chittoor District, Andhra Pradesh
10. Central Power Distribution Company  
of Andhra Pradesh Limited (APCPDCL),  
Corporate Office, Mint Compound,  
Hyderabad-500 063, Andhra Pradesh
11. Northern Power Distribution Company  
of Andhra Pradesh Limited, (APNPDCCL),  
Opposite NIT Petrol Pump,  
Chaitanyapuri, Kazipet,  
Warangal-506 004, Andhra Pradesh
12. Bangalore Electricity Supply Co. Limited, (BESCOM),  
Corporate Office, K.R. circle,  
Bangalore-560 001, Karnataka
13. Gulbarga Electricity Supply Co. Limited, (GESCOM),  
Station Main Road, Gulbarga-585 1052,  
Karnataka

14. Hubli Electricity Supply Co. Limited (HESCOM),  
Navanagar, PB Road, Hubli-580 025,  
Karnataka
  15. Mangalore Electricity Supply Co. Limited (MESCOM)  
MESCOM Corporate Office,  
Paradigm Plaza, AB Shetty Circle,  
Mangalore-575 5001, Karnataka
  16. Chamundeswari Electricity Supply Corporation Limited,  
(CESC), # 927, L J Avenue, Ground Floor,  
New Kantharaj Urs Road, Saraswatipuram,  
Mysore-570 009, Karnataka
  17. Bharatiya Nabhikiya Vidyut Nigam Limited,  
(BHAVINI), BHAVINI Project Station Building,  
Kalpakkam-603 102, Tamil Nadu
- ...Respondents

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

**Counsel for the Respondent(s)** : Mr. K.S. Dhingra for R-1

Mr. K. Gopal Choudhury for R-2

Mr. S. Vallinayagam  
Ms. Amali for R-5

Mr. Sumit Goel  
Ms. Tanya Chaudhury  
Mr. Manu Bajaj  
Ms. Aishwarya Dash  
Ms. Sonal Gupta for R-17

**J U D G M E N T**

**PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER**

**APPEAL NO. 168 of 2015**

1. The Appellant filed the present Appeal challenging the legality and validity of the Impugned Order dated 29.04.2015 passed in petition No. 105/TT/2012 on the file of Central Electricity Regulatory Commission (hereinafter called the '**Central Commission**') under Section 111 of the Electricity Act, 2003 for approval of Transmission Tariff, amongst others, for the Kalpakkam- PFBR – Kanchipuram 230 kV D/C Line (hereinafter referred to as '**Kalpakkam -Asset No. 3**') under the transmission system associated with Kalpakkam PFBR (500 MW) in the Southern region for the Tariff Period 2009 -2014. The Central Commission has not approved the declaration of the commercial operation of Kalpakkam - Asset No. 3, with effect from 1.09.2012 as claimed by the Appellant.

**2. Brief Facts of the Case in nutshell:-**

2.1 The Appellant herein, Power Grid Corporation of India Ltd, is a Government Company within the meaning of Companies Act, 1956 and has been established with the object of undertaking Inter State Transmission of Electricity in India. The Appellant also discharges the functions of the Central Transmission Utility as provided in section 39 of the Electricity Act, 2003 (hereinafter referred as the '**Electricity Act**').

2.2 The Appellant discharges the above functions under the regulatory control of the Central Commission. The tariff for the Appellant is determined by the Central Commission.

2.3 The Central Commission has notified the Central Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2009 (hereinafter referred to as the “**Tariff Regulations, 2009**”) during the period from 1.4.2009 to 31.3.2014. Regulation 3(12)(c) of the Tariff Regulations, 2009 reads as under:

*“Date of commercial operation” or “CoD” means;*

*(c) in relation to the transmission system, the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation:*

*Provided 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:*

***Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service.***

(emphasis supplied)

2.4 On 17.03.2010 the Board of Directors of Appellant approved the Investment for the transmission project vide letter No. C/CP/KPFBR at an estimated cost of Rs. 13858 lakh including Interest During Construction of

Rs. 799 lakhs based on 3rd quarter 2009 price level. The transmission project involved the following elements

**Transmission line-**

- (a) Kalpakkam PFBR-Sirucheri 230 kV D/C Line
- (b) Kalpakkam PFBR-Arani 230 kV D/C Line
- (c) Kalpakkam PFBR-Kanchipuram 230 kV D/C Line

**Sub-station-**

- (i) Extension of existing 230 kV TNEB Sub-Stations at Kanchipuram, Arani and Sirucheri Sub- Stations

2.5 As per the Investment Approval dated 17.03.2010, the above assets were scheduled to be commissioned within 24 months from the date of investment approval. Hence, the commissioning schedule comes to 16.03.2012 and date of commercial operation as 1.04.2012.

2.6 The Appellant filed the Petition being Petition No. 105/2012 for determination of transmission tariff for period of 2009-14 for the three transmission lines on 28.09.2011.

2.7 The transmission lines (a) Kalpakkam PFBR-Sirucheri 230 kV D/C Line and (b) Kalpakkam PFBR-Arani 230 kV D/C Line were duly commissioned on 01.12.2011 and 01.04.2012 respectively i.e. within time. The transmission line being Kalpakkam PFBR-Kanchipuram 230 kV D/C Line (hereinafter referred to as 'Asset 3') was completed on 01.09.2012. The Asset 3 was

delayed due to Right of Way issues and the documents in support of the same as well as in support of the cost overrun were submitted to the Central Commission during the pendency of the proceedings.

