IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

Appeal No. 777 of 2023 &
IA No. 1535 of 2023,
IA Nos. 36 and 97 of 2024

Dated: 20th November, 2024

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

Tamil Nadu Generation and Distribution Corporation Limited,
Rep. by Chief Financial Controller/Regulatory Cell
7th Floor, NPKRR Maaligai
No.144, Anna Salai, Chennai — 600 002. ….Appellant(s)

Versus

1. Central Electricity Regulatory Commission
   Represented by its Secretary
   4th Floor, Chanderlok Building,
   New Delhi 110 001.

2. Power Grid Corporation of India Limited,
   Represented by its Chief General Manager
   "Saudamani", Plot No.2, Sector-29,
   Gurgaon -122 001.

3. Transmission Corporation of Andhra Pradesh Ltd.
   Represented by its Chief Engineer
   (APTRANSCO), Vidyut Soudha,
   Vijayawada-520004.

4. Kerala State Electricity Board (KSEB),

Represented by its Managing Director
Vaidyuthi Bhavanam, Pattom,
Thiruvananthapuram-695 004.

5. Tamil Nadu Electricity Board
Represented by its Chairman cum Managing Director
NPKRR Malagai
800, Anna Salai,
Chennai 600002.

6. Electricity Department
Represented by Chief Electrical Engineer
Government of Goa
Vidyut Bhawan, Panaji, Goa 403 001.

7. Electricity Department,
Represented by its Secretary
Government of Pondicherry,
Pondicherry-605 001.

8. Eastern Power Distribution Company of
Andhra Pradesh Limited (APEPDCL),
Represented by CGM/RA,
P&T Colony, Seethammadhara,
Visakhapatanam 530 020.

9. Southern Power Distribution Co of AP Ltd.
Represented by Chairman & Managing Director,
Srinivasa Kalyana Mandapam Backside,
Tiruchanoor Road Kesavayanagunta
Tirupati- 517501,
Chittor District, AP.

10. Southern Power Distribution Company of Telangana Limited,
Represented by Chairman & Managing Director
6-1-50, Corporate Office, Mint Compound,
Hyderabad-500063.

11. Northern Power Distribution Company of Telangana Limited,
Represented by Chairman & Managing Director
H. No. 2-5-3 1 / 2, Vidyut Bhawan, Corporate Office, Nakkal Gutta, Hanamkonda, Warangal-506001,
Telangana.

12. Bangalore Electricity Supply Company Ltd. BESCOM Power Purchase,
Represented by General Manager (Electrical)
2nd Floor, Corporate Office, K.R. Circle,
Bangalore -560 001.

13. Gulbarga Electricity Supply Company Ltd. (GESCOM)
Represented by Chief Engineer (Electrical)
Station Main Road,
Gulbarga 585102.

14. Hubli Electricity Supply Company Ltd.
Represented by General Manager
Corporate Office, Navanagar,
P B Road, Hubli 580 025.

15. MESCOM Corporate Office,
Represented by its Managing Director
Paradigm Plaza, AB Shetty Circle,
Mangalore-575 001,
Karnataka.

16. Chamundeshwari Electricity Supply Co. Ltd.
Represented by Superintending Engineer (Comml)
Corporate Office, 927, L J Avenue,
New KantharajUrs Road,
Saraswathipuram,
Mysore 570 009.

17. Transmission Corporation of Telengana Limited,

Represented by its Managing Director
Vidhyut Soudha, Khairatabad,
Hyderabad — 500082.

18. Karnataka Power Transmission Corporation Limited,
Represented by Managing Director
Room No. 501, 5th Floor,
KPTCL Building, Kaveri Bhavan,
Bangalore-560 009.

19. Tamil Nadu Transmission Corporation,
Represented by its Managing Director
NPKRR Maaligai,
800, Anna Salai,
Chennai — 600 002.

20. Central Transmission Utility of India Ltd.
Represented by its Chief General Manager
A wholly owned subsidiary of
Power Grid Corporation of India Ltd.
A Government of India Enterprise
Saudamini, Plot No. 02, Sector 29
Gurugram – 122001. ….Respondent(s)

Counsel for the Appellant(s)	:	Mr. P. Wilson, Sr. Adv. Mr. S. Vallinayagam
Counsel for the Respondent(s)	:	Mr. TVS Raghavendra Sreyas Ms. Gayatri Gulati Mr. Siddharth Vasudev Mr. Nikhil Nayyar for Res. 1 Mr. S. B. Upadhyay, Sr. Adv. Mr. Anand K. Ganesan Ms. Swapna Seshadri Mr. Utkarsh Singh Ms. Surbhi Gupta for Res. 2

Mr. Prabhas Bajaj for Res. 4

Mr. Sidhant Kumar
Ms. Manyaa Chandok
Mr. Gurpreet Singh Bagga
Mr. Shivankar Rao
Ms. Vidhi Udayshankar for Res. 8, 9

Mr. D. Abhinav Rao for Res. 10, 11&17

Mr. Shubhranshu Padhi
for Res. 12,13,15&16

Ms. Suparna Srivastava for Res. 20

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The captioned Appeal has been filed by M/s. Tamil Nadu Generation & Distribution Corporation Limited (in short "Appellant" or "TANGEDCO") challenging the order passed by the Central Electricity Regulatory Commission (in short "Central Commission" or "CERC") dated 27.01.2023 (in short "Impugned Order") in 172/TT/2021 filed by Power Grid Corporation of India Limited (in short "R2" or "PGCIL"), a deemed transmission licensee, for determination of tariff under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as "the 2019 Tariff Regulations").

Parties

2. The Appellant is a Government Company vested with the function of Generation and Distribution of Electricity in the State of Tamil Nadu.

3. Respondent No. 1 is the Central Commission having vested with the functions under section 79 of the Electricity Act, 2003 (in short "Act") inter-alia determines the tariff for the Inter-State Transmission System (in short "ISTS").

4. Respondent No. 2, PGCIL is the Transmission Licensee under the Act.

5. Respondents No. 3 to 19 are the beneficiaries of the transmission system of the PGCIL for which the tariff has been determined by CERC vide the Impugned Order.

6. Respondent No. 20, CTUIL is the Central Transmission Utility inter-alia impleaded as Respondent vide this Tribunal's order dated 05.10.2023, which reads as under:

> *"An application is filed by the Appellant to implead Central Transmission Utility (CTU) as the 20th Respondent. Since we are of the view that CTU should be heard on the issues raised in this Appeal, more so as they were impleaded and heard in the Appeals decided earlier, the application for impleadment is allowed; and the*

CTU shall stand impleaded as the 20th Respondent in the Appeal. IA is disposed of accordingly."

Factual Matrix

7. PGCIL filed the aforesaid petition in respect of **Asset-1:** ± 320 kV VSC based 2000 MW Pugalur (HVDC) - North Trichur HVDC (Kerala) HVDC link along with ±320 kV 1000 MW (Mono Pole-II) HVDC terminals each at Pugalur (HVDC Station) & North Trichur (HVDC Station, Kerala); **Asset-2:** ± 320 kV 1000 MW (Mono Pole-I) HVDC terminals each at Pugalur (HVDC Station) & North Trichur (HVDC Station, Kerala); **Asset-3:** LILO of North Trichur-Cochin 400 kV (Quad) D/c line at North Trichur HVDC station along with associated bays & equipment's(GIS) at North Trichur HVDC station; **Asset-4:** 2 X 315 MVA 400/220/33 kV 3 Ph Auto Transformer along with its associated bays & equipment's(GIS) at North Trichur HVDC station; and **Asset-5:** 2 Nos. additional 220 kV line bays(GIS) at North Trichur HVDC for implementation of 220 kV feeder of Kerala (hereinafter referred to as the "transmission assets") under "HVDC Bipole link between Western Region (Raigarh, Chattisgarh) and Southern Region (Pugalur, Tamil Nadu) – North Trichur (Kerala) – Scheme #3: Pugalur-Trichur 2000 MW VSC based HVDC System" (hereinafter referred to as the "transmission project").

8. The Central Commission vide the Impugned Order determined the transmission tariff by holding as under:

"----

113. The main contention of the respondents is that Raigarh-Pugalur-Trissur HVDC system is one of the important elements of the National Grid which will provide flexibility, stability and RE integration, therefore, Raigarh-Pugalur-Trissur HVDC system may be treated as a national and strategic transmission system of national importance and 100% yearly transmission charges may be considered under National Component.

114. *We have examined the matter.* ***We observe that KSEBL is the only beneficiary of ± 320 kV VSC based HVDC Pugalur-Thrissur line and power also flowing in unidirectional mode from HVDC Pugalur (Tamilnadu) to Thrissur (Kerala), both are in Southern Region. Therefore, we do not agree with the proposal of KSEB to consider 100% yearly transmission charges of Pugalur-Trissur HVDC system under National Component.***

115. *The transmission project consists of HVDC components (Scheme-1 and Scheme-3) as well as AC components (Scheme-2 and Scheme-3). The Petitioner has filed separate petitions pertaining to HVDC components under Scheme-1 (Petition No. 685/TT/2020, Petition No. 173/TT/2021 and Petition No. 242/TT/2021). Further, the Petitioner has filed separate petitions pertaining to AC components under Scheme-2 (Petition No. 693/TT/2020 and Petition No. 243/TT/2021).*

116. *The instant petition covers both HVDC and AC components under Scheme-3 of the transmission project, which are Asset-1: ±320 kV VSC based 2000 MW Pugalur (HVDC) - North Trichur (HVDC,*

Kerala) HVDC link along with ±320 kV 1000 MW (Mono Pole-II) HVDC terminals each at Pugalur (HVDC Station) & North Trichur (HVDC Station, Kerala); Asset-2: ±320 kV 1000 MW (Mono Pole-I) HVDC terminals each at Pugalur (HVDC Station) & North Trichur (HVDC Station, Kerala); Asset-3: LILO of North Trichur-Cochin 400 kV (Quad) D/c line at North Trichur HVDC station along with associated bays & equipment (GIS) at North Trichur HVDC station; Asset-4: 2 X 315 MVA 400/220/33 kV 3 Ph Auto Transformer along with its associated bays & equipment (GIS) at North Trichur HVDC station; and Asset-5: 2 numbers additional 220 kV line bays (GIS) at North Trichur HVDC for implementation of 220 kV feeder of Kerala.

117. *In this connection, the Commission has already dealt with the sharing of charges of HVDC system (Scheme-1) vide order dated 29.9.2022 in Petition No. 685/TT/2020 and sharing of charges of AC system (Scheme-2) vide order dated 17.10.2022 in Petition No. 693/TT/2020 and order dated 24.11.2022 in Petition No.243/TT/2021. Therefore, the sharing of transmission charges in respect of HVDC assets i.e., Asset-1 and Asset-2 shall be in line with the order dated 29.9.2022 in Petition No. 685/TT/2020 and sharing of charges w.r.t. AC assets i.e., Asset-3, Asset-4 and Asset-5 shall be in line with the order dated 24.11.2022 in Petition No.243/TT/2021. Accordingly, the asset wise sharing of transmission charges is elaborated hereunder for the sale of clarity and in order to avoid any ambiguity at a later date.*

118. *With effect from 1.11.2020, the 2010 Sharing Regulations has been repealed and sharing of transmission charges is governed by the provisions of the 2020 Sharing Regulations. The COD of the Asset-1 and Asset-2 is 9.3.2021 and 8.6.2021, respectively. As per minutes of SCM/RPC, the instant HVDC system is developed as System Strengthening Scheme. Therefore, transmission charges for Asset-1 and Asset-2 shall be shared as per Regulation 5 and Regulation 6 of the 2020 Sharing Regulations.*

119. *----*

120. *In view of the above, as per Regulation 5(3)(d) and Regulation 6(1)(a) of the 2020 Sharing Regulations, 30% of the Yearly Transmission Charges (YTC) with effect from COD of the transmission assets shall be part of National Component and 70% of Yearly transmission charges for Raigarh-Pugular-Thrissur system is under Regional Component.*

121. *The transmission assets covered in the instant petition pertains to Scheme-3 of the transmission project which is the AC System strengthening at North Trichur end and consists of AC line, Transformers and Associated 400 kV and 220 kV bays. With effect from 1.11.2020, sharing of transmission charges is governed by the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2020 (in short "the 2020 Sharing Regulations"). The COD of the Asset-3, Asset-4 and Asset-5 is approved as 9.3.2021. Therefore, the transmission charges of Asset-3, Asset-4 and Asset-5 shall be governed by the 2020 Sharing*

Regulations. Accordingly, the liabilities of the DICs for arrears of the transmission charges determined through this order shall be computed DIC-wise in accordance with the provisions of respective Sharing Regulations and shall be recovered from the concerned DICs through bill under Regulation 15(2)(b) of the 2020 Sharing Regulations."

9. Aggrieved by the findings given by the Central Commission in the Impugned Order dated 27.01.2023, the Appellant is filing the present appeal.

Submissions of the Appellant

10. The Appellant raised the issue of the absence of Regulatory Approval under the CERC Regulatory Approval Regulation, 2010 for the Raigarh-Pugalur-Thrissur HVDC system (RPT HVDC), referring to Regulations 3 and 5.

11. Powergrid and CTUIL referred to and relied on two documents – a BPTA of 2006 and a TSA of 2011 filed as a compilation of documents at the time of arguments, without a supporting affidavit of the Respondent, to contend that the instant transmission system falls under the exemption under Regulation 3(2) of the Regulatory Approval Regulations, 2010. This document was not placed before CERC for its consideration. It is under the said circumstances that the Appellant submits that the provisions of the Connectivity Regulation and the Detailed procedure as approved by CERC are required to be addressed as under:

(a) There is no document brought on record by Powergrid or CTUIL showing a grant of LTA to the IPPs at Chhattisgarh for WR-SR identifying Raigarh Pugalur Thrissur HVDC transmission system as per the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations 2009. Powergrid and CTUIL did not bring on record the LTA granted to IPPs of Chhattisgarh for the RPT HVDC. There is no information on the point of injection and point of drawal involving the instant HVDC system as required under the Regulations.

(b) In the absence of LTA, as stated above for RPT HVDC, there cannot be any transfer of power using the RPT HVDC system and consequently, there can be no Transmission Service Agreement for sharing of transmission charges in respect of Raigarh Pugalur Thrissur HVDC transmission system.

(c) To show that a grant of LTA in a transmission system is necessary to agree to the sharing of transmission charges, the Appellant handed over a BPTA entered into by TANGEDCO with Powergrid dated 29.06.2015 at the time of arguments.

    (i) This agreement was entered by the appellant with Powergrid.

    (ii) The grant of LTA to the generator by Powergrid on the application by a generator under the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations 2009 is mentioned in paragraph B of the agreement.

(iii) This agreement is entered into only after the allocation of power by MoP and execution of PPA – in paragraph C.

(iv) The sequential conditions under which the agreement is entered into by the Appellant, i.e., grant of LTA, allocation of power, execution of PPA, and then agreement to share the transmission charges. The agreement specifically sets out the details of the transmission system in Annexure I to the agreement. The transmission system is the same as set out in the Intimation for Grant of LTA by Powergrid/CTUIL in Annexure I to Format -LTA-5. – in Paragraph D.

(v) The agreement incorporates the LTA granted to the Generator. – Paragraph G.

It is submitted that Powergrid/CTUIL did not bring on record the Intimation for Grant of LTA for RPT HVDC signed by the IPPs as required under CERC 2009 Regulations. In the absence of an LTA agreement as mandated under the Regulation, on record, which identifies the transmission system for which LTA is granted, the TSA referred to and relied upon, which does not show the transmission system for which it is entered into, cannot be looked into. The TSA is not related to RPT HVDC.

(d) Apart from the above, the TSA dated 05.08.2011 cannot be looked into for the following reasons:

(1) In the Model transmission agreement of CERC for sharing of transmission charges, as approved by CERC vide order dated

29.04.2011, paragraph 2.1.3, states that the Interstate Generating Station shall be made a signatory to the TSA if it has not signed BPTA or TSA. The word “shall” is removed from the Transmission Service Agreement [TSA] dated 05.08.2011. There is no document brought on record by Powergrid and CTUIL to show that the IPPs have signed BPTA or TSA in respect of RPT HVDC. In the circumstances, when the Interstate Generating Station is not made a signatory to the TSA, the agreement is not valid.

(2) Powergrid and CTUIL do not bring on record the agreement/agreements based on which they are raising transmission charges on IPPs that are reimbursed by the Appellant. No agreement relating to Raigarh Pugalur Thrissur is brought on record by Powergrid or CTUIL.

(3) As per paragraph 4.1.1 of the Model Agreement, ISTS owned operated, and maintained means existing lines. RPT HVDC was not in existence on 05.08.2011.

(4) As per paragraph 4.2.2 of the Model Agreement, addition or deletion to the existing line as certified by RPC and approved by the Commission shall form part of Schedule II. Schedule II was not brought on record by PGCIL and CTUIL. The incomplete TSA cannot be relied upon.

(5) As per paragraph 4.3.2 any element that may be added to ISTS detailed in 4.1.1 [refers to Schedule II], which provides for existing lines. Not new lines.

It is submitted that Powergrid and CTUIL contend that they are exempted from applying for Regulatory Approval under Regulation 3(2) relying on the TSA dated 05.08.2011 filed by them in the compilation of documents. This is not sustainable.

(e) The second document relied upon by Powergrid and CTU is the BPTA of 04.03.2006 signed by the Appellant for the drawal of power from the Central Generating Station on the basis of allocation of power by MoP. This BPTA was a renewal agreement of an earlier agreement that expired on 31.03.2002.

(f) This BPTA in clause 2.1 refers to a list of transmission systems in SR as Annexure B, listing transmission lines owned operated, and maintained by Powergrid and other lines yet to be commissioned and are under execution or to be executed. The VSC-based HVDC line, of the RPT HVDC system was envisaged in 2013. It cannot be included in the annexure to this BPTA.

(g) Clause 6 of this BPTA states that for the transfer of Private Sector Power through transmission assets owned by Powergrid --- *"The commercial arrangement/sharing of transmission charges for such transfer of power shall be as per tariff notification/guidelines issued by CERC."* There is no document brought on record by Powergrid or CTUIL indicating the commercial arrangement/sharing of transmission charges in respect of IPPs of Chattisgarh relating to RPT HVDC.

(h) Clause 10.1 of the BPTA relating to Billing and Payments states that "All charges covered under this Agreement for transmitting Central Sector Power and shall be billed by Powergrid and paid by the Bulk Power Beneficiaries / long term transmission customer under the provisions of clause A 3 of Annexure A.

12. It is submitted that the BPTA of 04.03.2006 does not apply to the sharing of transmission charges of private generators, the IPPs.

13. Given the above, it is also important to appreciate the Terms and conditions under the Connection Agreement executed by the applicant generator.

"2.1 Agreement to Monthly Transmission Tariff:

The applicant declares that it shall pay the Monthly Transmission Tariff including ULDC/NLDC charges, for use of the Inter-State Transmission System, as and when Long term access, Medium-term open access, or short-term open access is availed by the applicant, in accordance with the relevant regulations of CERC in this regard."

14. It is submitted that the IPPs applied for connectivity under Regulation 8 and applied for LTA under Regulation 12 of CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations 2009. Under the BPTA entered into by IPPs on 24.02.2010, the connectivity was to the Raigarh pooling station of Powergrid and the LTA was for the HVDC from Raigarh to Dhule set out in Petition No. 233 of 2009. [Page

220 of Rejoinder] This order of CERC also mandates the payment security mechanism to be implemented by CTU [Paragraph 40 @ page 213-214 of Rejoinder]. However, no LTA for Raigarh Pugalur Thrissur HVDC entered by the IPPs of Chhattisgarh is brought on record by Powergrid/CTUIL. In the absence of LTA for the instant HVDC from Raigarh Pugalur Thrissur, there can be no TSA.

> *"12. Amendment to The Connection Agreement:*
> *In case of Modification to a point of connection like re-allocation of bays, upgradation of voltage level etc. by either of the parties, if mutually agreed, an amendment to the Connection Agreement shall be executed between the parties within 30 days of implementing such modification."*

15. It is submitted that the IPPs at Chhattisgarh entered into BPTA for the Raigarh – Dhule HVDC of ±600kV 4000MW. The Detailed Procedure extracted above mandates that an amended connection agreement for the upgraded voltage level of Raigarh Pugalur Thrissur ±800kV 6000MW was required to be entered into by the IPPs of Chattisgarh. No such agreement is brought on record by CTUIL.