2.8 On 23.12.2013, the Central Commission passed the Impugned Order which, inter alia, reads as under:

*“18. As regards Asset-III, i.e. Kalpakkam-Kanchipuram line, the Kanchipuram Sub-station of TANGEDCO has not yet been commissioned. The petitioner has submitted that the line was declared commercial in consultation with the beneficiaries in 20th SRPC meeting. However, as per Regulation 3(12)(c) of the 2009 Tariff Regulations, as above, in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, the Commission may approve the date of commercial operation prior to the element coming into regular service. Even though the petitioner has not approached the Commission for approval of date of commercial operation as provided under Regulation 3(12)(c) of the 2009 Tariff Regulations prior to putting Asset-III into regular service, the Commission has to consider whether the requirements of the regulations have been complied with for declaration of commercial operation of the transmission line. Hon’ble Appellate Tribunal for Electricity in its judgement dated 2.7.2012 in Appeal No. 123 of 2011 has observed as follows:-*

*“..... merely charging of the line from one end without the switchgear, protection and metering arrangement being ready at the other end, even if not in the scope of work of the transmission licensee, would not entitle the line for declaration of commercial operation”*

*In the light of the above observation of Appellate Tribunal, it needs to be considered whether the line is capable of regular use. It is seen that the charging certificate dated 31.8.2012 issued by CEA is*

*for the purpose of only testing Asset-III. Further, it is an admitted fact that the sub-station to which the line is to be connected at the other end is yet to be developed by TANGEDCO. Therefore, Asset-III cannot be put to any regular service even if declared under commercial operation. Considering all these factors we are not inclined to approve declaration of the commercial operation of Asset-III with effect from 1.9.2012 as claimed by the petitioner.”*

2.9 In the Impugned Order the Central Commission has not considered the commercial operation date of Asset 3 as on 1.09.2012 on the ground that “...asset (iii) cannot be put to any regular service even if declared under commercial operation”. In arriving at the said conclusion, the Hon’ble Commission has mainly referred to and relied on the decision of the Hon’ble Appellate Tribunal dated 02.07.2012 passed in Appeal No. 123 of 2011 in the case of Barh Balia transmission line.

2.10 The Appellant being aggrieved by the Impugned Order dated 29.04.2015 passed in. Petition No. 105/TT/2012 on the file of 1<sup>st</sup> Respondent/Central Electricity Regulatory Commission has presented this Appeal.

### **3. FACTS IN ISSUE:-**

Non-consideration of the declaration of the commercial operation of Asset No. 3, with effect from 01.09.2012 despite the admitted fact that the Appellant had completed everything within its scope of work of Asset 3 and the same could not be put to ‘regular use’ only on account of delays on part



of Respondent No 5 in getting the inter connecting sub-station ready and the proviso to Regulation 3(12)(c) of Tariff Regulations specifically dealing with such circumstances.

#### **4. QUESTIONS OF LAW**

The Appellant has raised following questions of law in the instant Appeal for our consideration-

- 4.1 Whether in the facts and circumstances of the case, the Central Commission is right in not considering the commercial operation date of Asset 3 as on 01.09.2012 under the statutory Regulation 3(12) of the Tariff Regulations 2009, namely when the Proviso specifically deals with the transmission line constructed by the transmission licensee being eligible to be declared for commercial operation even before regular service?
- 4.2 Whether in the facts and circumstances, where the Appellant had undertaken and duly completed all the works relating to the transmission line which were within the scope of work of the Appellant but the transmission line could not be put to regular service for reasons not attributable to the Appellant but attributable to Respondent No 5 the Appellant should be deprived of payment of tariff?

5. **Mr. M.G. Ramachandran, learned counsel appearing for the Appellant has filed his written submissions as follows :-**

5.1 **Impugned Order** - Dated 29.4.2015 was passed by the Central Electricity Regulatory Commission in Petition No. 105/TT/2012 filed for Determination of tariff for the Inter State Transmission System laid down by Powergrid, namely, (a) Kalpakkam PFBR – Sirucheri 230 KV D/C Line (b) Kalpakkam PFBR – Arani 230 KV D/C Line (c) Kalpakkam PFBR – Kanchipuram 230 KV D/C Line under Transmission System associated with Kalpakkam PFBR (500 MW) in Southern Region for the tariff period - 1.4.2009 – 31.3.2014.

5.2 The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (herein after referred to as the **`Tariff Regulations, 2009**) Regulation 3 (12) (c), inter alia, provides as under:

*“Date of commercial operation “ or “CoD” means:*

*(c) in relation to the transmission system, the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation:*

*Provided 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:*

*Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service,.”*

5.3 Date on which the above mentioned Inter State Transmission System can be said to have achieved the commercial operation i.e. date of commercial operation or COD in accordance with the above Regulations, the Appellant has claimed the same to be 1.9.2012.