16. As per the procedure for making an application for a grant of long-term access to ISTS under the Detailed Procedure of CTU under Regulation 27 as approved by CERC by order dated 31.12.2009 the following conditions are mandatory:

"22.6 - In line with para-12 and para-33(d) of the Regulations, LTA shall be granted for a given capacity from a defined point of injection to a defined point of drawl. Accordingly, in the application for LTA, the applicant shall be required to indicate the location of the load point on the grid of the entity or entities to whom electricity is proposed to be supplied and the location of the source point on the grid of the entity from whom electricity is proposed to be sourced, along with the quantum of power to be transferred."

17. The Extract of the relevant Regulations of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 referred to in the above paragraph is as under:

Regulation 12: Application for long-term access

(1) The application for grant of long-term access shall contain details such as name of the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured along with the quantum of power and such other details as may be laid down by the Central Transmission Utility in the detailed procedure:

Provided that in the case where augmentation of transmission system is required for granting open access, if the quantum of power has not been firmed up in respect of the person to whom electricity is to be supplied or the source from which electricity is to be procured,

the applicant shall indicate the quantum of power along with name of the region(s) in which this electricity is proposed to be interchanged using the inter-State transmission system;

Provided further that in case augmentation of transmission system is required, the applicant shall have to bear the transmission charges for the same as per these regulations, even if the source of supply or off-take is not identified;

Provided also that the exact source of supply or destination of off-take, as the case may be, shall have to be firmed up and accordingly notified to the nodal agency at least 3 years prior to the intended date of availing long-term access, or such time period estimated by Central Transmission Utility for augmentation of the transmission system, whichever is lesser, to facilitate such augmentation;

Provided also that in cases where there is any material change in location of the applicant or change by more than 100 MW in the quantum of power to be interchanged using the inter-State transmission system ***or change in the region from which electricity is to be procured or to which supplied****, a fresh application shall be made, which shall be considered in accordance with these regulations.*

Regulation 33(d):

(d) Separate lists for long-term access and medium-term open access granted, indicating-

(i) Name of customers;

(ii) Period of the access granted (start date and end date);

(iii) Point or points of injection;

(iv) Point or points of drawal;

(v) Transmission systems used (in terms of regions and States);

(vi) Capacity (MW) for which access has been granted.

18. It is submitted that the generators at Chhattisgarh had LTA for WR to NR and WR to WR under the BPTA of 24.02.2010. No document is brought on record by Powergrid or CTUIL, after a change in the region from WR to SR, as required under the fourth proviso to Regulation 12 extracted above. relating to LTA for the Raigarh Pugalur Thrissur HVDC transmission system. The LTA granted under the Regulations, should contain the name of the transmission system as mandated under Regulation 33(d) (v). Nothing is brought on record by Powergrid and CTUIL.

"22.8. In cases where there is any material change in location of the applicant or change in the quantum of power to be interchanged using ISTS (by more than 100MW) or change in region from which electricity is to be procured or to which electricity is to be supplied before the transmission works are taken up by CTU or inter-State transmission licensee other than CTU, a fresh application shall be made and earlier application shall be considered closed and application money for that application forfeited."

19. Given the above mandate of Detailed Procedure, the generators at Chhattisgarh, who entered into PPA with SR beneficiaries, were required to apply for LTA as per the above provision of Detailed Procedure for the transfer of power from WR to SR for the RPT HVDC system.

20. It is a fact that the special meeting for the operationalization of LTA / MTOA from WR to SR was held on 21.05.2014. In this meeting, it was decided to grant an LTA of 1208 MW subject to the implementation of Solapur-Raichur 765kV 2 x S/c lines and other identified transmission systems in WR and SR subject to relinquishment of their earlier granted LTA.

21. It is submitted that there is no document brought on record to show that LTA was sought by any of the Chhattisgarh IPPs for a quantum other than the above said 1208 MW, from WR to SR, connected to the Raigarh pooling station of Powergrid. In the absence of a grant of LTA for Raigarh Pugalur Thrissur HVDC, there cannot be a sharing of Transmission Charges of the said transmission system. The Transmission Service Agreement and BPTA sought to be relied upon by Powergrid has no relevance to the facts of the present case and cannot be looked into.

22. Regulation 3 (2) of the Regulatory Approval Regulation refers to a BPTA executed by all beneficiaries for a transmission system for which the sharing of transmission charges is accepted by all beneficiaries. The transmission system is required to be identified on the date of execution of the BPTA. No BPTA for

RPT HVDC is brought on record by Powergrid or CTUIL as required under the above Regulation.

23. Powergrid or CTUIL, being the nodal agency for the grant of connectivity under the Connectivity Regulations, 2009 cannot plead contrary to the procedure and mandate provided under the Connectivity Regulations.

24. There is no BPTA to share the transmission charges of Raigarh-Pugalur-Thrissur HVDC entered into between SR beneficiaries and Powergrid, as required under Regulation 3 (2) of CERC Regulatory Approval Regulation 2010.

25. The second Respondent arrayed the DICs of the Southern Region alone in this Tariff Petition for the Pugalur to Thrissur scheme and did not add the Western Region beneficiaries although the DICs of WR were part of the Joint Meeting of the Standing Committee on Power System Planning SR & WR dated 20.04.2015. The comments of SE, MPPTCL (Madhya Pradesh) are recorded in the minutes of the meeting. [Paragraph 4.6 @ Page 157 of Rejoinder]

26. The Director (Projects) sought the possibility of a 400 kV AC system from Pugalur to Thrissur in place of VSC-based HVDC. The AC system would have cost 800 Crores but the VSC system has cost 5070 Crores. [Paragraph 4.4 @ Page 157 of Rejoinder]

27. On the issue of Pugalur to Thrissur VSC-based HVDC being part of the RPT HVDC System:

(a) The above transmission system was developed as a system-strengthening scheme, which is a part of the Raigarh – Pugalur – Thrissur Transmission System for the national grid. This is specifically admitted by Powergrid in its affidavit dated 18.11.2021 filed in response to the technical validation letter of CERC dated 21.10.2021. [Paragraph 37 (c) @ page 109 and 37 (g) @ page 110 of Vol-I]

(b) The system is a composite transmission system connecting WR and SR from Raigarh to Thrissur. This is evident from the fact that the rating and capacity of the Raigarh – Dhule HVDC was increased from 600kV 4000MW to 800kV 6000MW Raigarh – Pugalur – Thrissur HVDC, because Powergrid and CTUIL proposed the quantum from Raigarh to Pugalur as 4000MW and Raigarh to Thrissur as 2000MW in the various Standing Committee Meetings of WR, SR and Joint Meeting of WR and SR constituents. [Page 109 @117 paragraph 16.3 relating to shifting of converter terminal from Dhule in WR to SR]. [Page 151, paragraph 2.1 (i) & (ii) relating to increase in capacity - 4000MW to 6000MW and rating ±600kV to ±800kV, specifically indicating Pugalur to Thrissur VSC based HVDC for 2000MW]

(c) The Raigarh-Pugalur-Trissur HVDC system is a composite transmission system evident from the Minutes of the Joint meeting of the Standing Committee of SR and WR held on 20th April 2015 **(Copy enclosed- pages 10, Annexure IV- pages 9,10)** and the 39th meeting of Standing Committee on Power System Planning in Southern Region held on 28th and 29th December 2015 **(page 184-185- Vol-I)**

(d) MoP vide letter dated 30.05.2022 requested CERC to consider the entire **Raigarh-Pugalur-Trissur** HVDC system under the National Component (**page 629 –Volume III**). It is stated by MoP in a letter dated 29th August 2022 addressed to the Chief Minister of Tamil Nadu. **(Page 631 Vol III)**

(e) In a letter dated 20.02.2023 from the Minister for Power / GoI to the Minister for Electricity/ GoTN stated that MoP has already directed the CERC to consider the declaration of Raigarh-Pugalur-Trissur HVDC link as asset of National and Strategic importance based on the case study furnished by grid India (**Page 650 Vol III**).

(f) It is also evident from the press release of MoP dated 8th June 2021 regarding the inauguration of the Pugalur –Trissur HVDC link by the Prime Minister that the Pugalur –Trissur HVDC link is part of Raigarh-Pugalur-Trissur 6000 MW HVDC system (page 188 of Rejoinder).

28. It is factually incorrect to state that the Pugalur-Trissur HVDC system is an intra-regional HVDC system.

29. Under these circumstances, PGCIL's new statement on the status and character of the Pugalur-Trissur HVDC system to treat it as an isolated system is wrong.

30. It is pertinent to submit that this Appellate Tribunal in the connected matter in Appeal No.433 of 2022 set aside the tariff order of CERC in 685 TT 2020 dated 29.09.2022. Paragraph 117 of the impugned order refers to the above order

dated 29.09.2022 to determine the tariff of the Pugalur-Thrissur scheme of the RPT HVDC transmission system. [page 165 of Vol-I]

31. The Regulatory Approval for a Rs. 22000 Crore investment is necessary for a thorough study under Regulation 5 of the Regulatory Approval Regulation.

> *"(i) Need for transmission scheme: --*
> *(a) Technical justification*
> *(b) Urgency*
> *(c) Prudence of the investment*
> *(ii) Cost assessment and possible phasing of implementation.*
> *(iii) Cost benefit to the users of the proposed ISTS scheme."*

32. All the above-required information with a brief of the proposed transmission line is also required to be published in two leading news inviting objections. These provisions are the guiding principles to ensure that unnecessary, unwarranted projects are not thrust upon the beneficiaries, resulting in a pass-through of unwarranted costs to the consumers.

33. The Central Commission did not appreciate the fact that for the same HVDC system, which was envisaged as a system strengthening system from Raigarh to Dhule, IPPs at Chhattisgarh entered into BPTA and executed a Bank Guarantee in favor of Powergrid. LTA was granted only to those IPPs who had firm PPA for at least 50% of the applied LTOA to secure the investment being made for the evacuation of power from the IPPs.

34. Powergrid took Regulatory Approval from the Central Commission in Petition No. 233 of 2009 for the HVDC system strengthening from Raigarh to Dhule before investment approval for the project. However, after shifting of termination point of the HVDC from Dhule to Pugalur and Thrissur, it did not take Regulatory Approval.

35. It is submitted that the National Electricity Policy and the Tariff Policy of the Ministry of Power mandate the need for regulatory approval for network expansion. CTUIL is enjoined with the responsibility to plan transmission systems after obtaining regulatory approval. [Page 210 and 211 of Rejoinder]

36. Even in the LTA and Power System Planning meetings of SR, Powergrid / CTUIL did not bring it to the notice of SR constituents, that the existing BPTA and BG executed by IPPs at Chhattisgarh are to be modified as required under the Connectivity Regulations, 2009 and Regulatory Approval Regulations, 2010. On the contrary, the need to strengthen the system for evacuating power from WR to SR was discussed and agreed to in the 36th SCPSP of WR dated 29.08.2013.

37. In its report the CAG finds fault with Powergrid and CTUIL on the noncompliance with statutory requirements by Powergrid like an assessment of existing capacity, the need for additional lines, economical use of lines, and to prevent the creation of redundant transmission assets at the cost of the public exchequer.

38. It is submitted that there is no tie-up with any generator or beneficiaries in respect of the Raigarh-Pugalur HVDC. No LTA is brought on record by Powergrid or CTUIL identifying RPT HVDC. To show power flow in the HVDC / usage of HVDC, the petitioner is getting some power scheduled through the subject HVDC by reducing the power flow in WR-SR Inter-Regional AC corridors.

39. It is submitted that PGCIL in 200/MP/2019 on an affidavit stated that around 58% of its transmission assets are redundant. CERC Regulatory Approval Regulation intends to avoid such unwarranted and wasteful investment of public money by transmission system developers and Planners. The solemn duty and obligation cast upon this Commission is to protect public interest viz a viz financial gains by public sector undertaking such as the petitioner which operates on public money.

40. It is submitted that the tariff awarded is illegal, PGCIL can avail 100% grant from the Central Government considering the national importance of the assets. (PGCIL failed to submit a detailed project Report to PSDF funding agency respite directions from CERC and repeated requests from constituents).

41. It is prayed that the Impugned Order of CERC be set aside since all the assets under Scheme III of the total transmission system, are part of the comprehensive Raigarh-Pugalur-Trissur HVDC system, and Regulatory Approval under the 2010 Regulation applies to HVDC as well as AC systems.

42. It is submitted that the Appellant apprehends bias and favors in the order impugned due to the following reasons:

(a) The technical member of Central Commission was the Director from 2009 in PGCIL, the second Respondent herein, and was the Director of Projects in the year 2014-2015. He was a committee member in the committee on investment of projects and a shareholder in the second respondent company. In addition to the above the said technical member was also on the committee on the award of contracts and in the committee for transfer/split / re-materialization of shares of PGCIL.

(b) The said member of CERC, the then CMD of the company was responsible for and directing the implementation of the Raigarh – Pugalur – Thrissur HVDC system.

(c) The apprehension is that the decision taken in the impugned order is vitiated by bias.

  (i) Non-compliance of CERC Regulatory Approval Regulations, 2010.

  (ii) Proceeding with the project without applying for funds with the PSDF and no direction to first apply for PSDC funds as directed by CERC in 67/TT/2015.

  (iii) Non-compliance of 3rd amendment to Sharing Regulations 2010, though the same was made applicable to Biswanath Chariali – Agra HVDC transmission system vide order dated 08.01.2016 & 31.08.2017 in 67/TT/2015 by CERC.

(iv) The Central Commission constituted the Bakshi Committee to revisit the Stating Regulations 2010. Bakshi Committee submitted its report. To examine the Bakshi Committee, to formulate/draft amendments/re-enactment of Sharing Regulations 2010, the Jha Committee was constituted under the Chairmanship of Shri. I.S. Jha. The Jha Committee Report overruled the Bakshi Committee report and changed the sharing methodology of HVDC transmission systems.

(v) The Jha Committee Report recommended continuing sharing of transmission charges of Mundra Mohindergarh and Biswanath Chariali – Agra by DICs throughout the country and the same was included in the 2020 Sharing Regulations. However, a similar HVDC system, Raigarh – Pugalur – Thrissur HVDC was not considered an asset of strategic and national importance for sharing transmission charges on a national basis.

(vi) The COD of the assets was intentionally delayed beyond the date of notification of the 2020 Sharing Regulations.

(vii) The HVDC systems of Mundra Mohindergarh and Biswanath Chariali–Agra were treated as national assets and the transmission charges were directed to be recovered from all DICs across the country through the pool.

(viii) The Commission itself vide order dated 08.01.2016 declared Biswanath Chariali – Agra as an asset of strategic and national importance and directed PGCIL to implead all the DICs in the

said petition. However, in the case of the present HVDC, no such order was passed.

(ix) The letter from MoP to the Central Commission in Biswanath Chariali – Agra was considered by the Commission but the letters of MoP in the case of Raigarh – Pugalur – Thrissur HVDC system were not even Counsel for the appellant.

Submissions of the Respondents No. 8 & 9 (AP Discoms)

43. The Respondents No. 8 & 9 submitted that the PGCIL planned and developed a comprehensive HVDC System between the Western Region (Raigarh, Chhattisgarh) and the Southern Region (Pugalur, Tamil Nadu) - North Trichur (Kerala) (the "**HVDC System**" or "RPT HVDC"). This HVDC System was divided into three phases or schemes for ease of implementation. The Tariff Petition in respect of which the Impugned Order has been passed, concerned assets under Scheme 3 of this HVDC System.

44. Before the Central Commission, the beneficiaries of the Southern Region, including Respondent Nos. 8 and 9 (the "**AP Discoms**") contended that Scheme 3 Assets form part of the HVDC System, which is one of national importance. Accordingly, all assets comprising the HVDC System including the Scheme 3 Assets, ought to be included under the National Component of the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 ("**Sharing Regulations 2020**"), to be shared on an all-India basis.

45. This assertion on behalf of the southern beneficiaries has not been considered or decided in the Impugned Order. Therefore, to this extent, the Impugned Order is unreasoned. The question that the HVDC System is one integrated system for the benefit of the entire grid and cannot be bifurcated, has not been taken into consideration by the Impugned Order. The Impugned Order has, without delving into this question, summarily held the assets under Scheme 3 of the HVDC System, on a standalone basis, are not of national importance. Consequently, the Central Commission refused to apply the sharing mechanism for a national component to the assets covered under the HVDC System.

46. The Impugned Order has resulted in a position where the 70% transmission charges are borne by the southern beneficiaries alone, when in fact, the HVDC System enures to the benefit of the entire country.

47. Accordingly, the Appellant, Tamil Nadu Generation and Distribution Corporation Limited ("**TANGEDCO**") seeks to set aside the Impugned Order. AP Discoms support the challenge to the Impugned Order on the basis set out below:

A. The matter ought to be remanded to the Central Commission in accordance with the judgment dated 18 July 2023 passed by this Tribunal in Appeal No. 433 of 2022 ("**APTEL Judgment**")
B. The HVDC System was planned and developed as one comprehensive HVDC system. Sharing of transmission charges cannot be determined separately for each scheme or asset.

C. The HVDC System ought to be declared as one of national importance, in line with the recommendation of statutory technical bodies.
D. PGCIL is estopped from raising any contentions regarding the manner of sharing of the transmission charges in respect of the HVDC System.

48. At the outset, the Impugned Order is unreasoned for it does not render any finding in respect of the assertion of the southern beneficiaries that the entire HVDC System is of national importance. This issue is crucial and determinative of the manner of sharing the transmission charges of the HVDC System, including the assets under Scheme 3. The Central Commission, without dealing with the assertions raised by the Respondents, has summarily held the assets under Scheme 3 of the HVDC System, on a standalone basis, are not of national importance.

49. In addition to this, the matter ought to be remanded to the Central Commission for the reasons that (i) the Impugned Order requires re-adjudication in line with the principles laid down in the APTEL Judgment, (ii) the APTEL Judgment concerns the entire HVDC System, including the Scheme 3 Assets, (iii) Impugned Order is inconsistent with the previous approach of the Central Commission in respect of inter-state HVDC Systems.

50. By the APTEL Judgment, the Tribunal has held that consultation with expert statutory bodies including Central Electricity Authority (“CEA”), Power System

Operation Corporation Ltd. (now Grid Controller of India Ltd.) ("GCIL"), and Central Transmission Utility of India Ltd. ("CTUIL") is crucial to determine claims concerning the declaration of transmission assets to be of national importance. This Tribunal held that in similar proceedings, the Central Commission has considered the opinions of these technical bodies, before rendering the final adjudication.

51. This Tribunal, on finding that no such consultation had been undertaken, observed the inconsistent approach of the Central Commission. Accordingly, this Tribunal remanded the matter for re-adjudication by the Central Commission after considering the opinion of these technical bodies.

52. This Tribunal, in the APTEL Judgment, also noted that the Central Commission failed to consider the advice of the Ministry of Power ("MoP"). Even for this reason, this Tribunal remanded the matter to the Central Commission, to pass an order after giving due consideration to the advice of the MoP.

53. These principles have been approved and affirmed by the Supreme Court. They are therefore binding on this Tribunal as well as the Central Commission.

54. There is no dispute to the position that the Impugned Order has been passed without consultation with the technical bodies and without considering the advice of the MoP. Accordingly, the Impugned Order ought to be remanded to the Central Commission for re-adjudication, in accordance with the principles laid down in the APTEL Judgment and affirmed by the Supreme Court.

55. The fact that in the APTEL Judgment, the Central Commission had declined to adjudicate the claim of the entire HVDC System as one of national importance, is inconsequential. This is for the reason that APTEL Judgment clearly lays down two principles that apply in full force to the Impugned Order. Firstly, the APTEL Judgment holds that the Central Commission has the jurisdiction to adjudicate such a claim. Secondly, such a claim may only be adjudicated after consulting with the statutory technical authorities. While the Central Commission, in this case, has adjudicated the claim, but it has done so, without consulting statutory technical authorities, which is in the teeth of the APTEL Judgment stipulating the manner of exercise of such jurisdiction by the Central Commission.

56. It is, for this reason, that the Tribunal deemed it fit to implead CTUIL in these proceedings and consider submissions on its behalf to decide this *lis*. Even if viewed from this standpoint, in impleading CTUIL, this Tribunal has accepted the proposition that CTUIL is a necessary and proper party that ought to have been heard by the Central Commission. The position of CTUIL not having been considered in the Impugned Order, is therefore fatal. Accordingly, it is only fitting that the submissions of CTUIL at the first instance are adjudicated by the Central Commission. It is notable that even in the APTEL Judgment, this Tribunal considered the submissions of CTUIL. However, this Tribunal deemed it fit to remand the matter for adjudication in the first instance by the Central Commission. On this aspect, the issues raised in these proceedings and the APTEL Judgment are identical and therefore must follow.

57. PGCIL filed separate tariff petitions for each scheme of the HVDC System. The first such tariff petition was filed in respect of Scheme 1, that is, Petition No. 685/TT/2020. During the adjudication, the southern beneficiaries including the AP Discoms, sought a declaration of the HVDC System as one of national importance. It bears mentioning that this declaration was not limited to the assets under Scheme 1 in respect of which tariff was sought to be determined by PGCIL.

58. By order dated 29 September 2022 ("**Scheme 1 Order**"), this declaration was rejected by the Central Commission. The APTEL Judgment has set aside this Scheme 1 Order and has remanded the matter for re-adjudication to the Central Commission.

59. Clearly, the scope of the appeal before this Tribunal in the APTEL Judgment, concerned the declaration in respect of the entire HVDC System and not the assets under Scheme 1 alone. The scope of the Appeal before this Tribunal, as noted in the APTEL Judgment is reproduced below:

> *"3. The Central Commission, in the Impugned Order, has held that:*
>
> *"130. The main contention of the respondents is that Raigarh-Pugalur-Trissur HVDC system is one of the important elements of the National Grid which will provide flexibility, stability and RE integration, therefore, Raigarh-Pugalur-Trissur HVDC system may be treated as a national and strategic transmission system*

of national importance and 100% yearly transmission charges may be considered under National Component."

...

7. The Appellant submitted that Transmission System in dispute is the Raigarh - Pugalur - Trissur - HVDC transmission system which is implemented by PGCIL at an investment cost of Rs. 20,000 crores (approx) for the purpose of system strengthening to transfer surplus power from Chhattisgarh State (Raigarh) to Southern Region and also as part of green energy corridor for transfer of Renewable Energy (in short "RE") power from RE rich Southern States to the rest of the country and this HVDC system qualifies all the characteristics to be declared as an asset of strategic importance, however, contended that the Central Commission has erred in considering the transmission scheme in spite of the fact that no regulatory approval was obtained by PGCIL prior to planning and commissioning of the instant asset as mandated by the CERC Regulatory Approval Regulations 2010, even to the fact that compliance to its own regulations is mandatory as per the settled principle of law.

...

10. Being aggrieved by the decision of the Central Commission to be consistence with its earlier orders passed by it in identical / similar HVDC assets and its refusal to share the transmission tariff of Raigarh-Pugalur-Trissr HVDC system on all India basis stating that CERC does not have the authority to do so, the Appellant filed the captioned appeal and the IA.

(Emphasis Supplied)

60. Notably, even the submissions of CTUIL and findings of this Tribunal, based on the submissions of CTUIL, have been rendered in respect of the entire HVDC System.

61. It is clear that the issue before this Tribunal in the APTEL Judgment was the consideration of the entire Raigarh-Pugalur-Trissur HVDC System as a system of national importance. Accordingly, Scheme 3 assets, forming part of this HVDC System, are covered by the APTEL Judgment. Therefore, following the APTEL Judgment, the Impugned Order challenged in this Appeal is liable to be set aside by this Tribunal and remanded to the Central Commission for re-adjudication.

62. In addition, the Impugned Order holds that Scheme 3 of the HVDC System benefits Kerala alone and has only uni-directional power flow. Accordingly, the transmission charges for the Scheme 3 assets cannot be included under the National Component. The Impugned Order is clearly inconsistent with the approach of the Central Commission in respect of the HVDC System set out below:

(i) Transmission charges for the **Mundra - Mohindergarh HVDC system** have been directed to be borne by all beneficiaries on a pan-India basis.

(ii) **Biswanath Chariali - Agra HVDC System** has been declared by the Central Commission to be of national importance after consulting

technical bodies. Consequently, the transmission charges for the Biswanath Chariali - Agra HVDC System are included in the national component, to be borne by all beneficiaries.

63. In view of the inconsistent approach of the Central Commission, the Impugned Order is liable to be set aside and remanded for re-adjudication.

64. PGCIL has objected to the remand of the Impugned Order on the basis of the APTEL Judgment. PGCIL contends that Scheme 3 Assets are distinct from the HVDC System, and therefore the APTEL Judgment does not apply to the Impugned Order.

65. This contention is misconceived and meritless for the reason that the HVDC System has been planned and developed as one comprehensive project. The HVDC System was divided into 3 phases/ schemes only for ease of implementation. This is clear from the position set out below:

(i) Genesis of the HVDC System and its planning was undertaken during, more than 19 joint meetings of PGCIL, CTUIL, and the beneficiaries of the Southern and Western Region since 2013

(ii) The HVDC System was divided into three schemes for ease of implementation. The three schemes do not arise from separate projects of PGCIL. They indisputably form the entire HVDC System under dispute.

(iii) CTUIL in its Counter Affidavit dated 7 November 2023 has reaffirmed the position that planning of the HVDC System was integrated, while only for the purpose of implementation, the HVDC System was divided into sub-schemes.

(iv) This is also reiterated by the Central Commission in the Impugned Order.

66. Without prejudice, the Central Commission, in similar circumstances, refused to consider the transmission assets developed after the concerned HVDC System, assets in isolation. The Central Commission, after holding the Biswanath Chariali - Agra HVDC System to be of national importance, has directed that transmission charges for all assets related to the said HVDC System, be borne on an all-India basis. The Central Commission has expressly rejected the pleas of third parties that certain assets do not benefit them and accordingly, no liability to bear the transmission charges should be fastened on them. The Central Commission has maintained parity and consistency regarding the sharing of transmission charges for subsequent assets related to the Biswanath Chariali - Agra HVDC System.

67. Accordingly, the assets under Scheme 3 being related to the HVDC System planned by PGCIL, cannot be considered as distinct assets, separate from the HVDC System under dispute. The sharing of the transmission charges for Scheme 3 assets ought to be decided in consonance with the entire HVDC System.

68. The apex statutory technical bodies have recommended that the entire HVDC System be declared as one of national importance. Consequently, the transmission charges of this HVDC System have been recommended to be included under the National Component of the Sharing Regulations 2020. This is clear from the position set out below:

(i) The recommendation of CTUIL to consider the entire HVDC System to be of national importance and its transmission charges to be included under the National Component is reproduced below:

"6.2 TCC deliberation:

…

iv. CTU: Three meetings were held and it was decided that transmission system for RE integration would be taken up for implementation only after the grant of LTA. In the meeting taken by Chief Engineer, CEA on 12.10.2020, it was reiterated that the transmission system shall be developed only after the grant of LTA, submission of construction phase bank guarantee by the applicant and identification of LTTCs. CTU has not received LTA application for the 18.5 GW RE potential identified in SR. The available transmission system would be best utilised for export of power to other region in the surplus scenario of SR. If the forum approves investment for reverse mode operation, the proposal for beneficial utilization of the system would be put up to SRPC (TP) in the next meeting. Since Raigarh – Pugalur - Trissur HVDC system is huge, it is difficult to complete all the transmission elements in synchronous

way. Part commissioning of the system is being carried out with the approval of CEA. Utilization factor of the system may improve after fully operationalization of the entire system.

v. On a query from TSTRANSCO on the criteria of declaring transmission asset as national component, CTU stated that consideration of transmission asset as national component for sharing transmission charges is under the purview of CERC. However, CTU could recommend the asset for consideration under national component.

vi. SRLDC: In view of surplus scenario and optimistic RE capacity addition projections, this HVDC system would be used for export of power also. As such the entire asset Raigarh – Pugalur HVDC & Pugalur- Trissur HVDC system could be considered as national component for sharing the transmission charges.

…

ix. Chairperson TCC: CTU and POSOCO may recommend to CERC for considering the entire HVDC system under national component. SRPC may take up with MoP/CERC.

x. Recommendation:

Chairperson, SRPC may be requested to take up with MoP/CERC for declaring the Raigarh (Chhatisgarh)-Pugalur (TN) HVDC & Pugalur (TN) – Trissur (KER) HVDC system as national/strategic project/ national component.

(ii) CTUIL has reiterated this position during the meeting of the Southern Regional Power Committee ("**SRPC**") and the Technical Coordination Sub-Committee ("**TCC**") held on 4 November 2022 in the presence of PGCIL, CEA, POSOCO.

(iii) Clearly, the recommendation of CTUIL is conscious, keeping in mind the comprehensive development of the HVDC System. There is no error in nomenclature as has been orally argued before this Tribunal. It is inconceivable for an expert body such as CTUIL to contend that it was under a misconception of nomenclature. This is apparent from the fact that CTUIL has not raised any objection to, or sought modification of, the Minutes of the Meetings relied upon in these proceedings, to date. No such objection has also been raised by CTUIL in its pleadings before the Central Commission or this Tribunal, including at the time of adjudication of the APTEL Judgment. Therefore, any submissions of CTUIL contrary to its position recorded in the minutes of the various meetings, cannot be relied upon. Any attempt of CTUIL to resile from its admitted position, advocated while planning the HVDC System, is impermissible.

(iv) On the basis of the recommendations of CTUIL and other technical bodies including SRLDC, TCC, and SRPC unanimously decided that the entire HVDC System should be declared as one of national importance and take appropriate steps.

(v) The Ministry of Power by its letter to SRPC and to the Central Commission has recommended the declaration of the entire HVDC

System as one of national importance. This is reiterated by the Tribunal in the APTEL Judgment.

69. Notably, the Impugned Order has only considered the absence of bi-directional flow in the assets under Scheme 3 and consequently rejected the declaration of the Scheme 3 assets to be of national importance. The finding regarding uni-directional power flow under Scheme 3 has been rendered without consulting any technical bodies. Without prejudice, as stated above, the assets under Scheme 3 cannot be dissected from the HVDC System and considered in isolation. Any finding with respect to bi-directional power flow must be in consonance with the entire HVDC System.

70. In any event, this Tribunal has held that bi-directional power flow is not the sole criteria for deciding whether any transmission asset is of national importance and its transmission charges be included under the National Component. Therefore, viewed even from this angle, the Impugned Order is contrary to the APTEL Judgment which principally states that bi-directional flow is not the sole criteria for the determination of transmission assets as of national importance.

71. The HVDC System has additional benefits for the entire country including:

(a) The HVDC System will relieve the load in the intervening AC network. The power flow data demonstrates that the loading of the other AC inter-regional corridors has drastically reduced and relieved after the commissioning of the Raigarh - Pugalur HVDC

corridor. These lines are similarly placed as the Mundra-Mohindergarh and Talcher-Kolar HVDC lines which have been modulated to control flow through AC lines and consequently have been considered as assets of national importance.

(b) The HVDC System will help in voltage control, as power flow through parallel AC lines can be increased or decreased as per real-time requirements.

(c) HVDC System, having a bi-directional flow of power, will enhance the power transfer capability of the transmission systems.

(d) The HVDC System will accommodate renewable variation and intermittency can be adequately controlled. The HVDC link provides the flexibility of power transfer due to seasonal variations in renewable power generation in the Southern Region and would function as a pseudo phase shifter.

(e) The HVDC System and system can export/ import surplus power to the extent of 3000 MW between Southern and Western Regions as well as other regions. This will clearly improve and enhance the inter-regional power transfer capacity.

(f) This HVDC System would also provide stability to the National Grid and reduce the maximum angle spread across the Western and Southern Region grid by about 30-40 degrees.

72. It is the admitted position of PGCIL that the manner of sharing transmission charges of the HVDC System does not concern PGCIL. The manner of sharing transmission charges is a dispute *inter se* amongst the beneficiaries of the HVDC

System and other ISTS consumers of the grid, to be determined by the Central Commission.

73. Notably, this Tribunal has held that while PGCIL is entitled to the transmission charges, any erroneous determination in respect of the manner of sharing is likely to result in beneficiaries being penalized in the form of higher tariffs.

74. Accordingly, the contentions of PGCIL concerning the issue of sharing of transmission charges are without *locus* and contrary to its position canvassed before the Central Commission. Such objections of PGCIL ought not to be considered by this Tribunal.

Submissions of the Respondent No. 4 (KSEBL)

75. The KSEBL submitted that it supports the prayer of the Appellant in the present appeal for setting aside the Impugned Order dated 27.01.2023 passed by the CERC.

76. The Impugned Order passed by the CERC, in an impermissible and arbitrary manner, has sought to artificially bifurcate this link and treat it separately from the RPT HVDC system for the purpose of sharing of transmission charges. The RPT HVDC system is a composite transmission system and for this reason, it has always been treated as a single composite transmission system by all

concerned stakeholders including PGCIL. It cannot be artificially bifurcated/divided for the purpose of sharing of transmission charges.

77. It is respectfully submitted that before the CERC, the Tariff Petitions had been filed by PGCIL for the determination of tariffs for various elements of the RPT HVDC system. As per the scheme of the CERC (Terms & Conditions of Tariff) Regulations, 2019 [the "2019 Regulations"], different tariff petitions can be filed for different "*elements*" of the same transmission system, having reference to the costs/expenditure, etc. incurred for that element and the COD of that element
[***Ref****: 2019 Regulations @ Pg. 21 of PGCIL Compilation, Regn. 5 thereof @ Pg. 42 and Regn. 8 thereof @ Pg. 47*].

78. However, for the purposes of sharing of transmission charges, the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 [the "2020 Sharing Regulations"] do not permit or envisage different methodologies/schemes for sharing of transmission charges from different components of the same transmission system. The entire transmission system is to be treated as a single composite unit for deciding the principle/methodology for sharing of its transmission charges [***Ref:*** 2020 Regulations @ Pg. 407 of Appeal, Regn. 3(2) @ Pg. 412, r/w Regn. 5(1)(3)(a) at Pg. 413 which provides for sharing of transmission charges of the HVDC "system" and not separately for its different elements].

79. This Tribunal, having passed its judgment dated 18.07.2023 in Appeal No. 433 of 2022, upheld by the Hon'ble Apex Court by dismissal of the Appeals filed by PGCIL and CERC, in relation to the Raigarh-Pugalur element of the RPT HVDC system, the findings rendered and observations made therein would also squarely apply to the present case of Pugalur-Thrissur link which is an integral component of the same single composite RPT HVDC system.

80. It is respectfully submitted that for the reason that the RPT HVDC System is one single composite transmission system, and the principles/methodology for sharing of transmission charges thereof is to be followed uniformly for the entire system, it has always remained the consistent stand of all parties in various communications as well as before all judicial forums that the RPT HVDC system in its entirety ought to be treated as a National Component for the purpose of sharing of transmission charges. On this behalf, KSEBL has placed reliance on, *inter alia*, the following: -

a) **CTUIL**: Reply filed by CTUIL before this Tribunal in Appeal DFR No. 80 / 2023 [**Ref**: **Pg. 209** of Short Reply Affidavit of R-4] wherein at **Pg. 241**, it has been *inter alia* stated that "*it may be appropriate that the RPT HVDC System be declared as part of the National Component under the Sharing Regulations, 2020*".

b) **POSOCO**: The views of POSOCO have been recorded in the Bakshi Committee Report [**Ref**: Para (iv) at Pg.564-566 of Appeal] wherein POSOCO has, *inter alia*, stated that *"Considering the upcoming HVDCs, Raigarh-Pugalur and Pugalur-Thrissur which have bidirectional*

features (required under high RE scenario where substantial exports are expected from Southern Region), the Commission may consider socializing the same".

c) **Ministry of Power (MoP)**: The Ministry of Power, in its letters dated 30.05.2022 [**Ref**: Pg. 628 of Appeal, Paras 1 and 3 thereof], 20.02.2023 [**Ref**: Pg. 630 of the Appeal] as well as 01.03.2023 [**Ref**: Pg. 262 of Short Reply of R-4], has consistently maintained that it has sent communications to the CERC for considering appropriate measures with regard to the treatment of the "Raigarh-Pugalur-Thrissur" HVDC system as a National Component for sharing of transmission charges,

d) **Stand of PGCIL and CTUIL before CERC**: The stand/contentions on behalf of PGCIL as well as CTUIL have also been recorded in the order dated 27.09.2023 of CERC, to the effect that the "RPT" HVDC system ought to be treated as a National Component under the Sharing Regulations. A copy of the said order dated 27.09.2023 which had been submitted to this Tribunal during the hearing, is also annexed herewith as **ANNEXURE-A**.

81. In view of the above, it is respectfully submitted that the submissions being made before this Tribunal on behalf of PGCIL, CTUIL being inconsistent with and contrary to the consistent stand of all parties before all forums, as submitted hereinabove – would deserve to be rejected on this ground alone.

82. It is further respectfully submitted that even before the CERC, during the consideration of the Tariff Petitions, neither was it contended by any party nor

any issue framed by the CERC to the effect that the Pugalur-Thrissur link would deserve to be treated separately / distinctly from the RPT HVDC system as a whole. This issue was neither framed, argued nor deliberated in any hearing before the CERC. In fact, all Tariff Petitions for the RPT HVDC System were heard on the same date, and orders were reserved by a common order dated 11.02.2022 [**Ref**: Pg. 614 of the Appeal].

83. While all orders were reserved on the same date, the first order came to be passed on 29.09.2022 in Petition No. 685 / TT / 2020. Even in the said order dated 29.09.2022, the CERC had considered the RPT HVDC System as a whole [**Ref**: Paras 130 and 131 of order dated 29.09.2022, reproduced at Pg. 83 of Short Reply of R-4].

84. However, for the first time in the order dated 27.01.2023 (Impugned Order), a solitary finding has been recorded in para 114 of the said order **(Pg. 164)** to the effect that KSEBL is the only beneficiary of the Pugalur-Thrissur link, and this solitary finding, without considering any other factor, material or inviting views of any other statutory body – has formed the basis of the impugned decision to the effect that the Pugalur-Thrissur link cannot be treated as a National Component for sharing of transmission charges.

85. In the present proceedings before this Tribunal, new parties have been impleaded [including CTUIL], new documents have been placed on record, and submissions/contentions are being made which were never a part of the proceedings before CERC nor were those submissions/contentions deliberated

or put to the parties in any proceeding before the CERC. All contentions raised by various parties (including PGCIL and CTUIL) before this Tribunal and the documents being relied upon, do not even form part of the record, much less any consideration by the CERC while passing the Impugned Order.

86. In effect, the submissions before this Tribunal by relying on new pleadings, documents, and contentions, including by newly impleaded parties, are in the nature of converting the appellate proceedings before this Tribunal into original proceedings, for considering all relevant issues which had deserved to be considered by the CERC in the first instance. It is respectfully submitted that all such issues, documents, pleadings, and contentions ought to have been considered by the CERC at the first instance, before passing any decision in relation to the sharing of transmission charges from the Pugalur-Thrissur link. It is the settled position of law that appellate proceedings cannot be treated as a substitute for original proceedings [Ref: ***ICAI Vs. L.K. Ratna & Ors., (1986) 4 SCC 537 – para 18***].

87. It is respectfully submitted that all these issues and documents neither having been considered, nor deliberated upon before the CERC and nor forming part of its impugned order dated 27.01.2023, would not deserve to be introduced for the first time before this Tribunal, thereby converting the present proceedings into original proceedings. The CERC ought to have considered all such issues, documents, and contentions in the first instance, before passing any order. If such issues and contentions had been raised before CERC, then submissions would also have been advanced on behalf of SR beneficiaries including to the

effect that the Pugalur-Thrissur link is serving as an integral part of the inter-regional link under the RPT HVDC system. Inter-regional power is flowing from various regions, through this link, to the SR, and it is also capable of reverse flow to other regions in view of the addition of huge RE generating capacity in SR. The SR DISCOMs have been deprived of the opportunity to address all these factual submissions before the CERC at the first instance.