5.4 Reasoning given in the Impugned order - Relevant extracts are as under:

*“18. As regards Asset-III, i.e. Kalpakkam-Kanchipuram line, the Kanchipuram Sub-station of TANGEDCO has not yet been commissioned. The petitioner has submitted that the line was declared commercial in consultation with the beneficiaries in 20<sup>th</sup> SRPC meeting. However, as per Regulation 3(12)(c) of the 2009 Tariff Regulations, as above, in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, the Commission may approve the date of commercial operation prior to the element coming into regular service. Even though the petitioner has not approached the Commission for approval of date of commercial operation as provided under Regulation 3(12)(c) of the 2009 Tariff Regulations prior to putting Asset-II into regular service, the Commission has to consider whether the requirements of the regulations have been complied with for declaration of commercial operation of the transmission line. Hon’ble Appellate Tribunal for Electricity in its Judgment dated 2.7.2012 in Appeal No. 123 of 2011 has observed as follows :-*

*“..... merely charging of the line from one end without the switchgear, protection and metering arrangement being ready at the other end, even if not in the scope of work of the transmission licensee, would not entitle the line for declaration of commercial operation”*

*In the light of the above observation of Appellate Tribunal, it need to be considered whether the line is capable of regular use. It is seen that the charging certificate dated 31.08.2012 issued by CEA is for the purpose of only testing Asset-III. Further, it is an admitted fact that the sub-station to which the line is to be connected at the other end is yet to be developed by TANGEDCO. Therefore, Asset-III cannot be put to any regular service even if declared under commercial operation. Considering all these factors we are not*

*inclined to approve declaration of the commercial operation of Asset-III with effect from 1.09.2012 as claimed by the petitioner”.*

5.5 Subsequent to the filing of the present appeal on 1.7.2014 the Hon’ble Supreme Court vide Order dated 3.3.2016 decided the appeal filed by Powergrid against the Order dated 2.7.2012 passed by the Hon’ble Tribunal. The reasoning contained in the decision of the Hon’ble Supreme Court reads as under:

*On the other hand, on behalf of respondent No. 1 it is argued that the transmission line cannot be said to have been completed unless switchgear and other connected works are also completed, as provided in the definition of “transmission lines”.*

*We have considered the rival submissions. Sub-section (72) of Section 2 of Electricity Act, 2003 defines the word “transmission lines”, which reads as under: –*

*“2(72) “transmission lines” means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step- down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.”*

*From the above definition, it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3 (12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition of “transmission lines” □ given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including*

*respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.*

*We are apprised at the bar that meanwhile during the pendency of these appeals, in compliance of the interim order, after hearing all the concerned parties, C.E.R.C. has decided the matter on 30-06-2015, and transmission line has been now declared successfully charged w.e.f. 01-09-2011 and the commercial operation has started on said date. However, the order dated 30-06-2015 passed by CERC is stated to be operative subject to decision of this Court in the present appeals, due to the interim order passed by this court.*

*Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and the beneficiaries could not have been made liable to pay the tariff before transmission line was operational, we find no infirmity in the impugned order. Therefore, the appeals are liable to be dismissed. Accordingly, both the appeals are dismissed without prejudice to the right of the appellant, if any, available to it under law, against NTPC. There shall be no order as to costs.*

**5.6 Matter in Issue in the present appeal –**

- (a) Whether the above mentioned transmission asset cannot be said to have achieved the commercial operation with effect from 1.9.2012 in terms of Regulation 3 (12) (c) of the Tariff Regulations, 2009;
- (b) Whether the present case of Powergrid is covered by the decision of the Hon'ble Tribunal dated 2.7.2012 passed in Appeal No. 123 of 2011 and the decision of the Hon'ble Supreme Court dated 3.3.2016 passed in Civil Appeal No. 9193 of 2012.

**5.7 Interpretation of Regulation 3 (12) (c) of the Tariff Regulations, 2009:**

- (a) The Regulation provides for the COD upon an element of transmission system is put to regular service after successful charging and trial operation;

(b) The second proviso in the said Regulation expressly deals with a situation where an element of transmission system is ready for regular service but it prevented from providing such service for reasons not attributable to the transmission licensees, its suppliers or contractors. In such an event the Regulation envisage the Commission to approve the date of COD even prior to the element coming into regular service.

5.8 Thus, the two aspects which are relevant in regard to the application of Regulation 3 (12) (c) of the Tariff Regulations, 2009 are –

- (a) the concept of the system being put in actual practice in regular service; and
- (b) where the system is ready for regular service but cannot be put to regular service for reason other than those attributable to the transmission licensee, its suppliers and contractors.

5.9 Admittedly, in the present case, the transmission system forming part of the Asset – 3 which is within the scope of work of Powergrid was completed on 1.9.2012. However, it could not be put to regular service for reasons that the substation associated with the said line which was within the scope of Tamil Nadu Generation and Distribution Company Limited (**TANGEDCO**), Respondent No. 5 was not ready and was delayed.

- 5.10 In the impugned Order the Central Commission does not dispute the readiness of Asset – 3 by 1.9.2012 for rendering regular service and the reason as to why it could not be put into regular service on that date was not on account of Powergrid but for reasons attributable to Respondent No. 5. In this regard in Para 18 of the impugned Order, the Central Commission takes note of the line being declared commercial in consultation with the Respondent Beneficiaries in the 20<sup>th</sup> South Regional Power Committee (SRPC) Meeting. In the said paragraph, the Central Commission also takes note of the Regulation 3 (12) (c) of the Tariff Regulations, 2009 providing for consideration of the COD of a transmission line prior to the line being put to regular service. However, the Central Commission has mechanically proceeded on the basis of the decision of this Tribunal in Barh Generating Station case dated 2.7.2012 passed in Appeal No. 123 of 2011.
- 5.11 The Central Commission has proceeded on the basis that the substation of TANGEDCO was not ready and, therefore, Asset – 3 of the Inter State Transmission System of Powergrid was not capable of regular use. There is no other reasoning or justification given in the impugned order.
- 5.12 The reasoning given as mentioned above of TANGEDCO substation being not ready and, therefore, the transmission asset (Asset -3) of Powergrid is not capable of being put to regular use is a complete misreading of the provisions of Regulation 3 (12) (c) of the Tariff Regulations, 2009, in

particular, the proviso read in the context of the main part of the said regulation.