88. In view of the above, it is humbly submitted that it would be appropriate to set aside the impugned order and remand the proceedings to CERC to take into consideration all such issues, documents, and contentions of the parties, before passing any order with reference to the sharing of transmission charges from the Pugalur-Thrissur link, forming an integral part of the RPT HVDC system.

89. KSEBL also places reliance on the judgment dated 18.07.2023 [**Ref**: Pg. 77 of Short Reply of R-4] passed by this Tribunal in Appeal no. 433 / 2022 whereby this Tribunal [in the Appeal arising from order dated 29.09.2022 in Petition No. 685 / TT / 2020] has*, inter alia*, held that the CERC ought not to have taken the decision regarding treatment of the HVDC system as a National Component for sharing of transmission charges – without taking into consideration the views of CTU, POSOCO, MoP, CEA etc. Relevant paragraphs of the said judgment are reproduced as under for ready reference:-

> *"…… 20. We find is absolutely unjust and unreasonable on the part of the Central Commission of ignoring the recommendations of the CTU, SRLDC and SRPC in addition to the submissions made by the Southern Region constituents and even not consulting the*

CEA, the technical Apex Statutory Technical Organisation, further, passing the order without considering the advice of the Ministry of Power……

…… 29. Further, the Central Commission decided the issue after considering the comments of the CEA, POSOCO & CTU in earlies cases, however, passed the Impugned Order without considering these regulations in the instant case……

…… 33. We, therefore, find it appropriate to set aside the Impugned Order and direct the Central Commission to pass fresh order in the light of the observations recorded in the foregoing paragraphs and also duly consulting the statutory authorities i.e. CEA, CTU and POSOCO in the matter and also considering the aforementioned MoP's letter dated 30.05.2022……"

90. It is respectfully submitted that the aforesaid observations/principles laid down by this Tribunal would also squarely apply to the present case, wherein also, admittedly, CERC has not taken into consideration the views/submissions/contentions of CTU, POSOCO, MoP, CEA, etc. before passing the impugned order. It is respectfully reiterated that this exercise cannot be carried out for the first time at the Appellate stage, thereby converting appellate proceedings into original proceedings, which would also deprive the parties of the precious right of appeal before one forum. In view of the above,

even in the present case, this Tribunal may issue directions similar to those issued in the judgment dated 18.07.2023 in Appeal No. 433 / 2022.

91. It is most humbly reiterated that the issues arising in the present case, relating to the sharing of transmission charges for one element of the RPT HVDC system, being a single/composite transmission system, have already stood decided by this Tribunal by its order dated 18.07.2023 in Appeal No. 433 / 2022, and the said order also squarely applies in the present case. It is most respectfully submitted that by its order dated 18.07.2023, this Tribunal has been pleased to, *inter alia*, hold that the approach adopted by the CERC in the case of the RPT HVDC system has been completely inconsistent as compared to the approach adopted by the CERC in relation to other transmission systems, wherein the CERC has provided for the sharing of transmission charges on a national basis.

92. Further, this Tribunal has been pleased to hold that while in the other cases, the CERC took the decision after considering the views of CTU, POSOCO, and CEA, in the case of RPT HVDC system, the views of CTU, POSOCO, and CEA were never invited/taken into consideration by CERC.

93. In view of the above, vide its judgment dated 18.07.2023, this Tribunal has been pleased to direct CERC to pass fresh orders after taking into consideration the observations made by this Tribunal as well as after taking into consideration the views of CTU, CEA, and POSOCO. An order dated 31.07.2023 [**Ref**: Pg. 102 of Short Reply of R-4] to the same effect has also been passed in

the Appeal filed by KSEBL, being Appeal No. 566 / 2023 against the order dated 29.09.2022 passed by CERC.

94. The said judgment dated 18. 07.2023 passed by this Tribunal had been challenged in appeal before the Supreme Court by PGCIL as well as by the CERC, raising various grounds, including that the directions/reasoning of this Tribunal would be contrary to the Regulations, particularly Regulations 5 & 6 of the CERC (Sharing of Inter-state Transmission Charges) Regulations, 2020. However, rejecting all such contentions, the appeal filed by PGCIL as well as the appeal filed by CERC have been dismissed by the Supreme Court. The order dated 18.07.2023 passed by this Tribunal in Appeal No. 433 / 2022 has stood merged with the orders of the Hon'ble Supreme Court. [**Ref**: **(i)** PGCIL Appeal being C.A. No. 4959 / 2023 @ *Pg. 104 of Short Reply of R-4* [Relevant @ *Pg. 107*]; **(ii)** Order dated 18.08.2023 by Hon'ble Supreme Court dismissing PGCIL's Appeal @ *Pg. 139 of Short Reply of R-4*; **(iii)** CERC's appeal being C.A. No. 5883 / 2023 @ *Pg. 141* of Short Reply of R-4 [Relevant @ *Pg. 148*]; **(iv)** Order dated 25.09.2023 by Hon'ble Supreme Court dismissing CERC's Appeal @ *Pg. 206 of Short Reply of R-4*].

95. In view of the above, it is most respectfully submitted that the order dated 18.07.2023 passed by this Tribunal, having stood merged with the orders of the Hon'ble Supreme Court, would also squarely apply in the present case and the present Appeal would also deserve to be disposed of with the same directions, as contained in the order dated 18.07.2023 of this Tribunal in Appeal no. 433 / 2022.

96. Further, there would be no permissibility for any of the parties to raise the contentions which have already stood rejected by the Hon'ble Supreme Court by the dismissal of Civil Appeal No. 4959 / 2023 and Civil Appeal No. 5883 / 2023 filed by PGCIL and CERC, respectively, before the Hon'ble Supreme Court. The dismissal of the said statutory Appeals constitutes Res Judicata as well as Constructive Res Judicata, binding all the parties therein [Ref: ***Experion Developers Pvt. Ltd. Vs. Himanshu Dewan & Ors., 2023 SCC Online SC 1029 – paras 19, 20, 31*** and ***Karnataka Power Transmission Corporation Ltd. Vs. Karnataka Electricity Regulatory Commission, 2020 SCC Online APTEL 83 – paras 30, 51-55***; **copies of both these judgments had been submitted before the Hon'ble Tribunal during the hearing on 09.02.2024*].

97. Without prejudice to the submissions made hereinabove, it is respectfully reiterated that for the first time in the order dated 27.01.2023 (impugned order), a solitary finding has been recorded in para 114 of the said order **(Pg. 164)** to the effect that KSEBL is the only beneficiary of the Pugalur-Thrissur link and this solitary finding, without considering any other factor, material or inviting views of any other statutory body – has formed the basis of the impugned decision to decide that the Pugalur-Thrissur link cannot be treated as a National Component for sharing of transmission charges.

98. It is respectfully submitted that merely because at present, power is flowing in unidirectional mode on the Pugalur-Thrissur link, without considering any other material or issue, could not have been the sole basis for deciding that the said

element of the RPT HVDC system cannot be treated as a National Component for sharing of transmission charges. Such a finding of the CERC is completely contrary to and inconsistent with the approach adopted by it while considering other transmission systems i.e. Dehgam-Mundra-Mohindergarh-Bhiwani link and the +/- 800kV Biswanath Chariali-Agra HVDC Link. Even in those transmission systems, despite the flow of power being unidirectional, the systems have been treated as a "National Component" by the CERC for sharing of transmission charges. The relevant observations of CERC in the case of Biswanath Chariali-Agra has also been reproduced in the judgment dated 18.07.2023 of APTEL [**Ref**: Pg. No. 97 of Short Reply of R-4] and the same are also reproduced hereinbelow for ready reference:-

> *"…… 27. The Commission agrees with POSOCO that the usefulness and importance of the subject transmission assets should not be seen in the narrow prism of its immediate utilization during the initial years but needs to be assessed over the entire life cycle of the assets which will carry the hydro power from the huge potential in North East for the benefit by the entire country. POSOCO has rightly pointed out that this link would provide the flexibility in power transfer, function as a pseudo phase-shifter and help in mitigating oscillations in inter-area mode and above all, the frequency controllers at BNC would help in operation of NER system, if it were to get islanded due to any reasons. Further, this bi-directional HVDC technology would enable optimal hydrothermal mix and successful integration of renewable energy resources of the country due to its connectivity with the hydro surplus North Eastern Region on one end and balance part*

of the country through National Grid. Strong interconnection through AC links between all the regions of National Grid would enable exchange of power between North–East Region and rest of the country. Moreover, this high capacity interconnection between North–East Region comprising of huge hydro potential would go a long way for integration of large renewable energy resources being developed in different parts of the country. Due to direct interconnection, hydro generation can support the variability and intermittent nature of renewable generation. Thus, this vital link is a flagship endeavor of the Indian Power Sector which will benefit the entire country.

28. Since the transmission assets are of strategic and national importance whose benefits shall be derived by the entire country, we are of the view that the charges for the HVDC assets covered in the present petition should be shared by all the regions of the Country……"

99. The aforesaid aspects considered in the case of Biswanath Chariali-Agra would have also applied in the facts and circumstances of the present case. However, ignoring all such issues and factors in the present case, the impugned order has been passed directing that since the flow of power on the Pugalur-Thrissur link is unidirectional, it cannot be treated as a National Component for sharing of transmission charges. It is respectfully submitted that the present case is a clear case of arbitrariness and discrimination whereby different yardsticks are being adopted by the CERC for considering cases falling in the same class.

100. It is a matter of record that neither the Mundra-Mohindergarh transmission line nor the Biswanath Chariali-Agra transmission system is being utilized in any manner whatsoever by the SR DISCOMs. The SR DISCOMs do not receive any benefit or power from these transmission systems, and even in these two transmission systems, the flow of power remained unidirectional when the orders were passed for their transmission charges to be shared on a national basis. In the Mundra-Mohindergarh line, even as of today, the flow of power is unidirectional. Further, in the case of Biswanath Chariali-Agra, even though the flow of power was unidirectional, however, there being a "bidirectional feature" in the system, the same was treated as a National Component by the CERC. Any consistent or uniform approach would have required that even in the case of the RPT HVDC system, the availability of bidirectional features ought to have been considered and accepted by the CERC for directing that the RPT HVDC system be treated as a National Component for sharing of transmission charges.

101. Even in its judgment dated 18.07.2023, this Tribunal has clearly held that there would be no permissibility for an inconsistent approach to be adopted by the CERC for different transmission systems falling in the same class, and that unidirectional flow cannot form the sole basis for deciding whether a transmission system ought to be treated as a National Component or not. For ready reference, para 28 of the judgment dated 18.07.2023 of this Tribunal is reproduced as under:-

> *"…… 28. We find it totally inconsistent approach adopted in the present case, its decision to defer the consideration of the instant*

HVDC link under the components of National Importance to a later stage based on change in load generation and bi-directional flow of power is unreasonable as the Dehgam–Mundra–Mohindergarh–Bhiwani link, till date, has operated with only unidirectional flow, as submitted by the Appellant and also that the ±800 kV Biswanath Chariali-Agra HVDC link is underutilized and the SR is not benefitted by either of the two……"

102. It is respectfully submitted that the aforesaid observations would also squarely apply in the present case wherein the only solitary finding rendered by CERC (without any discussion thereon) is in para 114 of its impugned order, to the effect that the Pugalur-Thrissur link cannot be treated as a National Component on account of unidirectional flow of power in the said link. It is respectfully reiterated that this solitary finding/reason cannot form the basis to reject the plea for treatment of the Pugalur-Thrissur link (an integral part of the RPT HVDC system) as a National Component for sharing of transmission charges. The impugned order deserves to be set aside on this ground as well.

103. It is most humbly reiterated that any uniform and non-discriminatory approach by the CERC as the Regulator under the provisions of the Electricity Act, 2003, would have required the RPT HVDC System to be treated as a "National Component" having regard to the facts and circumstances of this transmission system, as well as the similar approach adopted by the CERC in the case of other transmission assets such as the Dehgam-Mundra-Mohindergarh-Bhiwani link and the +/- 800kV Biswanath Chariali-Agra HVDC

Link. It is respectfully reiterated that the case of the RPT HVDC system stands on the same footing as the above-mentioned two transmission systems. The CERC, by following a uniform and non-discriminatory approach, ought to have passed orders for declaring the RPT HVDC system also as a National Component for sharing of transmission charges.

Submissions of the Respondent No. 2 (PGCIL)

104. PGCIL submitted that the CERC vide the Impugned Order has determined the transmission tariff for Scheme # 3: "Pugalur-Trichur 2000 MW VSC based HVDC System" under "HVDC Bipole link between Western Region (Raigarh, Chattisgarh) and Southern Region (Pugalur, Tamil Nadu) - North Trichur (Kerala)" consisting of the following Assets and hereinafter referred to as subject assets:

> ***"Asset-1**: ±320 kV VSC based 2000 MW Pugalur(HVDC) - North Trichur HVDC(Kerala) HVDC link along with ±320 kV 1000 MW (Mono Pole-II) HVDC terminals each at Pugalur (HVDC Station) & North Trichur (HVDC Station, Kerala);*
>
> ***Asset 2**: ±320 kV 1000 MW (Mono Pole-I) HVDC terminals each at Pugalur (HVDC Station) & North Trichur (HVDC Station, Kerala);*
>
> *[The aforesaid Asset 1 and 2 are referred to as "Pugalur- Trichur HVDC System"]*

Asset-3*: LILO of North Trichur-Cochin 400 kV (Quad) D/c line at North Trichur HVDC station along with associated bays & equipment's (GIS) at North Trichur HVDC station;*

Asset-4*: 2 X 315 MVA 400/220/33 kV 3 Ph Auto Transformer along with its associated bays & equipment's (GIS) at North Trichur HVDC station; and*

Asset-5: *2 Nos. additional 220 kV line bays (GIS) at North Trichur HVDC for implementation of 220 kV feeder of Kerala.*

[The aforesaid Asset 3, 4 and 5 are referred to as "AC Systems at North Trichur]

105. The Date of Commercial Operation (COD) for these Assets is as under:

S. No	Particulars	COD	Line Type
1.	Asset 1	09.03.2021	HVDC System
2.	Asset 2	08.06.2021	
3.	Asset 3	09.03.2021	AC System
4.	Asset 4	09.03.2021	
5.	Asset 5	09.03.2021	

106. Further, submitted that most of the grounds being raised by the Appellant Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as ***'TANGEDCO')*** in the present Appeal viz lack of regulatory approval, the system to be demolished, or even bias was not raised before the Central Commission. The primary challenge is only on the inclusion of the instant assets

in the National Component and the sharing of its charges on all India basis. POWERGRID is answering the same in a point-wise manner. All page references to documents are either from the pleadings or the compilation of the documents filed on behalf of POWERGRID on 06.10.2023.

107. PGCIL argued that the contention of the Appellant that the issue raised in the instant appeal stands covered by the Judgment dated 18.07.2023 passed by this Hon'ble Tribunal for Electricity in Appeal No. 433 of 2022 (***'Judgment dated 18.07.2023'***) and followed by the Order dated 03.10.2023 in Appeal No. 775 and Appeal No. 776 of 2023, is misplaced.

108. It is well settled that the judgments passed by the Hon'ble Courts have to be read in the context of the issue framed and not like statutes. POWERGRID relies on the following judgments -

(a) **Union of India and Anr. v. Major Bahadur Singh,** (2006) 1 SCC 368 (*at Para 9*)

(b) **Goan Real Estate and Construction Limited and Anr v. Union of India**, (2010)5 SCC 388. (*at Para 31*)

109. This Hon'ble Tribunal in the judgment dated 18.07.2023 was only concerned with the Raigarh-Pugalur HVDC transmission link. All the observations of this Hon'ble Tribunal are summarized in the operative direction at *Para 30* which holds as under –

> *"30. We appreciate the views of the CTU and in the light of the above mentioned Orders, Statement of Reasons to the Sharing*

Regulations, 2020, and ***the fact that Raigarh-Pugalur HVDC transmission link will also be utilized for export of power outside the Southern Region****(bi-directional) (on account of surplus scenario and optimistic RE capacity addition projections), the HVDC transmission link is likely to be utilized for both import and export of power under various operating conditions and may be considered as National Component under the Sharing Regulations, 2020."*

110. The term "Raigarh-Pugalur-Trichur" System has been used as common parlance in several discussions, Meetings, Letters, and Orders. The Judgment dated 18.07.2023 has to be read in the context of the asset which was the subject matter in those proceedings. The said judgment of this Hon'ble Tribunal pertains to certain assets which is part of the Raigarh – Pugalur HVDC system, however does not mean that the Pugalur-Trichur transmission System has either been declared or even considered as an asset of National and Strategic Importance because of which charges are to be paid by all beneficiaries.

111. The Judgment dated 18.07.2023 was based on CTU's recommendation which pertains to the Raigarh-Pugalur transmission link, the Ministry of Power (***'MOP'***) letter dated 30.05.2022 and the fact that the Central Commission had deferred its consideration of the charges of the Raigarh-Pugalur transmission link to be shared by beneficiaries on all India basis.

112. The CTU's recommendation in the present case is that there is no bi-directional flow and also considering the future planning, the Pugalur-Trichur

HVDC transmission link is not likely to be utilized for the export of power from Kerala in the future. (**REF***. at Para 14,17,18 and 19 of the reply dated 07.11.2023 filed by CTUIL*).

113. Even the two conditions mentioned in the MOP Letter dated 30.05.2022 i.e. (a) inter-regional transmission asset and (b) bi-directional flow of power are not present in the Pugalur-Trichur HVDC System. It is an intra-regional HVDC Link for dispersal of power from Tamil Nadu to Kerala and there is no likelihood of bi-directional power flow on the link.

114. The Central Commission's Order dated 29.9.2022 passed in Petition No. 685/TT/2020 was subject matter of Appeal No. 433 of 2022 referred by the Appellant, wherein the Central Commission had held that is not an appropriate authority on declaring any asset as an asset of national and strategic importance and if need be to consider the sharing based on bi-directional flow due to change in load generation mix, the same shall be dealt by the Commission at the appropriate stage. Whereas in the present case, at Para 114 of the Impugned Order, the Central Commission has held that there is a uni-directional power flow in the Pugalur-Trichur HVDC link with Kerala being the only beneficiary of the system.

115. PGCIL countered the argument of the Appellant contending that the "*Raigarh-Pugalur-Trichur*" terminology has been used in all meetings, letters, and discussions and the corridor is ONE composite transmission system and the scheme was divided into three sub-schemes only for administrative convenience

and the tariff was sought in six different petitions only because of different COD dates.

116. If the argument of the composite scheme is accepted, there is no logic in either TANGEDCO or the other SR-Beneficiaries accepting the decision of the Central Commission in Petitions No. 243/TT/2021 and 693/TT/2020 deciding that the transmission charges covered in scheme 2 (AC system at Pugalur end) would be paid in accordance with Sharing Regulations in vogue and not on a national basis. (Schematic Map available on Page 1 of the Compilation dated 06.10.2023 filed by POWERGRID).

117. The link from Raigarh to Pugalur was planned as an inter-regional link to transmit electricity in bulk from the Western Region to the Southern Region and was conceived as Scheme 1. Both Scheme 2 and Scheme 3 were planned as power dispersal lines on an intra-region basis. In Scheme 2, an AC system was planned for power dispersal from Pugalur, and in Scheme 3, due to RoW and land issues, an intra-regional HVDC using VSC technology and underground cable as well as an AC system was planned for dispersal of power.

118. Most of the transmission schemes have multiple assets such as ICTs, bus reactors, AC transmission lines, and HVDC Links. However, the sharing of transmission charges of each asset would be done as per the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (***'Sharing Regulation, 2020'***). While the charges of ICTs planned for the drawl of power are shared by all drawee DICs

located in the concerned state, whereas in the case of bus reactors transmission charges are charged on regional bases. In the case of HVDC, 70% of charges is included in the Regional Component and are payable by all DICs of the region for which a particular HVDC is planned, and the balance 30% of charges are shared by DICs of all Regions by including it in 'National Component'.