5.13 The very purpose of the proviso is to deal with the situation like in the present case where the transmission elements (Asset 3) are ready for regular use but is prevented from providing such regular service for reasons not attributable to Powergrid. If the interpretation given by the Central Commission at Para 18 of the impugned order is to be accepted, the proviso will be redundant. The Central Commission has misdirected itself in interpreting the regulation ignoring the fact that that the application of the proviso would arise ipso facto when a transmission system although ready for regular service cannot be put to regular service.

5.14 If the transmission system is capable of providing regular use, then it would be covered as such under the main part of Regulation 3 (12) (c) of the Tariff Regulations, 2009. The proviso to the regulation will be redundant. It is well settled principle of law that the legislative provision cannot be said to be redundant and the meaning need to be given to the proviso. Accordingly, the scope of the proviso to Regulation 3 (12) (c) of the Tariff Regulations, 2009 is to cover a case where the transmission asset is ready but cannot be put to regular service on account of extraneous reason to be considered by the Central Commission.

5.15 The Central Commission is also wrong in proceeding on the basis that the present case is covered by the decision given by this Hon'ble Tribunal



dated 2.7.2012 in Appeal No. 123 of 2012. The decision in the said case proceeded on the basis that the Powergrid was not in a position to undertake regular performance test so as to declare the transmission assets being capable of being put to regular use. In this regard, in Para 11 of the said judgement the Central Commission takes note of the line being charged only from one end on 30.6.2010 and not from the other end and, therefore, the trial operation and regular service was not possible. It also takes notice of the fact that the switch gear protection system, metering arrangement etc was not ready. The application of proviso to Regulation 3 (12) (c) of the Tariff Regulations, 2009 in Barh case was not accepted where the line was not ready for regular service due to non-installation of switch gear at Barh end. It has been held that the proviso will be applicable if the transmission line is ready in all respects for regular use. The Hon'ble Tribunal did not accept the trial operation claim of Powergrid in the said case. The Hon'ble Supreme Court in the Civil Appeal had proceeded on the basis that the switch gear and protection system were not ready. Further, the Hon'ble Supreme Court had construed the definition of the term line as including switchyard.

5.16 The distinguishing feature in the present case in regard to the above are as under:

- (a) all the conditions for declaring an asset under the COD, namely, the line should be charged successfully; (ii) Its trial operations should be carried out successfully; and (iii) the transmission system should be under regular use, are fulfilled.
- (b) if any of these conditions cannot be met on account of the extraneous reason, the Central Commission is to approve the date of COD.

5.17 In the present case the scope of work is complete on part of the Appellant, its contractors and suppliers in all respect and despite this the transmission system is not in regular use due to delay in commissioning of the associated sub-station, which is under the scope of TANGEDCO.

5.18 The Appellant having completed the works under its scope of work cannot be denied tariff on the ground that associated elements which are beyond its scope of work have not been completed by other parties. The Appellant cannot be penalized for default on part of others. The decision of the Central Commission defeats the very purpose and objective of the said provision to Regulation 3(12)(C) of Tariff Regulations, 2009.

5.19 The non availability of the substation does not mean that the transmission line of the Appellant has not been constructed, commissioned and under commercial operation. The Appellant should not be penalized for the non completion of the work which is not within the scope of work of the

Appellant. The Appellant had duly completed the work undertaken by it by 01.09.2012 by reason whereof in accordance to the terms of second proviso of Regulation 3(12), the transmission line of the Appellant can be considered to be under commercial operation even if the regular service is not possible for reasons not attributable to the Appellant.

5.20 The Central Commission has also misconstrued the certificate dated 31.8.2012 issued by the CEA. The said certificate issued in regard to the successful testing leads to the declaration of the COD.

5.21 Powergrid, the Appellant herein had duly completed all the works under its scope in regard to Asset No. 3 by 31.8.2012 and the line has been ready for regular service effective 1.9.2012. Despite the lapse of more than 6 years, TANGEDCO Substation has not been completed for no reason attributable to Powergrid or its suppliers or contractors. In view of the impugned Order, the Appellant has not been given any tariff for Asset No. 3 which stands completed in all respects by 31.8.2012.

5.22 While the Appellant has claimed commercial operation effective 1.9.2012 which is under the Tariff Regulations, 2009 notified by the Central Commission, subsequently the Central Commission has notified the Tariff Regulations, 2014 applicable for the control period 1.4.2014 to 31.3.2019. The provisions of Regulation 3 (12) (c) of the Tariff Regulations, 2009 has been modified by the Central Commission in its application to the control

period commencing 1.4.2014. Regulation 4 (3) of the Tariff Regulations, 2014 reads as under:

*(3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:*

*Provided that:*

- (i) Where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the generating company and transmission licensee shall endeavour to commission the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with Regulation 12 (2) of these Regulations;*
- (ii) In case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.*

5.23 Being effective from 1.4.2014, the Regulation applicable to the COD of the transmission system has been modified to recognise precisely the issue of the work being not completed by other agencies as a result of which the transmission asset made ready by Powergrid, the Appellant, cannot be put to regular service. As mentioned in the proviso (quoted above) if the Asset

No. 3 made ready by Powergrid is prevented from regular service for reasons not attributable to Powergrid or its suppliers or its contractors but is on account of the delay in the commissioning of the concerned generating station or in commissioning of the upstream or downstream assets, the Central Commission can on an application made by Powergrid grant approval of the date of commercial operation of Asset No. 3.

5.24 In the circumstances mentioned above and without prejudice to the rights and contentions of the Appellant mentioned above, in any event, the Central Commission should consider the grant of approval to the commercial operation of Asset No. 3 effective 1.4.2014 even pending the decision of this Hon'ble Tribunal in the above mentioned appeal filed by the Appellant. The Appellant can be given liberty to file an application before the Central Commission seeking grant of approval in terms of Regulation 4 (3) (ii) of the Tariff Regulations, 2014 to enable tariff determination for Asset No. 3 with capital cost being considered as on 31.3.2014 inclusive of the admissible IDC and IEDC.

5.25 It is also pertinent to mention that the tariff being made applicable for the transmission system in a situation where the transmission licensee in a competitive bid process has made ready the assets for regular use but is prevented from undertaking regular service being granted the tariff from the date when the assets of the transmission licensees are ready. In this regard, the Appellant would crave reference to the decision of the Central

Commission in Petition No. 99/MP/2017 dated 31.05.2018 where in a tariff based competitive bidding process, the principle that the transmission licensee should not be deprived of the tariff when it is ready but prevented from regular service for reasons not attributable to it has been duly recognized. The rationale for the above is the same as that of the proviso to Regulation 3 (12) (c) of the Tariff Regulations, 2009. In view of the above it is important to apply the same rationale in interpreting and applying the provisions of Regulation 3 (12) (c) of the Tariff Regulations, 2009.

5.26 For reasons mentioned herein above, Powergrid should not be penalised for the delay in the construction of the substation by TANGEDCO and the date of commercial operation as on 1.9.2012 should have been accepted by the Central Commission.

6. **Mr. K.S. Dhingra, Learned Counsel appearing for the Respondent No.1 has filed his written submissions as follows:-**

6.1 The appellant filed the tariff petition before the Central Commission for approval of the transmission charges for the transmission line with effect from 1.9.2012. The appellant stated that the transmission line was declared under commercial operation on 1.9.2012 in consultation with the beneficiaries of Southern Region after discussion at 20<sup>th</sup> meeting of the Southern Regional Power Committee (SRPC) and sought approval of the transmission charges with effect from that date.

- 6.2 It was submitted on behalf of the appellant that the transmission line and the substation at Kalapakkam PFBR were ready for commissioning, but the Kanchipuram substation being developed by Tamil Nadu Generation and Distribution Company Ltd (**TANGEDCO**), Respondent No 5, was not ready. The appellant stated that the transmission line could not be made available for regular use because of the unavailability of the substation at Kanchipuram.
- 6.3 In accordance with sub-clause (c) of clause (12) of Regulation 3 of the 2009 Tariff Regulations, in relation to the transmission system the date of commercial operation is the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation and such date is the first day of the calendar month.
- 6.4 The second proviso to sub-clause (c) of clause (12) of Regulation 3, however, provides that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, the Central Commission may approve the date of commercial operation prior to the element coming into regular service.
- 6.5 Because Kanchipuram substation was unavailable, the transmission line could not provide regular service. Therefore, the appellant was required to approach the Central Commission for approval of date of commercial operation of 1.9.2012 as provided under second proviso to sub-clause (c) of clause (12) of Regulation 3 of the 2009 Tariff Regulations. The appellant, however, did not.
- 6.6 Nevertheless, the Central Commission examined the question of approval of date of commercial operation of the transmission line declared by the appellant. The

Central Commission noted that CEA had issued the charging certificate dated 31.8.2012 for the purpose of testing the transmission line and not for declaring it commercially operative from 1.9.2012. For this reason, the commercial operation of the transmission line could not be declared on 1.9.2012 by the appellant.

- 6.7 The Central Commission further noted that Kanchipuram substation to which the transmission line was to be connected at the other end was not developed by TANGEDCO and as such, the transmission line could not be put to regular service even if declared under commercial operation.
- 6.8 The Central Commission took notice of the **Appellate Tribunal's judgment dated 2.7.2012 in Appeal No 123/2011 (Punjab State Power Corporation Ltd Vs Power Grid Corporation of India Ltd and others)**, wherein, under similar circumstances, it was held that merely charging of the transmission line from one end, without the switchgear, protection and metering arrangement being ready at the other end would not entitle the transmission line to be declared under commercial operation.
- 6.9 On consideration of all the relevant factors, in particular the judgment of the Appellate Tribunal (Supra) the Central Commission in the impugned order did not approve declaration of the commercial operation of the transmission line with effect from 1.9.2012 made by the appellant.
- 6.10 At this stage it is also pointed out that the **Civil Appeal No 9193/2012 (Power Grid Corporation of India Ltd Vs Punjab State Power Corporation Ltd and others)**.filed by the appellant before the Hon'ble Supreme Court against the



Appellate Tribunal's judgment dated 2.7.2012 in Appeal No 123/2011 was dismissed by the Hon'ble Supreme Court by its judgment dated 3.3.2016.