119. It is respectfully submitted that even for an integrated project where it comprises multiple assets, the sharing of charges can be different depending upon the nature of assets as defined in Sharing Regulations, 2020.

120. The mere use of the term "*Raigarh-Pugalur-Trichur*" system in discussions, letters, and meetings does not mean that it is a composite transmission system having the very same sharing mechanism for transmission charges.

121. The Scheme was divided into 3 schemes after due discussions in RPC and SCM forums and considering the nature of the transmission assets. The implementation of 3 Schemes was discussed in the 39th Meeting of the Standing Committee on Power System Planning in Southern Region (SCPSPSR) held in New Delhi on 28.12.2015 and 29.12.2015(At Page No. 355 of the Compilation dated 06.10.2023 submitted by POWERGRID).

122. Separate investment approvals were taken for all 3 schemes and at no point in time it was contemplated that there would be only one sharing methodology for assets involved in the Scheme.

123. It is, further, submitted that the Appellant has misrepresented by comparing Mundra-Mohindergarh and Biswanath-Chariali cases with the present transmission system.

124. Neither the Biswanath-Chariali nor the Mundra-Mohindergarh cases are comparable to the Pugalur-Trichur Transmission link. Both the above systems were HVDC Links alone and have been given a separate treatment for reasons available in the respective Central Commission's Orders as well as recognized for the separate treatment in Regulation 5 (3)(b) & Regulation 5 (3)(c) of the Sharing Regulations, 2020.

125. For all other HVDCs, Regulation 5(3)(d) provides as under:

> *"5. Components and sharing of National Component (NC)*
>
> *…….*
>
> *(3) National Component-HVDC shall comprise of the following:*
>
> *……..*
>
> *(d) 30% of Yearly Transmission Charges for all other HVDC transmission systems except those covered under sub-clauses (a), (b) and (c) of this clause of this Regulation."*
>
> (At Page No. 5 of the compilation dated 06.10.2023 filed by POWERGRID)

126. The observation and findings of this Hon'ble Tribunal at Para 28 are also to compare the Raigarh-Pugalur HVDC transmission link to the Mundra-Mohindergarh and Biswanath-Chariali cases. The Pugalur-Trichur transmission Link does not stand on the same footing as the Raigarh-Pugalur transmission Link.

127. There are also several other HVDCs for which the sharing of transmission charges has been done in accordance with 2020 Sharing Regulations that is 70% of transmission charges are included in the 'Regional Component' and are being paid by DICs of the region for which particular HVDC was planned and 30% of transmission charges are included in National Component and is being paid by all of the DICs. Some of the examples of such HVDC are as under:

A. Balia-Biwadi 2500 MW + 500kV HVDC Bipole (70%Paid by NR Beneficiaries),
B. Champa-Kurukshetra HVDC Corridor (70% transmission charges are paid by NR Beneficiaries) and
C. Talcher-Kolar HVDC (70% transmission charges paid by SR Beneficiaries).

128. All these cases are covered by Regulations 5(3)(d) and 6(1)(a) of the Sharing Regulations, 2020.

129. It is a fact that even in case of an outage of the Raigarh-Pugalur HVDC transmission system for any reason, the Pugalur-Trissur Transmission System can operate independently.

130. With regard to the contention of the Appellant that no regulatory approval has been obtained for the said transmission asset, PGCIL submitted that the contentions of TANGEDCO are contrary to its main case i.e. the charges for the Pugalur-Trichur Transmission link should be shared on National basis. If there is no Regulatory Approval, there is no requirement to raise various Grounds in the present Appeal regarding the sharing of transmission charges. Surprisingly, TANGEDCO did not raise this issue in any of the meetings when the corridor was planned and executed and not even before the Central Commission as a response to the tariff petition of POWERGRID.

131. It is submitted that there is no need for obtaining Regulatory Approval in terms of Regulation 3(2) of the Central Electricity Regulatory Commission (Grant of Regulatory Approval for Execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010 which has been extracted under for ready reference –

> *"3. Scope and Applicability-*
>
> *……*
>
> *(2) These regulations shall not apply to ISTS Scheme, for which all beneficiaries/respective STUs have signed Bulk Power Transmission Agreement to share the transmission charges."*

132. It is submitted that TNEB (erstwhile common entity) has signed BPTA dated 04.03.2006 which provides as under:

> *"2.0 TRANSMISSION SYSTEM IN SOUTHERN REGION:*
>
> *2.1 The list of transmission system owned, operated and maintained by POWERGRID in Southern Region is detailed in Annexure-B. The list also incorporates such other lines which are yet to be commissioned and are under execution or to be executed.*
>
> *2.2 Any transmission line and/ or substation and/ or transformer that may be added to the transmission system detailed in Clause 2.1 of this Agreement and declared for Commercial operation by POWERGRID in Southern Region will be intimated to Bulk Power Beneficiaries/long term transmission Customer by POWERGRID as and when these are declared for Commercial Operation. Such additions shall form a part of this Agreement and shall be governed by the terms and conditions as contained herein.*
>
> *2.3 ……. <u>Any new asset which is planned for the Southern Region for which the constituents would pay the charges, a prior approval of the concerned constituent(s)/SREB shall be obtained.</u>*
>
> *……*
>
> *9.0 SHARING OF TRANSMISSION CHARGES BY BULK POWER BENEFICIARIES/LONG TERM TRANSMISSION CUSTOMER FOR PAYMENT TO POWERGRID AND BILLING BY POWERGRID*

9.1 The total monthly fixed charges determined for the entire transmission system detailed at ANNEXURE-B shall be shared and paid by the Bulk Power Beneficiaries/long term transmission Customer individually to POWERGRID, every month, in accordance with notification issued by a CERC from time to time.

9.2 Other charges such as Incentive/Disincentive, linked with transmission system availability, income-tax, FERV, Cess etc. of POWERGRID shall be as per the notification issued by CERC.

……...

18.0

The Agreement shall be deemed to have come into force with effect from the date of its signing for all other purposes and intents and ***shall remain operative up to 31.3.2027*** *subject to its revision as may be made by the parties to this Agreement provided that this Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such further period as the parties may mutually agree. In case Bulk Power Beneficiaries/long term transmission Customer continue to get transmission services from the POWERGRID even after expiry of this Agreement without further renewal or formal extension thereof, then all the provisions of this Agreement shall continue to operate till this Agreement is formally renewed, extended or replaced.*

……...

Transmission Lines/System in Southern Region :

……

NOTE

Any other transmission system which will be commissioned in SR and declared under commercial operation during the period of this Agreement shall form a part of the transmission system covered under this agreement. However, the transmission tariff for new assets shall be as per clause 8.0 of the Agreement."

133. It is not in dispute that the subject assets were implemented after due deliberation, discussion, and approval of all southern region beneficiaries in the RPC forum and various planning forums.

134. BPTA does not get amended every time a system achieves its COD since this would be an unyielding process. All DICs agree to recognize any transmission system that achieves COD for the purposes of sharing of transmission tariff.

135. BPTA is never signed system wise and remains in force for several years during which there are additions made to the ISTS. All DICs agreed that the additions would be recognized as and when the COD of the assets is achieved.

136. The TSA is also signed only once with all DICs. The TSA with TANGEDCO dated 05.08.2011 provides as under -

"4.0. Description of inter-State Transmission System (ISTS)

……..

4.2 Deemed ISTS

…….

4.2.2 Any additions/ deletions to the existing list as certified by the RPCs and approved by the Commission shall be intimated to the DICs by the Regional Power Committee (RPC). Such modifications shall form part of Schedule II of this Agreement and shall be governed by the terms and conditions contained herein.

……

4.3 New ISTS Schemes

……..

4.3.2 Any element that may be added to the ISTS detailed in Article 4.1.1 and declared for commercial operation by the concerned ISTS Licensee will be intimated to the DICs by the ISTS Licensee or the CTU, as and when these are declared under commercial operation. Such addition shall form a part of Schedule - II of this Agreement and shall be governed by the terms and conditions as contained herein.

……..

8.0 Sharing of Transmission Charges

8.1 The methodology for PoC charges calculation shall be as per Sharing Regulations, and any subsequent amendment made thereto.

8.2 All the DICs agree to pay the PoC charges as calculated by the Implementing Agency.

8.3 Point of Connection (PoC) Charges for Long Term Access, Medium Term Open Access and Short Term Open Access

8.2.1 There shall be no differentiation in PoC charges, as determined by the Implementing Agency for the Application Period, among the long-term access, medium-term open access and short-term open access to the ISTS.

8.3 Computation of PoC Charges

8.3.1 The computation of PoC charges shall be as per the Sharing Regulations and any subsequent amendment made thereto."

137. In view of the above reasons, it is clear that there was no need to obtain any regulatory approval prior to implementation of the present assets.

138. This was a System Strengthening scheme agreed to by all the beneficiaries in various planning forums (SCM and RPC forums) and this fact is not in dispute, and in fact, demanded in a compressed time frame by none less than the then Chief Minister of Tamil Nadu, there is no requirement for regulatory Approval as the requirement of BPTA and TSA has been complied with. (**REF.** *Annexure C- at page 31* of the Reply to main Appeal dated 24.04.2023 filed by POWERGRID).

139. There is no fresh BPTA or TSA required to be signed each time there is an addition to the ISTS. The LTA Agreement handed over by TANGEDCO is for a specific system being set up for the evacuation of power from an identified generator-NLC and not a system strengthening which is the present scheme for which the benefits are agreed in various RPC Meetings.

140. The earlier regulatory approval Order dated 31.05.2010 in Petition No. 233 of 2009 was for 9 high-capacity transmission corridors planned mainly for various IPPs and there was no LTA agreement signed by beneficiaries. Whereas the present scheme is a system strengthening scheme planned for the transfer of power from the Western region to the Southern region considering the load generation scenario at that time without identifying any specific generator. With regard to HCPTC-V, the assets planned were different from the Raigarh-Pugalur-Trichur system. It is not that this was a regulatory approval from Raigarh to Dhule which was later unilaterally changed by POWERGRID.

141. There are certain typographical errors in the present TSA which have been blown out of proportion. It may be noted that TANGEDCO has also signed the TSA in question and is bound by the same.

142. PGCIL submitted that the issue raised by the Appellant during the hearing was that the POA had been executed by Sh. I S Jha in favor of Mr. Zafrul Hassan and the same is akin to Sh. I S Jha signing the tariff petition and approving the same is incorrect and baseless.

143. The tariff petition for the instant Pugalur-Trichur system was signed by Sh. S. S. Raju and not Sh. Zafrul Hasan. The POA is a general power of attorney that has been executed pursuant to POWERGRID's Board of resolution dated 09.11.1990 wherein the Board of Directors has delegated certain powers to the CMD of POWERGRID which includes the power to sign and verify affidavits and file petitions. This is a routine process required for corporate governance and

structure. It may be noted that the CMD in an official capacity sub-delegates the powers to officials and the same is not done in a personal capacity.

144. In response to the arguments of the KSEBL, PGCIL submitted that the judgment dated 18.07.2023 pertains to Raigarh – Pugalur HVDC system wherein the Central Commission had held that it is not an appropriate authority on declaring any asset as an asset of national and strategic importance and if need be, to consider the sharing based on bi-directional flow due to change in load generation mix, the same shall be dealt by the Commission at the appropriate stage. In so far as the present Impugned Order is concerned, the Central Commission has decided the issue and has specifically held in para 114 that KSEB is the only beneficiary and there is uni-directional flow of power. In view of this, there is no requirement to remit the matter back to the Central Commission.

145. Also argued that in line with the observation of this Tribunal in earlier Judgment regarding consultation of statutory authorities like CEA, CTU, and POSOCO before deciding the nature of a transmission asset, CTUIL has been arrayed as a Respondent and has presented its views before this Hon'ble Tribunal. Therefore, there is no requirement to remand the matter and a final decision can be taken by this Hon'ble Tribunal itself.

146. Also, submitted that Civil Appeal 4959 of 2023 filed by POWERGRID was dismissed *in limine* by directing the Central Commission to decide the matter in the remand by 31.10.2023 by the Hon'ble Supreme Court by its Order dated

18.08.2023. This is not a case of merger or *res judicata* or constructive *res judicata*.

147. Appeal No. 433 of 2022 in any case was pertaining to Raigarh-Pugalur Transmission Link alone which is entirely different from the Pugalur-Trichur Transmission Link having uni-directional power flow and intra-regional connectivity and can be operated independently.

148. In response to other contentions of KSEBL and APDISCOMs, PGCIL submitted that the Sharing Regulations, 2020 divides the transmission charges into National Component (NC), Regional Component (RC), Transformer Component (TC), and AC System Component (ACC), Regulation 5, 6, 7 and 8 deal with each of these and how transmission charges would be shared amongst the DICs. A tariff order cannot be passed ignoring the provisions of the Sharing Regulations. As the impugned order is strictly in accordance with Regulations in vogue, the impugned order ought to be upheld.

149. Most of the Transmission schemes have multiple assets and sharing is in accordance with the applicable Sharing Regulations. For example- ICTs, Bus reactors, AC Transmission lines, HVDC links, etc. are part of a single Transmission scheme.

150. However, as per Sharing Regulations, 2020, the charges of ICTs meant for the drawl of power are shared by DICs located in the concerned states, charges of bus reactors are shared by all DICs in the region, in the case of the HVDC

system, 70% charges of HVDC links meant for drawl of power are shared by all DICs in the region and balance 30% charges are shared by all DICs in the country.

151. Even for an integrated project that comprises multiple assets, the sharing of charges can be different depending upon the nature of assets as defined in Sharing Regulations, 2020.

152. The term "*Raigarh-Pugalur-Trichur*" system is used in discussions, letters, and meetings does not mean that it is a composite transmission system having the very same sharing of transmission charges.

153. The link from Raigarh to Pugalur (Scheme – 1) was planned to transmit electricity in bulk from the Western Region to the Southern Region. Scheme 2 and Scheme 3 were planned as power dispersal lines on intra-region basis. In Scheme 2, an AC system was planned for power dispersal from Pugalur and in Scheme 3, due to RoW and land issues, an intra-regional HVDC as well as AC system was planned.

154. It was only after discussions and deliberations in SCM and RPC forums that the 3 schemes were envisaged and taken up for implementation. The 3 separate schemes were envisaged as each of the schemes caters to a particular requirement. The same was also discussed in the 39th Meeting of the Standing Committee on Power System Planning in Southern Region (SCPSPSR) held at

New Delhi on 28.12.2015 and 29.12.2015 (At Page No. 355 of the Compilation dated 06.10.2023 submitted by POWERGRID).

155. Separate investment approvals were taken for all 3 schemes and at no point in time it was contemplated that there would be only one sharing of the transmission charges.

156. Further, the MOP Letters i.e. 30.05.2022 and 01.03.2023 referred to twin conditions for the consideration of the transmission charges of all interregional links under national component

a. There is a certain quantum of bi-directional power flow through the link
b. There is an inter-regional HVDC Transmission link.

157. Both the above conditions are absent in Pugalur-Trichur HVDC Transmission Link.

158. Further, added that neither TANGEDCO nor any other SR beneficiaries has placed any data to dislodge the factual finding arrived at by the Central Commission in para 114 of the Impugned order which read as under:

> *"114. We have examined the matter. We observe that KSEBL is the only beneficiary of ± 320 kV VSC based HVDC Pugalur-Thrissur line and power also flowing in unidirectional mode from HVDC Pugalur (Tamilnadu) to Thrissur (Kerala), both are in Southern Region.*

Therefore, we do not agree with the proposal of KSEB to consider 100% yearly transmission charges of Pugalur-Trissur HVDC system under National Component."

159. In the above situation, merely because the term Raigarh-Pugalur-Trichur system has been used by all parties in various meetings and letters would not make the sharing common across all schemes. The fact that the tariff petitions were heard together and reserved for Orders cannot be stretched to mean that irrespective of the difference in finding in various tariff Orders, if one tariff order is set aside and remanded, all other tariff orders ought to be set aside. It is a relevant fact that the tariff orders pertaining to Scheme – 2 have not been challenged by any of the parties and if the contention of the SR beneficiaries is accepted, the said tariff orders ought to also have been challenged.

160. If the broad arguments of SR beneficiaries are accepted, all ISTS schemes have to be declared as assets of national and strategic importance, and the 100% transmission charges have to be recovered from the national component *dehors* the difference recognized in the Sharing Regulations, 2020.

161. While TANGEDCO has converted the present Appeal into an original proceeding by arguing several points never raised before the Central Commission, KSEB and AP Discom are insisting on remand and arguing that the hearing at the Appellate stage would not substitute lack of hearing in the Original proceedings. The Central Commission did hear the SR beneficiaries on the issues raised and held that the Pugalur-Trissur link only has uni-directional power

flow with KSEB being its only beneficiaries. This aspect has not been questioned by any of the beneficiaries. It is also relevant that KSEB and AP DISCOM have not even filed independent appeals against the impugned order and as party respondents, they cannot insist on remand. Despite detailed arguments on other issues, none of the southern region DISCOMs have challenged the entitlement of POWERGRID to receive transmission charges or on the determination of capital cost/tariff.

162. It is submitted that the Interim Order dated 19.01.2024 passed by this Hon'ble Tribunal in the present appeal inter-alia directing TANGEDCO to pay the monthly bills from the billing month of November 2023 i.e. the amount payable from January 2024, has not been complied with. TANGEDCO has not paid charges to POWERGRID even after the Interim Order passed by this Hon'ble Tribunal regarding the payment of the same. The relevant extract of the Interim Order dated 19.01.2024 is as under -

> *"Mrs. Swapna Seshadri, Learned Counsel for PGCIL, would however contend that the share of the Appellant is around 35%; a sum in excess of Rs.500 crores is due from them till November, 2023; and the monthly bills payable by the Appellant is of around Rs.15 crores. In the light of this submission and, since we will continue hearing the appeal on the next working Friday ie 02.02.2024, we direct that the interim order granted earlier shall continue only to the extent of the arrears claimed to be payable by the Appellant. We make it clear that the Appellant shall, from the billing month of November, 2023 ie the amount payable*

from January, 2024, pay the monthly bills till the disposal of either the I.A. or the main appeal, whichever is earlier. "

163. TANGEDCO has conveniently chosen to not make payments of the invoices taking the shield of the pendency of the present Appeal and also filing multiple litigations in various forums. It is clear from the conduct of TANGEDCO that it is not only trying to wriggle away from its obligation of payment for the utilization of the assets of POWERGRID but also trying to confuse the judicial process by knocking doors of various judicial forums.

164. Moreover, it is also important to highlight that regardless of the final Order/Judgment passed by this Hon'ble Tribunal in the present Appeal, the liability for payment of the Tariff still lies with TANGEDCO as per the Tariff Order and the Regulations. POWERGRID being a responsible ISTS Licensee has provided continuous and uninterrupted services for the Subject Asset, which are duly utilized by TANGEDCO. It is noteworthy that it is only TANGEDCO who chooses not to pay for its due invoices and is in continuous usage of the Pugalur-Trichur link and therefore, POWERGRID has the right to recover its tariff for the Subject Asset qua TANGEDCO as per the invoices raised which are in accordance with the Regulations and Tariff Order passed.

165. POWERGRID is a Public Sector Undertaking that is facing immense financial difficulties and is not able to recover its capital cost even though it has billed in terms of the Sharing Regulations, 2020. The outstanding dues have the potential to affect the credit rating of POWERGRID which eventually dents the

ability of POWERGRID to get loans at a comparable lower interest rate, which in turn affects the tariff to be paid by the consumers at large.

166. The appeal is without merit and deserves to be dismissed with costs with a time-bound direction to TANGEDCO to clear the pending dues.

Submissions of the Respondent No. 20 (CTUIL)

167. Vide the Impugned Order, the CERC has determined the transmission tariff for the assets comprised in the Pugalur-Trichur 2000 MW VSC based HVDC system from the date of commercial operation of the said assets to 31.3.2024 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.

168. For sharing the transmission tariff so determined, the CERC, after considering the submissions of the beneficiaries in the Southern Region to declare the Raigarh-Pugalur-Trichur HVDC system to be included under *"National Component"* for their sharing by all beneficiaries in various Regions, has held that

(i) Respondent No.4 herein i.e. Kerala State Electricity Board Ltd., is the only beneficiary of the VSC based Pugalur-Trichur line; and

(ii) the power flow therein is unidirectional i.e. from Pugalur (Tamil Nadu) to Trichur (Kerala), both being in the Southern Region.