- 6.11 The Appellate Tribunal in its recent judgment dated 18.1.2018 in Appeal Nos. 198/2015 and 6/2015 filed by the present appellant have held that the judgment dated 2.7.2012 in Appeal No 123/2011 is fully applicable to the facts of the cases considered in these appeals. The Appellate Tribunal concluded as under:

*“In the light of the above, it may be concluded that some parts of the transmission system viz. bays and line reactors cannot be considered as commissioned and claimed to be put in commercial operation without commissioning of the associated transmission line(s). The completeness / intended use of the transmission system should be viewed in its entirety.”*

- 6.12 It may be pointed out that the admitted position is that Asset-III could not be put into regular service on account of delay on the part of TANGEDCO, Respondent No 5 to make Kanchipuram substation available. The other beneficiaries in Southern Region cannot be burdened with payment of the transmission charges with effect from the date declared by the appellant without a corresponding gain.

7. **Mr. S. Vallinayagam, learned counsel appearing for the Respondent No.5 has filed his written submissions as follows:-**

- 7.1 The present appeal seeks to set aside the order dated 29.04.2015 passed by the Hon'ble CERC in the tariff petition No. 105/TT/2012 filed by the appellant for approval of transmission tariff for the transmission system associated with the power evacuation system for Kalpakkam PFBR (500MW) for the tariff block 2009-14.

7.2 The answering respondent submits that the written submission of the appellant M/s PGCIL is centered around the single point of COD of the subject transmission asset “Kalpakkam PFBR – Kancheepuram 230 kV DC line being prevented by TANTRANSCO due to non-commissioning of Kancheepuram 230/ 110 kV SS. The contention of the appellant has no technical or regulatory backup and hence liable to be rejected at the first instance.

7.3 The Hon’ble Supreme Court in its judgement dated 03/03/2016 in C.A. No. 9302/2012 held as under:

“We have considered the rival submissions. Subsection (72) of Section 2 of Electricity Act, 2003 defines the word “transmission lines”, which reads as under: -

*2(72) “transmission lines” means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.*

*11. From the above definition, it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3 (12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition of S “transmission lines” given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.”*

7.4 This Hon'ble Appellate Tribunal for Electricity in judgment dated 02.07.2012 in Appeal No. 123 of 2011 held that: -

**“..... merely charging of the line from one end without the switchgear, protection and metering arrangement being ready at the other end, even if not in the scope of work of the transmission licensee, would not entitle the line for declaration of commercial operation”**

The above underlined portion of the findings of this Hon'ble Appellate Tribunal clearly hold that even if the work of providing switchgear, protection and metering arrangement is not within the scope of the transmission licensee providing the line, in the absence of switchgear protection and metering arrangement, the line could not be declared commercially operational.

7.5 The CERC's order dated 29/04/2015 held that asset III cannot be put to any regular service even if declared commercially operational relying upon the three tests laid down by this Hon'ble Appellate Tribunal and quoted in the findings of this Hon'ble Appellate Tribunal.

7.6 If the appellant is entitled to tariff under the Tariff Regulation, 2014, the appellant can apply for the same before CERC. The issue of determination of tariff involving 2014-2019 period is not in issue in the present appeal. No relief relating to the same can be sought for by the appellant in the present proceedings.

- 7.7 The issue is between the generator M/s BHAVINI and M/s PGCIL in terms of recovery of transmission cost of the subject assets till the transmission asset is brought to beneficial use i.e. from the COD of the generator.
- 7.8 In the counter affidavit filed by TANGEDCO in the instant appeal, it has been emphasized that the 230 kV Substation at Kancheepuram is being developed by TANTRANSCO as a system strengthening scheme of the Intra State network and not as a scheme for power evacuation of power from KPFBR. Moreover, till date, the generator is not ready and there is uncertainty in commissioning of KPFBR.
- 7.9 The appellant being the CTU should be more responsible in terms of implementation of transmission schemes in an optimal way so as to match with the commissioning schedule of the generator. Until commissioning of the generation project, the evacuation lines could not be brought to beneficial use by any means. Even if the terminal bays at Kancheepuram substation are ready and connected, the appellant cannot establish power flow in the subject lines and regular service is not possible without the source end at BHAVINI. Hence, it is a proven fact that the generation project, the transmission line and the terminal bays at TANTRANSCO substation should be brought simultaneously to bring the system into beneficial use.

7.10 Even if the terminal bays at Kancheepuram SS are commissioned without any generation injection at BHAVINI end, **the cost of the redundant asset will increase the tariff burden of the end consumers without any justification or beneficial use. It is appalling that the appellant has never ever brought M/s BHAVINI, the generator into picture, which is solely responsible for preventing the subject assets being put into beneficial use.** Despite the fact that the Kancheepuram 230 kV substation is in the advanced stages of commissioning, it is not going to address the concerns / requirement of the appellant. The terminal bays will be ready for commissioning matching with the COD of the generation project as required under Section 38 (2) of Act, 2003. TANGEDCO is no way an obstacle to bring the assets into beneficial use.