169. Accordingly, the CERC has declined to approve the 100% yearly transmission charges of the Pugalur-Trichur HVDC system to be included under the *National Component* in terms of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2020 *[the Sharing Regulations, 2020]*. Consequently, the transmission charges for the assets comprised in the Pugalur-Trichur HVDC system have been directed to be shared by treating the same as the *Regional Component* under the Sharing Regulations.

Transmission system planning for the Raigarh-Pugalur-Trichur HVDC link:

170. In the 37th Meeting of Standing Committee Power System Planning of Southern Region *[SCPSP]* held on 31.7.2014 *[Annexure "R-20/1 @ page 26 of Reply of Respondent No.20]*, the scheme for increasing capacity for the Inter-State transmission system (ISTS) for import of power into the Southern Region was discussed.

171. Keeping in view that the Southern Region was facing power deficit which had arisen for various reasons *[stated in para 5.1 @ page 30]*, the Central Electricity Authority *[CEA]* pointed out *[in para 5.2 @ 30]* that joint studies had been carried out by the Central Transmission Utility *[CTU]* to facilitate import of 16000 MW power to the Southern Region by 2018-19 based on the pessimistic scenario of non-availability/delay in commissioning of some of the generation projects in the Southern Region. As such, three transmission system schemes were put for discussion in the Meeting which included the HVDC bipole link

between Western Region (Chhattisgarh) and Southern Region (Tamil Nadu) *[in para 5.3(B) @ page 31]*; Kerala was not envisaged in this inter-regional scheme at that stage.

172. In addition, Scheme-1, being an additional inter-regional AC link for the import of power into the Southern Region i.e. Warora-Warangal-Hyderabad-Pugalur 765 kV link was also discussed in the above Meeting. The Appellant has submitted during the hearing that this Warora-Warangal-Hyderabad-Pugalur 765 kV link, which was subsequently implemented, was catering to the power requirement in its State, thereby making the Raigarh-Pugalur HVDC link redundant for import of power into the State and as such, was no longer required. The discussion in the Meeting, however, shows that both the schemes i.e. the Warora-Warangal-Hyderabad-Pugalur 765 kV link and the Raigarh-Pugalur HVDC link were discussed for implementation simultaneously and in conjunction with enabling import of power into the then power deficit State of Tamil Nadu.

173. The above 37th SCPSP Meeting was attended by each of the beneficiaries in the Southern Region *[as per List of attendees @ page 27]*. Both the Appellant and the distribution company in Telangana suggested *[in para 5.6 @ page 33]* that Powergrid could implement the Raigarh-Pugalur HVDC link due to the urgent need for power transfer to the Southern Region. It was thus at the behest of the Appellant itself that not only the requirement of constructing the Raigarh-Pugalur HVDC link on an urgent basis was considered and planned, but even the implementing agency namely, Powergrid, was suggested by the Appellant itself owing to its established expertise.

174. When the CEA suggested that the proposed HVDC link be planned in phases *[in para 5.7 @ page 33]*, CTU advised that since power shortage in the Southern Region was very high which was likely to remain so for a long time thereby requiring the second phase to be envisaged within a very short period, it could be implemented as 6000 MW capacity HVDC link in a single phase. At this point, Respondent No.4 suggested *[in para 5.9, 5.11 @ page 33]* that the drawal of power from the proposed 6000 MW HVDC could be divided into 4000 MW terminal at Pugalur and the balance of 2000 MW could be extended to Kerala as the State was facing acute power shortage.

175. Based on the above discussions, it was agreed *[in para 5.12 @ page 34]* to have a 6000 MW HVDC link from Raigarh-Chhattisgarh to the Southern Region. Regarding building this link as a multi-terminal HVDC with one inverter station of 4000 MW in Pugalur and another inverter station of 2000 MW in Kerala, it was decided that the same would be explored and finalized in the next SCPSP Meeting. This position was reiterated in the 26th Meeting of the Southern Region Power Committee *[SRPC]* held on 20.12.2014 *[Annexure "R-20/3" @ page 71 of Reply of Respondent No.20, relevant @ page 87]*, which Meeting was once again attended by all the beneficiaries in the Southern Region.

176. Thereafter, in the Joint SCPSP Meeting of Southern Region and Western Region held on 20.4.2015 *[Annexure "R-20/5" @ page 99]*, further deliberations with regard to the implementation of the Raigarh-Pugalur HVDC link (with a terminal in Kerala) took place. In the said Meeting, CTU explained the possible

alternatives for constructing the HVDC link. One such alternative was *"Alt-II: ±800kV 6000MW HVDC LCC from Raigarh to Pugalur and ±320kV 2000MW (2x1000MW) VSC HVDC from Pugalur to North Trichur."*, which was being considered because of right of way constraints in Kerala. VSC (i.e. voltage source controller) technology was more suitable in case of the right of way problems as cables could be used more easily and for ±800kV, cable was not available. Also, with the VSC based terminals, reactive support could be provided which improved the grid stability *[in para 4.1 @ page 108]*.

177. After detailed discussions with the participation of stakeholders in the Southern Region and the Western Region, the CEA suggested *[in para 4.8 @ page 109]* as under:

> *"4.8. Director (CEA), suggested that the whole system can be planned as 3 separate schemes: HVDC part, AC part and VSC part of the schemes can be treated as three schemes separately so that the work on all three of them can be started at the same time."*

178. After further deliberations, the following systems were agreed *[para 5.0 @ page 111]:*

> *"**5.1 Scheme #1: Raigarh-Pugalur 6000 MW HVDC System***
>
> *1. Establishment of Raigarh HVDC Station ±800kV with 6000 MW HVDC terminals. This Raigarh Station would be implemented with extended bus of Raigarh (Kotra) existing 400kV S/S. The HVDC Station would have GIS for 400kV part and AIS for HVDC part.*

2. Establishment of Pugalur HVDC Stn ±800kV with 6000 MW HVDC terminals. The HVDC Station would have GIS for 400kV part and AIS for HVDC part.

3. ±800 kV Raigarh (HVDC Stn) - Pugalur (HVDC Stn) HVDC Bipole link with 6000 MW capacity.

This system would be designed with normal 20% overload for 30 minutes and 10% overload for 2 hours, as discussed above.

Estimated cost of this scheme is Rs.13776 crore

5.2 Scheme #2: AC System strengthening at Pugalur end

1. Pugalur HVDC Station - Pugalur (Existing) 400kV (quad) D/c line

2. Pugalur HVDC Station - Arasur 400kV (quad) D/c line.

3. Pugalur HVDC Station - Thiruvalam 400kV (quad) D/c line with 2x80 MVAR line reactor at Pugalur HVDC Station end and 2x63 MVAR line reactor at Thiruvalam 400kV end.

3. Pugalur HVDC Station - Edayarpalayam 400kV (quad) D/c line with 63 MVAR switchable line reactor at Edayarpalayam end.

4. Edayarpalayam - Udumulpeta 400kV (quad) D/c line. (Establishment of 400/220kV substation at Edayarpalayam with 2x500 MVA transformers and 2x125 MVAR bus reactors would be under the scope of TANTRANSCO. The bay for ISTS transmission lines at Edayarpalayam would be implemented as ISTS.)

Estimated cost of this scheme is Rs. 2008 crore

5.3 Scheme #3: Pugalur- Trichur 2000 MW VSC Based HVDC System

1. ±320kV, 2000 MW VSC based HVDC terminal at Pugalur. The HVDC Station would have GIS for 400kV part and AIS for HVDC part.

2. ±320kV, 2000 MW VSC based HVDC terminal at North Trichur. The HVDC Station would have GIS for 400kV part and AIS for HVDC part.

3. Establishment of VSC based 2000 MW HVDC link between Pugalur and North Trichur (Kerala).*

*(*part/parts of this link, in the Kerala portion, may be implemented as underground cable where implementation as overhead transmission line is difficult because of RoW issues).*

4. LILO of North-Trichur - Cochin 400 kV (Quad) D/c line at North Trichur HVDC Stn.

***Estimated cost of this scheme is Rs.3769 crore**"*

179. In this manner, the inter-regional HVDC link which was originally conceived to import power from Chhattisgarh into the Southern Region (Tamil Nadu), was now agreed to be segregated into three separate and distinct transmission schemes, where,

(i) The Raigarh-Pugalur HVDC scheme was to import power from the Western Region into the Southern Region at Pugalur (thus being an inter-regional scheme);

(ii) the AC system strengthening scheme at Pugalur end was to disburse power from Pugalur to various pooling stations in Tamil Nadu itself; and

(iii) the Pugalur-Trichur HVDC (VSC) system was for disbursing power to Kerala (the entire system within the Southern Region thus being an intra-regional scheme).

180. Subsequently, with the expected development of a large quantum of renewable energy capacity in the Southern Region, the Raigarh-Pugalur HVDC scheme was agreed to also be used for export of power by operating the same in reverse mode with minor investment at Raigarh vide augmentation of ICTs. The Pugalur-Trichur HVDC link being VSC based, had the inherent capability of 100% reverse flow; however, owing to insufficient generation resources for renewable energy in Kerala (including in the foreseeable future as per available projection), no reverse flow was envisaged in the same. Accordingly, the Raigarh-Pugalur HVDC system (with a bi-directional flow) was recommended by Respondent No.20 (CTU) for inclusion of 100% transmission charges for the Raigarh-Pugalur HVDC transmission link under the *National Component*; the same subsequently became the subject matter in Appeal No.433/2023 filed by the Appellant before this Hon'ble Tribunal.

181. However, the present Appeal has been filed with respect to the transmission tariff of the sub-Scheme 3 Pugalur-Trichur VSC based HVDC system. It is the submission of the Respondent-CTU *[in para 13 @ page 18 of Reply]* that,

> *"13. …….the Pugalur-Trichur 2000 MW VSC based HVDC system serves as interconnection between Tamil Nadu and Kerela within Southern Region with a unidirectional flow of power for meeting the demand of Kerala. Being the VSC based HVDC technology, the interconnection provides inherent capability of100% reverse power flow;*

however such, reverse power flow was not envisaged at the planning stage nor is it expected in the near future due to growing demand and insufficient generation resources in the State of Kerela. At present, the interconnection is facilitating unidirectional power flow of 2000 MW to Kerala for meeting demand."

182. As per Regulation 5(3)(d) and Regulation 6(1)(a) of the Sharing Regulations, 2020, 30% of the Yearly Transmission Charges (YTC) of the Pugalur-Trichur HVDC link are to be part of *National Component* (to be borne by all India DICs) and 70% of YTC are to be part of *Regional Component* (to be borne by Southern Region DICs). Accordingly, monthly average billing of Rs.55 Cr. (approx.) is being carried out by the CTU for the instant HVDC scheme based on the notification of transmission charges payable by DICs. As on 6.11.2023 *[as stated in para 14 @ page 20 of Reply],* a total amount of Rs.1733.01 Cr. has been billed by the CTU.

Requirement of regulatory approval for the Raigarh-Pugalur-Trichur HVDC link:

183. The CERC has framed the Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010 *[the Regulatory Approval Regulations] [Sl. No.4 @ page 163 of Compilation of documents filed by Respondent No.2]*. The scope and applicability of the said Regulations are set out in Regulation 3 which lays down in clause (2) as under:

> *"(2) These Regulations shall not apply to ISTS scheme for which all the beneficiaries/respective STUs have signed Bulk power transmission agreement to share the transmission charges."*

184. There is, thus, no requirement for regulatory approval for ISTS schemes where the beneficiaries have signed the Bulk Power Transmission Agreement *[BPTA]* to share the transmission charges.

185. In the Statement of Objects and Reasons notified by the CERC *[Sl. No.5 @ page 172 of Compilation of documents filed by Respondent No.2]*, it has been noted as under:

> *"2.2 ……. There may be delay in execution of the transmission schemes due to procedural delay in having prior agreement with all the beneficiaries. In such cases, regulatory approval by the Commission, in accordance with the spirit of the National Electricity Policy would facilitate in timely execution of the schemes."*
>
> *….*
>
> *"5.4 …..... We believe that if BPTA is signed then there would not be need for regulatory approval. National Electricity Policy also indicates that those schemes for which prior agreement with beneficiaries has not been made may be executed after getting regulatory approval.*

186. Thus, where the beneficiaries have signed Agreements undertaking to bear liability towards payment of transmission charges, the CERC has considered the transmission schemes to be kept outside the purview of regulatory approval.

187. The erstwhile Tamil Nadu Electricity Board has signed a BPTA dated 4.3.2006 with the then Power Grid Corporation of India Ltd. (acting in its capacity as the CTU) *[Sl. No.6 @ page 183 of Compilation of documents filed by Respondent No.2]*. The said BPTA provides in clause 2.0 as under:

> ***"2.0 TRANSMISSION SYSTEM IN SOUTHERN REGION***
>
> *2.1 The list of transmission system owned, operated and maintained by POWERGRID in Southern Region is detailed in Annexure-B. The list also incorporates such other lines which are yet to be commissioned and are under execution or to be executed.*
>
> *2.2 Any transmission line and/or substation and/ or transformer that may be added to the transmission system detailed in Clause 2.1 of this Agreement and declared for Commercial operation by POWERGRID in Southern Region will be intimated to Bulk Power Beneficiaries/long term transmission Customer by POWERGRID as and when these are declared for Commercial Operation. Such additions shall form a part of this Agreement and shall be governed by the terms and conditions as contained herein.*
>
> *2.3 POWERGRID shall duly intimate the Bulk Power Beneficiary/ Long term Transmission Customer regarding all changes in transmission system, asset ownership, commissioning and commercial operation of*

new assets and any other relevant development/changes. Necessary documents, drawings, cost estimates etc. shall be furnished by POWERGRID for examination by constituents. Any new asset which is planned for the Southern Region for which the constituents would pay the charges, a prior approval of the concerned constituent(s)/SREB shall be obtained.

188. Further, the Note to the Annexure B of the BPTA dated 4.3.2006 states as follows:

"Note

Any other transmission system which will be commissioned in SR and declared under commercial operation during the period of this Agreement shall form a part of transmission system covered under this agreement. However, the transmission tariff for new assets shall be as per clause 8.0 of the Agreement."

189. Thus, not only the existing lines, but also the lines/assets to be executed in future in the Southern Region are to form part of the BPTA. Their planning is to be preceded by a prior approval of the beneficiaries and their commissioning is to be informed by Powergrid to such beneficiaries; in the present case, both the requirements have been duly met.

190. Subsequently, under the Sharing Regulations, 2010, a Model Transmission Service Agreement *[TSA]* *[Sl. No.7 @ page 202 of Compilation of documents*

filed by Respondent No.2] has been notified, which has been signed by various DICs. The said TSA provides at Recital D as under:

> *"D. The development of an ISTS Scheme including any scheme which is under construction would continue to be governed in accordance with the Indemnification Agreement or Bulk Power Transmission Agreement or Transmission Service Agreement or any such agreement, as entered into between the concerned ISTS Licensee and the concerned DIC (s)(erstwhile beneficiary) to the extent relevant to the development, construction and commissioning of the elements referred therein till such time the said element is for commercial operation and actually brought into the operations, post which the terms and conditions of this TSA would come into force;"*

191. The BPTA thus stands replaced by the TSA after an element is declared under commercial operation and actually brought into operation.

192. In the above TSA, the following provision has also been made:

> *"4.0. Description of inter-State Transmission System (ISTS)*
> *4.1. Existing ISTS*
> *4.1.1. The list of ISTS presently owned, operated and maintained by ISTS Licensees in the country is detailed in Schedule - II.*
> *…*
> *4.3 New ISTS Schemes*

4.3.1. New ISTS Schemes shall be as identified in consultation with the stakeholders, by CEA and CTU.

4.3.2 Any element that may be added to the ISTS detailed in Article 4.1.1 and declared for commercial operation by the concerned ISTS Licensee will be intimated to the DICs by the ISTS Licensee or the CTU, as and when these are declared under commercial operation. Such addition shall form a part of Schedule - II of this Agreement and shall be governed by the terms and conditions as contained herein.

193. Any element that has been identified by the CEA and CTU, in consultation with stakeholders, and is declared for commercial operation by the concerned ISTS licensee, is thus to be intimated to the DICs by the ISTS licensee as and when these are declared under commercial operation and such addition is to form a part of Schedule-II of the TSA and is to be governed by its terms and conditions.

194. The Minutes of various Meetings placed on record before this Hon'ble Tribunal show that the beneficiaries of the Southern Region have agreed to the implementation of the Pugalur-Trichur HVDC link for disbursement of power from Tamil Nadu to Kerala and as such, the requirements of clause 4.3.1 of the TSA are duly met. Further, Powergrid has placed on record before this Hon'ble Tribunal, communications to Southern Region beneficiaries as regards commissioning of the instant assets. As such, the condition of clause 4.3.2 of the TSA is also met and the said asset forms part of the TSA. The Pugalur-Trichur HVDC link therefore falls under Regulation 3(2) of the Regulatory Approval Regulations and regulatory approval is not a requirement for the said link.

Importantly, the issue of regulatory approval has never been raised by any of the Southern Region beneficiaries during the planning and execution of the instant assets.

195. The submission, therefore, of Respondent-CTU *[as set out in para 17 @ page 23 of Reply]* is as under:

> *"17. That it is humbly submitted in view of the submissions made hereinabove that no regulatory approval was required to be obtained for the instant sub-scheme 3. Further the detailed system studies has been carried out and circulated as part of Agenda along with the estimated cost to all the stake holders of SR which was subsequently deliberated in the meeting. The transmission assets under sub-scheme 3, which are the subject matter of the present Appeal have been envisaged on request of Kerala for transfer of power to Kerala for meeting their demand. The interconnection is not likely to be utilized in near future for export of power considering the growing demand and generation resource (including RE potential) limitations in the State of Kerala. The subject assets have thus been rightly billed under the Sharing Regulations 2020."*

Our Observations and Conclusion

196. The major contentions of the Appellant and Respondents No. 4(KSEBL) and 8&9(AP Discoms) are as under:

(i) The present case is covered by this Tribunal's judgment in Appeal No. 433 of 2022,

(ii) No regulatory approval has been taken for the transmission scheme, and

(iii) The subject assets are part of a composite scheme named the Raigarh-Pugalur-Trichur HVDC system.

197. Let us deal with the above issues one by one.

Issue (i)

198. Appeal No. 433 of 2022 was filed by TANGEDCO, the appellant herein also, being aggrieved by the decision of the CERC, as noted in para 2 of this Tribunal's judgment in Appeal No. 433 of 2022, reproduced hereunder:

"2. The Central Commission, in the Impugned Order, has held that:

"130. The main contention of the respondents is that Raigarh-Pugalur-Trissur HVDC system is one of the important elements of the National Grid which will provide flexibility, stability and RE integration, therefore, Raigarh-Pugalur-Trissur HVDC system may be treated as a national and strategic transmission system of national importance and 100% yearly transmission charges may be considered under National Component.

> *131.* ***We are of the view that the Commission is not the appropriate forum for declaring any transmission asset to be of national and strategic importance.*** *It is further observed that transmission system being of national importance and a transmission system considered as a National Component are two different aspects. Therefore, we are not inclined to approve the 100% yearly transmission charges of Raigarh-Pugalur-Trissur HVDC system under National Component."*

199. This Tribunal also noted as under:

> *"3. The main issue, thus, raised before us is whether the Central Commission has the powers and jurisdiction to declare any transmission asset as of national importance and 100% yearly transmission charges may be considered under National Component, if the answer to this is affirmative, then the Central Commission has erred in stating that "****Commission is not the appropriate forum for declaring any transmission asset to be of national and strategic importance****", and the Central Commission ought to have considered the submissions made by the Respondents."*

200. Therefore, the main issue raised in Appeal No. 433 of 2022 is the decision of the CERC that *"****Commission is not the appropriate forum for declaring any transmission asset to be of national and strategic importance****",*

however, in the instant case the issue is whether the Scheme 3 is to be covered under the National Component, accordingly, the two appeals are distinct.

201. Further, under para 13 of the aforesaid judgment, comments of CTU are noted, as under:

> *"i. That the 4000 MW HVDC bipole link from Raigarh pooling station in Chhattisgarh to Pugalur was agreed as a system strengthening scheme for meeting the requirement of future demands in the Southern Region (SR), accordingly, the Standing Committee on Power System Planning for Southern Region (in short "SCPSP(SR)") during its 37th Meeting held on 31.7.2014 was briefed that joint studies had been carried out by CTU and the Central Electricity Authority (in short "CEA") to facilitate import of 16000 MW power to SR due to huge deficit in the Southern Region on account of delay/deferment of generation projects and non-availability of gas for existing gas based generation projects, accordingly, the Raigarh-Pugalur HVDC could be implemented under the regulated tariff mechanism, CTU (at that stage was part of PGCIL) suggested for implementation of the bipole link as 6000 MW HVDC capacity in a single phase to meet the urgent requirement of power, it was agreed, after the discussion in the Meeting and taking into account the suggestions of various SR constituents, to have a 6000 MW HVDC link from Raigarh, Chhattisgarh to SR."*

202. It was also noted that during the Joint Study Meeting on Transmission Planning for the Western Region and Southern Region on 16.12.2021, it was decided as under:

> *"iii.* ***Deliberations and decisions taken in the meeting***
> *CTU representative briefed the participants that studies have been carried out to evolve a scheme for* ***enabling operation of Raigarh-Pugalur HVDC link*** *in reverse mode from Southern Region to Western Region under high SR export scenario.*

203. It is also important to note that Appeal No. 433 of 2022 was filed by TANGEDCO challenging the Order passed by the CERC with respect to the determination of the tariff for the ± 800 kV 6000 MW Raigarh (HVDC Station)-Pugalur (HVDC Station) HVDC link along with ± 800 kV 1500 MW (Pole-I) HVDC terminals each at Raigarh (HVDC Station) and Pugalur (HVDC Station) (hereinafter referred to as "the transmission asset").

204. Thus, the transmission asset disputed before this Tribunal was limited to the HVDC link between Raigarh and Pugalur, the CTUIL also made submissions limited to the Raigarh-Pugalur link and not for the Raigarh-Pugalur-Trichur link, as observed under para 30 of the aforesaid judgment:

> *"30. We appreciate the views of the CTU and in the light of the above mentioned Orders, Statement of Reasons to the Sharing Regulations, 2020,* ***and the fact that Raigarh-Pugalur HVDC transmission link***

will also be utilized for export of power outside the Southern Region(bi-directional) (on account of surplus scenario and optimistic RE capacity addition projections), the HVDC transmission link is likely to be utilized for both import and export of power under various operating conditions *and may be considered as National Component under the Sharing Regulations, 2020."*

205. This Tribunal vide the said judgment decided as under:

"31. It cannot be disputed that Tamil Nadu and other Southern Regional States are RE rich States and the resources will be shared for the benefit of the entire country, it was also submitted by the Appellant that the loan for the instant asset was sought from the Asian Development Bank citing it as a Renewable Energy Corridor.

32. ***Therefore, primafacie the submissions of the Appellant under these circumstances find merit, for considering the Raigarh — Pugalur HVDC transmission system as assets of strategic and national importance in line with the other HVDC systems so that the charges are shared on all India basis.***

33. We, therefore, find it appropriate to set aside the Impugned Order and direct the Central Commission to pass fresh order in the light of the observations recorded in the foregoing paragraphs and also duly

consulting the statutory authorities i.e. CEA, CTU and POSOCO in the matter and also considering the aforementioned MoP's letter dated 30.05.2022."

206. Reference to the complete HVDC system i.e. "Raigarh-Pugalur-Trichur" System as part of planning, proposal, deliberation, and approval as the technical nomenclature for the complete system during several discussions and Meetings does not mean that Raigarh-Pugalur-Trichur is a composite scheme including the three Schemes are part of a composite scheme.

207. The judgment dated 18.07.2023 of this Tribunal has to be read in the context of the specific scheme/asset that was the subject matter in those proceedings, the said judgment pertains to certain assets that are part of Raigarh – Pugalur HVDC system (Scheme 1), and, any observation or decision in respect of that Scheme does not mean that the same applies to the other Schemes of the proposed system i.e. to the Pugalur-Trichur transmission System (Scheme 3) and accordingly, Scheme 3 has also to be or have been declared or even considered as an asset of National and Strategic Importance.

208. Further, the said referred judgment was passed after considering the recommendation of CTUIL, accordingly, the recommendation of the CTUIL also needs to be considered herein, which is for considering the instant asset as an intra-regional asset due to uni-directional flow.

209. The decision in the judgment dated 18.07.2023 of this Tribunal was rendered after observing and recording that there is a bi-directional flow of power, and any HVDC asset operating with a bi-directional flow should be considered as part of the National Component, however, the asset in the instant case, even having the capability of bi-directional flow, is limited to uni-directional flow, even possibility of bi-directional flow is not envisaged.

210. It cannot be disputed that the HVDC link in the aforesaid referred appeal is a bi-directional HVDC link on which power is actually flowing in both directions, whereas in the instant case, the asset has a uni-directional flow only, and KSEBL is only receiving power through the said link, therefore, the judgment in Appeal No. 433 of 2022 is not applicable in the instant case.

211. We are satisfied that the present case is not covered by the aforesaid judgment of this Tribunal, the appeal on this count is decided against the Appellant, and the submissions of Respondent No. 4, 8, and 9 are rejected.

Issue (ii)

212. The Regulatory Approval for a transmission system is governed by the Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010, and the scope and applicability of the said Regulations are set out in Regulation 3 which lays down in clause (2) as under:

"(2) These Regulations shall not apply to ISTS scheme for which all the beneficiaries/respective STUs have signed Bulk power transmission agreement to share the transmission charges."

213. Thus, there is no requirement for regulatory approval for ISTS schemes where the beneficiaries have signed the Bulk Power Transmission Agreement to share the transmission charges.

214. Also, as part of the Statement of Objects and Reasons notified by the CERC along with the draft Regulations, it is noted that:

"5.4 ..... We believe that if BPTA is signed then there would not be need for regulatory approval. National Electricity Policy also indicates that those schemes for which prior agreement with beneficiaries has not been made may be executed after getting regulatory approval.

215. CTUIL informed that the erstwhile Tamil Nadu Electricity Board has signed a BPTA dated 4.3.2006 with the then Power Grid Corporation of India Ltd. (acting in its capacity as the CTU), the said BPTA provides in clause 2.0 as under:

"2.0 TRANSMISSION SYSTEM IN SOUTHERN REGION

2.1 The list of transmission system owned, operated and maintained by POWERGRID in Southern Region is detailed in Annexure-B. The list also incorporates such other lines which are yet to be commissioned and are under execution or to be executed.

2.2 Any transmission line and/or substation and/ or transformer that may be added to the transmission system detailed in Clause 2.1 of this Agreement and declared for Commercial operation by POWERGRID in Southern Region will be intimated to Bulk Power Beneficiaries/long term transmission Customer by POWERGRID as and when these are declared for Commercial Operation. Such additions shall form a part of this Agreement and shall be governed by the terms and conditions as contained herein.

2.3 POWERGRID shall duly intimate the Bulk Power Beneficiary/ Long term Transmission Customer regarding all changes in transmission system, asset ownership, commissioning and commercial operation of new assets and any other relevant development/changes. Necessary documents, drawings, cost estimates etc. shall be furnished by POWERGRID for examination by constituents. Any new asset which is planned for the Southern Region for which the constituents would pay the charges, a prior approval of the concerned constituent(s)/SREB shall be obtained.

216. Further, the Note to the Annexure B of the BPTA dated 4.3.2006 states as follows:

"Note

Any other transmission system which will be commissioned in SR and declared under commercial operation during the period of this Agreement shall form a part of transmission system covered under

this agreement. However, the transmission tariff for new assets shall be as per clause 8.0 of the Agreement."

217. Thus, we agree with the submission of Respondents No. 2 (PGCIL) and 20 (CTUIL) that the impugned assets do not require a separate Regulatory Approval i.e. not only the existing lines but also the lines/assets to be executed in the future in the Southern Region are to form part of the BPTA, their planning is to be preceded by prior approval of the beneficiaries and their commissioning is to be informed by Powergrid to such beneficiaries, in the present case, both the requirements have been duly met.

218. Subsequently, under the Sharing Regulations, the BPTA stands replaced by the TSA after an element is declared under commercial operation and brought into operation, in the TSA, the following provision has also been made:

"4.0. Description of inter-State Transmission System (ISTS)

4.1. Existing ISTS

4.1.1. The list of ISTS presently owned, operated and maintained by ISTS Licensees in the country is detailed in Schedule - II.

…

4.3 New ISTS Schemes

4.3.1. New ISTS Schemes shall be as identified in consultation with the stakeholders, by CEA and CTU.

4.3.2 Any element that may be added to the ISTS detailed in Article 4.1.1 and declared for commercial operation by the concerned ISTS Licensee

will be intimated to the DICs by the ISTS Licensee or the CTU, as and when these are declared under commercial operation. Such addition shall form a part of Schedule - II of this Agreement and shall be governed by the terms and conditions as contained herein.

219. Thus, intimation to the DICs by the ISTS licensee as and when an asset is commissioned and declared under commercial operation after the same was identified by the CEA and CTU, in consultation with stakeholders, such addition shall form a part of Schedule-II of the TSA and is to be governed by its terms and conditions, as the conditions of the TSA are met.

220. Therefore, the Pugalur-Trichur HVDC link is covered by Regulation 3(2) of the Regulatory Approval Regulations, and thus, regulatory approval is not a requirement for the said link.

221. On being asked, it is informed by the CTUIL that the issue of regulatory approval has never been raised by any of the Southern Region beneficiaries during the planning and execution of the instant assets.

222. The Appeal is found to be devoid of merit on Issue (ii).

Issue (iii)

223. The Joint SCPSP Meeting of the Southern Region and Western Region held on 20.4.2015 deliberated the implementation of the Raigarh-Pugalur HVDC link (with a terminal in Kerala) and recommended as under:

*"**5.1 Scheme #1: Raigarh-Pugalur 6000 MW HVDC System***

1. Establishment of Raigarh HVDC Station ±800kV with 6000 MW HVDC terminals. This Raigarh Station would be implemented with extended bus of Raigarh (Kotra) existing 400kV S/S. The HVDC Station would have GIS for 400kV part and AIS for HVDC part.

2. Establishment of Pugalur HVDC Stn ±800kV with 6000 MW HVDC terminals. The HVDC Station would have GIS for 400kV part and AIS for HVDC part.

3. ±800 kV Raigarh (HVDC Stn) - Pugalur (HVDC Stn) HVDC Bipole link with 6000 MW capacity.

This system would be designed with normal 20% overload for 30 minutes and 10% overload for 2 hours, as discussed above.

Estimated** cost **of this scheme is Rs.13776 crore

5.2 Scheme #2: AC System strengthening at Pugalur end

1. Pugalur HVDC Station - Pugalur (Existing) 400kV (quad) D/c line

2. Pugalur HVDC Station - Arasur 400kV (quad) D/c line.

3. Pugalur HVDC Station - Thiruvalam 400kV (quad) D/c line with 2x80 MVAR line reactor at Pugalur HVDC Station end and 2x63 MVAR line reactor at Thiruvalam 400kV end.

3. Pugalur HVDC Station - Edayarpalayam 400kV (quad) D/c line with 63 MVAR switchable line reactor at Edayarpalayam end.

4. Edayarpalayam - Udumulpeta 400kV (quad) D/c line.

(Establishment of 400/220kV substation at Edayarpalayam with 2x500 MVA transformers and 2x125 MVAR bus reactors would be under the scope of TANTRANSCO. The bay for ISTS transmission lines at Edayarpalayam would be implemented as ISTS.)

Estimated cost of this scheme is Rs. 2008 crore

5.3 Scheme #3: Pugalur- Trichur 2000 MW VSC Based HVDC System

1. ±320kV, 2000 MW VSC based HVDC terminal at Pugalur. The HVDC Station would have GIS for 400kV part and AIS for HVDC part.

2. ±320kV, 2000 MW VSC based HVDC terminal at North Trichur. The HVDC Station would have GIS for 400kV part and AIS for HVDC part.

3. Establishment of VSC based 2000 MW HVDC link between Pugalur and North Trichur (Kerala).*

*(*part/parts of this link, in the Kerala portion, may be implemented as underground cable where implementation as overhead transmission line is difficult because of RoW issues).*

4. LILO of North-Trichur - Cochin 400 kV (Quad) D/c line at North Trichur HVDC Stn.

***Estimated cost of this scheme is Rs.3769 crore**"*

224. Therefore, the HVDC link which was originally conceived to import power from Chhattisgarh into the Southern Region (Tamil Nadu), was now agreed to be developed through three separate and distinct transmission schemes, as under:

(i) The Raigarh-Pugalur HVDC scheme was to import power from the Western Region into the Southern Region at Pugalur (thus being an inter-regional scheme);

(ii) The AC system strengthening scheme at Pugalur end was to disburse power from Pugalur to various pooling stations in Tamil Nadu itself; and

(iii) The Pugalur-Trichur HVDC (VSC) system was for disbursing power to Kerala (the entire system within the Southern Region thus being an intra-regional scheme).

225. With the expected generation of a large quantum of renewable energy in the Southern Region, the Raigarh-Pugalur HVDC scheme was resolved to be developed for bi-directional transfer of power i.e. import and export to and from the Southern Region by operating the same in reverse mode, the Pugalur-Trichur HVDC link being VSC based had also built with the inherent capability of 100% reverse flow, however, owing to insufficient generation resources for renewable

energy in Kerala (including in the foreseeable future as per available projection), no reverse flow was envisaged.

226. Accordingly, the Raigarh-Pugalur HVDC system, with an actual bi-directional flow, was recommended by Respondent No. 20 (CTU) as an asset to be included in the *National Component* i.e. for inclusion of 100% transmission charges under the *National Component*, however, no such recommendation made for the Pugalur-Trichur system due to insufficient generation resources for renewable energy in Kerala (including in the foreseeable future as per available projection).

227. Undisputedly, the three Schemes have been envisaged and agreed to as part of the Transmission assets of the Raigarh-Pugalur-Trichur HVDC system, however, implemented as separate schemes having different requirements, Scheme 1, Raigarh-Pugalur link is developed for import and export of power to /from the Southern Region through the Pugalur (Tamil Nadu), however the Scheme 3, Pugalur to Trichur is developed for meeting the power requirement of the State of Kerala.

228. Therefore, Scheme 3, part of the present appeal is distinct from Scheme 1, and thus, the tariff for the three has to be determined separately, and the Raigarh-Pugalur-Trichur HVDC system cannot be considered as a composite scheme of which Scheme 3 is one of the composite components.

Other Issues

229. The MOP vide letter dated 30.05.2022 advised that inter-regional links having bi-directional flow may be considered as part of the National Component, however, the two conditions mentioned in i.e. (a) inter-regional transmission asset and (b) bi-directional flow of power are not present in the Pugalur-Trichur HVDC System, the fact is that the instant asset is an intra-regional HVDC Link for dispersal of power from Tamil Nadu to Kerala and there is no likelihood of bi-directional power flow on the link.

230. Accordingly, reliance on the MoP letter by the Appellant and other beneficiaries is misconceived.

231. Further, the argument that the CERC has not considered the submissions of the beneficiaries needs to be examined in the light of the following observation by the CERC in the Impugned Order, as under:

> *"114. We have examined the matter. We observe that KSEBL is the only beneficiary of ± 320 kV VSC based HVDC Pugalur-Thrissur line and power also flowing in unidirectional mode from HVDC Pugalur (Tamilnadu) to Thrissur (Kerala), both are in Southern Region. Therefore, we do not agree with the proposal of KSEB to consider 100% yearly transmission charges of Pugalur-Trissur HVDC system under the National Component."*

232. We find merit in the above order, the CERC has rightly observed that the flow on the instant asset is uni-directional and only between the two states of the southern region, an intra-region uni-directional flow and the KSEBL is the sole beneficiary for the same.

233. On being asked, neither TANGEDCO nor the other respondent beneficiaries counter the factual situation as observed by the CERC or place any document or data to prove otherwise.

234. We also decline to accept the contention of the beneficiaries that CERC has reserved the petitions for orders after hearing together all the petitions filed for determining the tariff for the three schemes, therefore, if one tariff order is set aside and remanded, all other tariff orders also ought to be set aside, however, the tariff orders for Scheme – 2 has not been challenged by any of the beneficiaries and if the contention of the SR beneficiaries is accepted, the said tariff orders ought to have been challenged.

235. Every tariff order has to be dealt with based on facts and the merit of each case.

RULE AGAINST BIAS:

236. One of the cardinal principles of natural justice is *nemo debet esse judex in propria causa* (no man shall be a judge in his own cause). The deciding authority must be impartial and without bias. A predisposition to decide for or against one party, without proper regard to the true merits of the dispute, is bias. ***(Secretary to Government, Transport Department* v. *Munuswamy***

Mudaliar **: 1988 Supp SCC 651; *Rattan Lal Sharma v. Managing Committee, Dr Hari Ram (Co-Education) Higher Secondary School*, (1993) 4 SCC 10).** "Bias" in common English parlance means and implies — predisposition or prejudice. The word "bias" stands included within the attributes and broader purview of the word "malice", which in common acceptation means and implies "spite" or "ill-will" (***Stroud's Judicial Dictionary*****, 5th Edn., Vol. 3**; ***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant*****, (2001) 1 SCC 182).** Bias may be defined as a pre-conceived opinion or a pre-disposition or predetermination to decide an issue in a particular manner, so much so that such pre-disposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which renders the person unable to exercise impartiality in a particular case. **(*State of West Bengal* v. *Shivananda Pathak,* (1998) 5 SCC 513).**

237. Bias may be generally defined as partiality or preference. Any person or authority, required to act in a judicial or quasi-judicial matter, must act impartially. It is not every kind of bias which, in law, is taken to vitiate an act. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. A prejudice, which is not founded on reason and is actuated by self-interest — whether pecuniary or personal, constitutes bias. Being a state of mind, bias is sometimes impossible to determine. Courts have, therefore, evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences, affecting a fair assessment of the merits of the case, can be inferred. ***(G.N. Nayak v. Goa University*****, (2002) 2 SCC 712).**

238. In defining the scope of the rule against bias and its content, at least three requirements of public law are in play. The first seeks accuracy in public decision-making, the second seeks the absence of prejudice or partiality on the part of the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision, and who puts aside any personal prejudices. The third requirement is for public confidence in the decision-making process. Even though the decision-maker may, in fact, be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that "justice should not only be done, but should manifestly and undoubtedly be seen to be done." **(Judicial Review of Administrative Action: de Smith, Woolf & Jowell: Fifth Edition; *Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School*, (1993) 4 SCC 10 : AIR 1993 SC 2155; Sridhar Lime Products v. Deputy Commissioner of Commercial Taxes (Judgment of A.P.HC DB in W.P. No. 13970 of 2005 dated 19.08.2005).**

TESTS TO DETERMINE BIAS:

239. While examining a challenge to an order passed by a subordinate tribunal as vitiated by bias, it is necessary to ascertain whether there is a mere apprehension of bias or there is a real danger of bias, and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusions drawn therefrom. **(*Kumaon Mandal Vikas Nigam Ltd,* (2001) 1 SCC 182.; *Oryx Fisheries (P) Ltd.* (2010) 13 SCC 427).** As it is difficult to prove

the state of mind of a person, what has to be seen is whether there were reasonable grounds for believing that he was likely to have been biased. In deciding this question, human probabilities and ordinary course of human conduct should be taken into consideration. **(*A.K. Kraipak,* (1969) 2 SCC 262).**

240. The Court must first take note of all the circumstances which have a bearing on the suggestion that the judge was biased and must then ask whether those circumstances would lead of a fair minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal wsas biased and the question to be considered is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased. (**R v. Gough, (1993) 2 All ER 724**; **Porter v. Magill, (2002) 1 ALL.E.R. 465;** and **Lawal v. Northern Spirit Ltd, (2004) 1 All.E.R. 187**). It is unnecessary to delve into the characteristics to be attributed to the fair minded and informed observer. What can confidently be said is that one is entitled to conclude that such an observer would adopt a balanced approach, and that "a reasonable member of the public is neither complacent nor unduly sensitive or suspicious". **(*Lawal* v. *Northern Spirit Ltd. (2004) 1 All ER 187; Porter*, (2002) 1 ALL ER 465).**

CIRCUMSTANCES IN WHICH BIAS CAN BE INFERRED:

241. In ***Locobail (UK) Ltd.* v. *Bayfield Properties Ltd.*, (2000) 1 ALL ER 65,** the Court of Appeal held that they could not conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age class, means or sexual orientation of the judge; nor, at any rate ordinarily, could an objection be soundly based on the judge's social or

educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or previous judicial decisions; or extra-curricular utterances(whether in textbooks, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same inn, circuit, local Law Society or chambers. By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case.