7.11 Because of the failure of the appellant to act on the indemnification agreement between the generator and the appellant to make good any loss on account of delay on either party, and failure on the part of the appellant to coordinate with the generator to match the commissioning of the lines with commissioning of the generator, beneficiaries cannot be made to bear the financial implication. The Beneficiaries don't even have a PPA with the generator. The fact of the matter is that TANGEDCO and other beneficiaries are put into huge loss due to the uncertainty in the commissioning of the generation project.

7.12 The appellant is suppressing the facts with regard to indemnification agreement between M/s BHAVINI and the appellant, delay in commissioning of the generation project and the regulatory requirements for declaration of COD of the transmission assets. The Commission taking cognizance of the above facts has rightly denied the request of the appellant to declare COD of the subject asset.

7.13 In view of the above, this respondent prays that the illegitimate request of the appellant may be declined and the appeal deserves to be dismissed with cost.

**8. We have heard learned Counsel appearing for the Appellant(s) and the learned Counsel appearing for the Respondents at consideration length of time and we have gone through the written submissions carefully and evaluated the entire relevant material available on record. The only one issue emerges out of Appeal for our consideration: -**

- Whether the Central Commission is right in non-considering the commercial operation date of Asset 3 as on 01.09.2012 when the proviso to Regulation 3(12)(c) of the Tariff Regulations specifically deals with the facts and circumstances of the instant case wherein, the Appellant has completed all the works pertaining to Asset 3 and the same could not be put to regular use only on account of delays on part of other agency (TANGEDCO).

**Our findings and analysis :-**

8.1 The learned counsel for the Appellant Mr. M.G. Ramachandran submitted that the Asset 3 namely Kalpakkam PFBR- Kanchipuram 230 KV D/C Line was completed in all respect and its COD declared from 01.09.2012. He pointed out that the Central Commission has not allowed the COD for Asset 3 from 01.09.2012 merely on consideration of earlier judgment of this Tribunal dated 02.07.2012 in Appeal No.123 of 2011 and held that :

*“..... merely charging of the line from one end without the switchgear, protection and metering arrangement being ready at the other end, even if not in the scope of work of the transmission licensee, would not entitle the line for declaration of commercial operation”*

*In the light of the above observation of Appellate Tribunal, it need to be considered whether the line is capable of regular use. It is seen that the charging certificate dated 31.08.2012 issued by CEA is for the purpose of only testing Asset-III. Further, it is an admitted fact that the sub-station to which the line is to be connected at the other end is yet to be developed by TANGEDCO. Therefore, Asset-III cannot be put to any regular service even if declared under commercial operation. Considering all these factors we are not inclined to approve declaration of the commercial operation of Asset-III with effect from 1.09.2012 as claimed by the petitioner”.*

The said judgment of the Tribunal has attained finality after the judgment dated 3.3.2016 of the Hon’ble Supreme Court which has inter alia ratified the above judgment of this Tribunal.

8.2 The learned counsel further contended that admittedly in the present case the transmission system forming part of the Asset – 3 which is within the scope of Powergrid was completed on 1.9.2012 in all respects but it could not be put to regular service for reasons that the substation associated with

the said line at Kanchipuram was not completed by Respondent No. 5. He further contended that the very purpose of the proviso in the said regulation is to deal with the situation like in the present case where the transmission element is ready for regular use but is prevented from providing such regular service for reasons not attributable to the Powergrid. If the interpretation given by the Central Commission at Para 18 of the impugned order is to be accepted, the said proviso will render to be redundant. He vehemently submitted that it is well-settled principle of law that legislative provision cannot be said to be redundant and the meaning needs to be given to the proviso.

- 8.3 The learned counsel further submitted that all the conditions for declaring an asset under the COD, namely, the line should be charged successfully; its trial operations should be carried out successfully; and the transmission system should be under regular use, are fulfilled and as such the Commission ought to have accepted the COD from 01.09.2012. The Appellant has completed all the works under its scope of work and cannot be penalised for default on part of others. He indicated that the decision of the Central Commission defeats the very purpose and objective of the said proviso to Regulation 3(12)(c). He, further pointed out that despite the lapse of more than six years, TANGEDCO' sub-station has not been completed so far for no reason attributable to Powergrid or its suppliers or its contractors. The learned counsel further submitted that while the



Appellant has claimed commercial operation effective 1.9.2012 which is under the Tariff Regulations, 2009 notified by the Central Commission, subsequently the Central Commission has notified the Tariff Regulations, 2014 applicable for the control period 1.4.2014 to 31.3.2019. The provisions of Regulation 3 (12) (c) of the Tariff Regulations, 2009 has since been modified by the Central Commission in its application to the control period commencing 1.4.2014. The above regulation being effective from 1.4.2014 has been modified to recognise precisely the issue of the upstream / downstream work being not completed by other agencies as a result of which the transmission asset completed by Powergrid cannot be put to regular service.

- 8.4 The counsel contended that in the circumstances mentioned above and without prejudice to the rights and contentions of the Appellant mentioned above, in any event, the Central Commission should consider the grant of approval to the commercial operation of Asset No. 3 effective from 1.4.2014 even pending the decision of this Tribunal in the above mentioned appeal filed by the Appellant. The Appellant can be given liberty to file an application before the Central Commission seeking grant of approval in terms of Regulation 4 (3) (ii) of the Tariff Regulations, 2014 to enable tariff determination for Asset No. 3 with capital cost being considered as on 31.3.2014 inclusive of the admissible IDC and IEDC.

8.5 *Per contra*, the learned counsel, Mr. K.S. Dhingra, appearing for the Central Commission submitted point-wise clarifications on the issue and for not accepting the COD of Asset-3 from 01.09.2012. In the process of his submission, he mainly focussed on the interpretation of proviso to the Regulation 3(12)(c) and earlier decision of this Tribunal dated 02.07.2012 in Appeal No. 123 of 2011. He vehemently pointed out that in view of the referred judgments of this Tribunal and its ratification by the Hon'ble Supreme Court vide its judgment dated 03.03.2016, the Central Commission has rightly recorded its findings in the impugned order for not accepting the COD w.e.f. 01.09.2012.

8.6 The learned counsel for the Respondent No.5, Mr. S. Vallinayagam submitted that, the entire submission of the learned counsel for the Appellant, is centred around a single point i.e. COD of Kalpakkam PFBR-Kanchipuram 230 KV D/C Line has been prevented by TANGEDCO due to non-commissioning of Kancheepuram 230/ 110 kV sub-station. He placed the reliance on the judgment of this Tribunal dated 02.07.2012 as well as the judgment of the Apex Court dated 03/03/2016 in C.A. No. 9302/2012 wherein it has been clearly held that the transmission asset cannot be put to regular service even if declared commercial operation. The learned counsel further contended that the issue is between the generator M/s BHAVINI and M/s PGCIL in terms of recovery of transmission charges and has nothing to do with the 230/110 KV sub-station at Kanchipuram which is being

developed as system strengthening scheme of the Intra-state network and not as a scheme for power evacuation from Kalpakkam PFBR. Moreover, till date the said generating unit of BHAVINI is hanging in uncertainty.

- 8.7 The learned counsel for Respondent No.5 emphasised that the Appellant being the CTU should be more responsible in terms of implementation of transmission schemes in an optimal way so as to match with the commissioning schedule of the generator. He further pointed out that even if the terminal bays at Kancheepuram substation are commissioned without any generation injection at BHAVINI end, it will unduly increase the tariff burden on the end consumers without any beneficial use. As such, it is not the Respondent No.5 but BHAVINI which is solely responsible for preventing the subject assets being put into regular / beneficial use.

**Our Findings:-**

- 8.8 We have gone through the contentions of the learned counsel for the Appellant and the Respondents and also perused the judgments of this Tribunal as well as the Apex Court. While we considered the genuine reason in the contentions of the Appellant counsel which has completed the transmission line (Asset-3) in all respects and declared its COD from 01.09.2012 but the same has not been accepted by the Central Commission due to the fact that line is not in regular service due to non-readiness of downstream sub-station of TANGEDCO.

8.9 The learned counsel for the Appellant has vehemently contended to apply the proviso to Regulation 3(12)(c) which deals with such circumstances as in the present case. Admittedly, the Appellant alleges for getting penalised for the fault / inaction of the others due to which it is not able to put the reference asset to its regular use. On the other hand, the learned counsel for the Respondents quick to point out that the findings of the Central Commission are just and right, taking into consideration of the judgments of this Tribunal and the Apex Court which are for the cases of identical nature. In view of the above submissions and the decisions contained in the judgments of this Tribunal and the Hon'ble Supreme Court, we are of the considered opinion that though the transmission line between Kalpakkam PFBR and Kanchipuram, i.e. Asset-3, has been made ready by the Appellant but the same could not be put to regular service because of non-readiness of sub-station at Kanchipuram end. We, further opine that there is not much interpretation left in the proviso of the Regulations 3(12)(c) as far as the entitlement of the Appellant to tariff under the Tariff Regulation 2009-2014 is concerned. It is, however, pertinent to note that the provisions of Regulation 3(12)(c) of the Tariff Regulation, 2009 has now been modified by the Central Commission for the control period commencing from 01.04.2014 which deals with such eventualities as in the present case in an elucidated manner.

8.10 Keeping all these aspects in view, we are of the considered opinion that the findings of the Central Commission in the impugned order pertaining to the COD of Asset-3 as 01.09.2012 are consistent with various judgments and its Tariff Regulations, 2009. As the Appellant has completed all the works under its scope of work and a considerable time of more than six years has elapsed, the Appellant deserves a liberty to file an application before the Central Commission seeking grant of approval in terms of the Tariff Regulations, 2014 to enable the tariff determination for Asset-3 with capital cost being considered as on 31.03.2014 including admissible IDC /IEDC.

### **ORDER**

Having regard to the facts and circumstances of the case as stated supra, we are of the considered view that the issues raised in the present appeal being Appeal No. 168 of 2015 have merit. Hence, the Appeal is partly allowed to the extent of granting liberty to the Appellant to approach the Central Electricity Regulatory Commission for seeking grant of approval in terms of the Tariff Regulations, 2014. The impugned order dated 29.04.2015 passed by Central Electricity Regulatory Commission in Petition NO.105/TT/2012 is hereby upheld excepting the above directions.

The matter stands remitted back to the Central Commission with the direction to consider the matter afresh in accordance with law and dispose of the same after affording reasonable opportunity of hearing as

expeditiously as possible. The appellant and respondents are directed to appear either personally or through their counsel without further notice on 29.10.2018.

No order as to costs.

Pronounced in the Open Court on this **20<sup>th</sup> day of September, 2018.**

**(S.D. Dubey)**  
**Technical Member**

**(Justice N.K. Patil)**  
**Judicial Member**

**REPORTABLE / ~~NON-REPORTABLE~~**

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