MERE SUSPICION NOT ENOUGH TO ESTABLISH BIAS:

242. Mere general statements is not sufficient to indicate ill-will. There must be cogent evidence, available on record, to come to the conclusion as to whether in fact there was bias which resulted in miscarriage of justice. ***(Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant*, (2001) 1 SCC 182).** It is also not sufficient to merely allege facts which may throw more or less suspicion on the motives of a Tribunal and ask the Court to infer bias. “Objection cannot be taken to everything which might raise a suspicion in somebody's mind— ‘anything at any time which could make fools suspect.’ It is not something which raises doubt in somebody's mind that is enough to cause an order or a judgment of justices to be set aside. There must be something in the nature of real bias. (***R.* v. *Taylor etc., JJ., and Leidler ex p. Vogwill* 14 T.L.R. 155; *R.* v. *Nailsworth Licensing,***

JJ. **(1953) 2 All E.R. 652, 654; S. Venkatachalam Iyer v. State of Madras, 1956 SCC OnLine Mad 285).** If the allegations pertaining to bias are fanciful, and are made only to avoid a particular court, Tribunal or authority, the question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence. (***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant*****, (2001) 1 SCC 182).**

JUDGEMENTS RELIED ON BEHALF OF THE APPELLANT:

243. In support of his submission that the participation of Sri I.S. Jha, the erstwhile Chairman and Managing Director of Power Grid, in the hearing of the tariff petition filed by Power Grid, vitiated the impugned order by his bias, Sri P. Wilson, Learned Senior Counsel appearing on behalf of the appellant, would rely on **(1) Tamilnadu Electricity Board vs Neyveli Lignite Corporation Ltd: 2009 SCC OnLine APTEL 79; (2) Sudhakara Infratech Pvt Ltd Metro Residency vs UPERC: 2020 SCC OnLine APTEL 15; (3) Vidarbha Industries Power Limited v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 73; (4) *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.*, (2012) 10 SCC 353; (5) *Manak Lal v. Dr Prem Chand Singhvi*, 1957 SCC OnLine SC 10 : AIR 1957 SC 425; (6) *Gullapalli Nageswara Rao v. State of A.P*: AIR 1959 SC 1376; (7) *S. Parthasarathi v. State of A.P.*, (1974) 3 SCC 459; (8) *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611; (9) *International Airports Authority v. K.D. Bali*, (1988) 2 SCC 360; (10) *Jiwan Kumar Lohia v. Durga Dutt Lohia*, (1992) 1 SCC 56; (11) *K. Vijaya Bhaskar Reddy v. State of A.P.*, 1995 SCC OnLine AP 356; and (12) *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, (1995) 5 SCC 457.**

244. It is necessary for us, therefore, to take note of the law declared in the afore-said judgements.

245. In **Tamil Nadu Electricity Board v. Neyveli Lignite Corporation Ltd., 2009 SCC OnLine APTEL 79**, this Tribunal observed that, as fairly conceded by Mr. Parekh, this point regarding bias had never been raised before the Commission; however, on seeing some documents, it was clear that one of the Members of the Commission has had correspondence with the Appellant through letters; therefore, it would be appropriate to remand the matter to the Commission to give opportunity to the Appellant to argue the point regarding bias; and the Commission can consider the same, and decide about the matter in accordance with law.

246. In **Sudhakara Infratech Private Limited v. Uttar Pradesh Electricity Regulatory Commission, 2020 SCC OnLine APTEL 15,** this Tribunal directed that (a) In appeals, presented to this Tribunal under Section 111 of the Electricity Act, 2003, the Electricity Regulatory Commission, whose order is sought to be assailed, shall not ordinarily be impleaded as a contesting party respondent, and only such parties as were the disputants before the Commission should be so shown in the fray; (b) If propriety of the procedure adopted by the Commission is not challenged, and the issues raised concern the merits of the contentions of the opposite disputant, the Commission may be shown as a respondent but be qualified by use of the expression "*proforma party*"; (c) in case the tariff order, or an order passed *suo motu* by the Commission, is sought to be assailed, there being no other disputant or identifiable objector, thus creating to a situation where only Electricity Regulatory Commission can be shown on the other side, the

Commission may be impleaded as the solitary party respondent that is to be called upon to respond; (d) if personal bias or misconduct is attributed to the Member(s) of the Electricity Regulatory Commission, it will be incumbent on the Appellant to implead the Regulatory Commission as a respondent which is expected to come up and respond; € In all such matters where the Electricity Regulatory Commission is shown as a *proforma party* respondent, there shall be no obligation on the part of the Commission to appear in response to the notice on the appeal, its responsibility being restricted to making the relevant record available if and when called for.

247. This Tribunal clarified that the above directions were not to be misconstrued as inhibiting the Electricity Regulatory Commission from participation at the stage of appeal; whether or not there is a need for participation was a matter that would have to be considered, and a call taken thereupon, by the concerned Commission having regard to the facts and circumstances of each case; they only wished to under-score the fact that in cases where the Commission was deciding a dispute between two parties, it being a neutral adjudicatory body, should feel dispassionate about it, and avoid wasting its resources or running the risk of being perceived as partisan.

248. On the issue of institutional bias on the part of the Maharashtra Electricity Regulatory Commission ("MERC" for short), this Tribunal, in **Vidarbha Industries Power Limited v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 73,** noted the submission urged on behalf of the appellant that the Tariff Order dated 20.06.2016 was partly set aside by this Tribunal in Appeal No. 192 of 2016; most of the findings in the impugned

order were based on the averments and submissions made by MERC before the Supreme Court in Civil Appeal No. 372 of 2017, filed by MERC itself, challenging this Tribunal's Judgment in Appeal No. 192 of 2016 dated 03.11.2016, treating the matter in a manner as if the said Civil Appeal had already been allowed; and the MERC was using the present proceedings as a "*ruse to delay the determination of tariff*", even though Regulation 15 of MYT Regulations, 2015 required it to pass the Tariff Order within 120 days from the date of filing of the tariff petition.

249. This Tribunal then observed that, in its view, the argument of Institutional bias on the part of MERC was frivolous, wholly unfounded and in bad taste; the Commission has been entrusted by the statute (Electricity Act) with multifarious responsibilities, the adjudicatory function being only one of them; it discharges, *inter alia*, legislative functions by framing regulations that have the force of law and also oversees, as the regulator, the conduct of players in the power sector engaged in the work of generation, transmission, trading, distribution *et al* granting approvals and securing compliances; as a statutory authority, it exercises its jurisdiction in accordance with law; ordinarily, the Commission is to act as a dispassionate authority while being engaged in the duty of adjudication over disputes brought before it, and should its order be challenged in appeal it would not seek to defend it in the manner a contesting respondent (disputant) would do; but there may be occasions where the Commission is expected not merely to defend its action but also to prosecute the matter with a view to enforce the law by approaching the superior forum as an appellant; the authorization by the statute (Section 124) in favour of the regulatory commissions to arrange for legal representation on their part at the appellate

stage is just one illustration of the several such acknowledgements by law as to why the participation by the Commission cannot be begrudged; and it was not fair to attribute "*own vested interest"* to the regulator only because in a certain situation there may be an overlap between the regulatory function and adjudicatory function.

250. In ***State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.*****, (2012) 10 SCC 353,** the Supreme Court observed that judicial functions involve a decision of rights and liabilities of the parties; an enquiry and investigation into facts is a material part of the judicial function; the system of tribunals was created as a machinery for the speedy disposal of claims arising under a particular statute/Act; most of the tribunals have been given the power to lay down their own procedure; in some cases, the procedure may be adopted by the tribunal and the same may require the approval of the competent authority/Government; however, in each case, principles of natural justice are required to be observed; such tribunals perform quasi-judicial functions; under certain statutes, tribunals have been authorised to exercise certain powers conferred under some provisions of the Code of Civil Procedureor the Code of Criminal Procedure, but not under the whole Code, be it Civil or Criminal; however, in a regular court, the said Codes, in their entirety, Civil as well as Criminal, must be strictly adhered to; and, from the above, it was evident that the terms "court" and "tribunal" were not interchangeable.

251. In ***Manak Lal v. Dr Prem Chand Singhvi*****, 1957 SCC OnLine SC 10 : AIR 1957 SC 425,** the Tribunal consisted of three members with Shri Chhangani as its Chairman; and Shri Chhangani had filed his vakalat on behalf of Dr Prem

Chand in proceedings under Section 145 of the Code of Criminal Procedure, and had argued the case on that date.

252. While finding force in the submission that, since Shri Chhangani had appeared in the criminal proceedings for the opponent, he was disqualified from acting as a member of the Tribunal and this disqualification introduced a fatal infirmity in the constitution of the Tribunal itself, the Supreme Court observed that it was well settled that every member of a Tribunal, that is called upon to try issues in judicial or quasi-judicial proceedings, must be able to act judicially; it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias; in such cases the test is not whether in fact bias had affected the judgment; the test always was and must be whether a litigant could reasonably apprehend that a bias, attributable to a member of the Tribunal, might have operated against him in the final decision of the Tribunal; justice must not only be done but must also appear to be done; in dealing with cases of bias attributed to members constituting Tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed; pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a Judge; but where pecuniary interest is not attributed, but instead bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias, and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice; it would always be a question of fact to be decided in each case; and this principle applied to all Tribunals and bodies which are given jurisdiction to determine judicially the rights of parties.

253. In ***Gullapalli Nageswara Rao v. State of A.P*****: AIR 1959 SC 1376,** the Supreme Court held that the principles governing the "doctrine of bias" vis-à-vis Judicial Tribunals were well settled and they were : (*i*) no man shall be a Judge in his own cause; and (*ii*) justice should not only be done but manifestly and undoubtedly seem to be done; the two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the Tribunal; and "any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a Judge, and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias"; and the said principles are equally applicable to authorities, though they are not courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others i.e. authorities who are empowered to discharge quasi-judicial functions.

254. The Supreme Court further observed that the question raised in this case was whether, when a statute confers a power on an authority and imposes a duty on it to be a Judge of its own cause or to decide a dispute in which it has an official bias, the doctrine of bias is qualified to the extent of the statutory authorization; the decision, in ***King* v. *Bath Compensation Authority*, (1925) 1 KB 685,** was an authority for the proposition that, unless the legislature clearly and expressly ordained to the contrary, the principles of natural justice cannot be violated; in ***King* v. *Leicester Justices*, (1927) 1 KB 557** it has been held that some risk of bias is inseparable from the machinery which Parliament has set up"; these decisions show that in England a statutory invasion of the common

law objection on the ground of bias is tolerated by decisions, but the invasion is confined strictly to the limits of the statutory exception; in England, Parliament is supreme and therefore a statutory law, however repugnant to the principles of natural justice, is valid; whereas in India the law made by Parliament or a State Legislature should stand the test of fundamental rights declared in Part III of the Constitution.

255. In ***S. Parthasarathi v. State of A.P.*****, (1974) 3 SCC 459,** the Supreme Court held that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would, in the circumstances, infer that there is real likelihood of bias; the Court must look at the impression which other people have; this follows from the principle that justice must not only be done but should be seen to be done; If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias; surmise or conjecture would not be enough; there must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent; the Court will not inquire whether he was really prejudiced; and if a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision.

256. The Supreme Court also observed that they should, however, not be understood to deny that the Court might with greater propriety apply the "'reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings.

257. On the test of likelihood of bias, the Supreme Court, in ***Ranjit Thakur v. Union of India*****, (1987) 4 SCC 611**, observed that what was relevant was the reasonableness of the apprehension in that regard in the mind of the party; the proper approach for the Judge was not to look at his own mind and ask himself, however honestly, "Am I biased?"; but to look at the mind of the party before him. Relying on ***Allinson*** **v.** ***General Council of Medical Education and Registration*****: (1894) 1 QB 750, 758-59,** ***Metropolitan Properties Co. (F.G.C.) Ltd.*** **v.** ***Lannon*****, (1969) 1 QB 577, 599,** ***Public Utilities Commission of the District of Columbia*** **v.** ***Pollak*** **[343 US 451, 466-67 : 96 L Ed 1068, 1079],** and ***Regina*** **v.** ***Liverpool City Justices, ex parte Topping*** **[(1983) 1 WLR 119 : (1983) 1 All ER 490, 494],** the Supreme Court held that, thus tested, the conclusion became inescapable that, having regard to the antecedent events, the participation of Respondent No. 4 in the court-martial rendered the proceedings *coram non-judice.*

258. In ***International Airports Authority v. K.D. Bali*****, (1988) 2 SCC 360,** the Supreme Court held that it was well settled that there must be a real likelihood of bias, and not mere suspicion of bias, before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest.

259. Relying on ***Gullapalli Nageswara Rao*** **v.** ***State of Andhra Pradesh*** **: AIR 1959 SC 1376,** ***Mineral Development Ltd.*** **v.** ***State of Bihar*** **: AIR 1960 SC 468,** and ***Ranjit Thakur*** **v.** ***Union of India*****: (1987) 4 SCC 611,** the Supreme Court further held that there must be reasonableness of the apprehension of bias in the mind of the party; it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased; the apprehension

must be judged from a healthy, reasonable and average point of view, and not on mere apprehension of any whimsical person; it cannot be that, in a judicial or a quasi-judicial proceeding, a party who is a party to the appointment could seek the removal of an appointed authority or arbitrator on the ground that appointee being his nominee had not acceded to his prayer about the conduct of the proceeding; vague suspicions of whimsical, capricious and unreasonable people are not the standard; it is the reasonableness and the apprehension of an average honest man that must be taken note of; if the alleged grounds of apprehension of bias are examined, there was no substance in them; and the arbitrator was appointed by the Chief Engineer of the petitioner, who was in the service of the petitioner.

260. With regards bias in relation to a judicial tribunal, the Supreme Court, in ***Jiwan Kumar Lohia v. Durga Dutt Lohia*****, (1992) 1 SCC 56,** held that the test which is applied is not whether in fact bias has affected the judgment, but whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal **(*Manaklal* v. *Dr Prem Chand* :AIR 1957 SC 425; *Ranjit Thakur* v. *Union of India*: (1987) 4 SCC 611)**; while considering whether there is a reasonable ground for apprehension that the arbitrator will be biased, the Court should be satisfied that substantial miscarriage of justice will take place in the event of its refusal of the said application; and the discretion to give leave to revoke an arbitrator's authority has to be exercised cautiously and sparingly.

261. In ***K. Vijaya Bhaskar Reddy v. State of A.P.*****, 1995 SCC OnLine AP 356,** it has been held that, when a Court, judicial authority, quasi-judicial authority or

a statutory authority or any other authority including administrative authority takes a decision which has civil consequences and/or affects the rights of a person, the doctrine of bias would apply.

262. In ***C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*****, (1995) 5 SCC 457,** the Supreme Court held that Judicial office is essentially a public trust; society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influence; he is required to keep the most exacting standards of propriety in judicial conduct; any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process; it is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity; the standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate; in fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others; and, therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

263. The question of bias was not examined In **Tamil Nadu Electricity Board v. Neyveli Lignite Corporation Ltd., 2009 SCC OnLine APTEL 79**, and on its attention being drawn to the fact that one of the Members of the Commission had corresponded with the Appellant through letters; this Tribunal remanded the matter to the Commission to give an opportunity to the Appellant to argue the point regarding bias, and to decide the matter in accordance with law.

264. In **Sudhakara Infratech Private Limited v. Uttar Pradesh Electricity Regulatory Commission, 2020 SCC OnLine APTEL 15,** this Tribunal directed, among others, that, if personal bias or misconduct is attributed to the Member(s) of the Electricity Regulatory Commission, it will be incumbent on the Appellant to implead the Regulatory Commission as a respondent which is expected to come up and respond. The question whether the person. against whom bias is alleged, should be arrayed as a respondent eo-nominee, was not considered in the said judgement.

265. In **Vidarbha Industries Power Limited v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 73,** the allegation of institutional bias on the part of the Maharashtra Electricity Regulatory Commission ("MERC" for short) was rejected by this Tribunal, and it was held that it was not fair to attribute "*own vested interest"* to the regulator only because in a certain situation there may be an overlap between the regulatory function and adjudicatory function.

266. In ***State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.*, (2012) 10 SCC 353,** the Supreme Court observed that most tribunals have been given the power to lay down their own procedure; principles of natural justice should be observed, as such tribunals perform quasi-judicial functions; and, under certain statutes, tribunals have been authorised to exercise certain powers conferred under some provisions of the Code of Civil Procedure or the Code of Criminal Procedure, but not under the whole Code.

267. In ***C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, (1995) 5 SCC 457,** the Supreme Court held that a Judge's official and personal conduct should

be free from impropriety; and the same must be in tune with the highest standard of propriety and probity.

268. None of the afore-said judgements relied on behalf of the appellants, have any bearing on the case on hand. Different facets of bias have been considered, in the following judgements relied on behalf of the appellant, ie (1) In ***K. Vijaya Bhaskar Reddy v. State of A.P.*****, 1995 SCC OnLine AP 356,** where it has been held that, when a quasi-judicial or statutory authority takes a decision which has civil consequences. and/or affects the rights of a person, the doctrine of bias would apply. (2) In ***Manak Lal v. Dr Prem Chand Singhvi*****, 1957 SCC OnLine SC 10 : AIR 1957 SC 425,** where the Supreme Court held that every member of a Tribunal must be able to act judicially, impartially, objectively and without any bias; the test is not whether, in fact, bias had affected the judgment, but whether a litigant could reasonably apprehend that a bias, attributable to a member of the Tribunal, might have operated against him in the final decision; and these principles applied to all Tribunals and bodies which are given jurisdiction to determine judicially the rights of parties. (3) In ***Gullapalli Nageswara Rao v. State of A.P*****: AIR 1959 SC 1376,** wherein the Supreme Court held that. if a member of a quasi-judicial body is "subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the Tribunal; and "any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a Judge, and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias. (4) In ***S. Parthasarathi v. State of A.P.*****, (1974) 3 SCC 459,** where the Supreme Court held that, If right minded persons would think that there is real

likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; surmises or conjectures would not suffice; and there must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. (5) In ***Ranjit Thakur v. Union of India*****, (1987) 4 SCC 611**, where the Supreme Court, observed that the proper approach for the Judge was not to look at his own mind and ask himself, however honestly, "Am I biased?"; but to look at the mind of the party before him. (6) In ***International Airports Authority v. K.D. Bali*****, (1988) 2 SCC 360,** where the Supreme Court held that there must be a real likelihood of bias, and not mere suspicion of bias and (7) In ***Jiwan Kumar Lohia v. Durga Dutt Lohia*****, (1992) 1 SCC 56,** where the Supreme Court held that the test was not whether in fact bias had affected the judgment, but whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal; and, in considering whether there is a reasonable ground for apprehension that the Tribunal will be biased, the Court should be satisfied that substantial miscarriage of justice will take place in the event of its refusal to intervene.

269. Bearing the afore-said principles in mind, let us examine whether the allegations, levelled by the appellant against Mr. I.S. Jha – Member CERC, would justify setting aside the impugned order as being vitiated by bias.

DOES SIGNING OF A POWER OF ATTORNEY EARLIER CONSTITUTE BIAS?

270. Sri P. Wilson, Learned Senior Counsel appearing on behalf of the Appellant, would submit that Sri I.S. Jha, the technical member of the CERC was

a Director in the second respondent PGCIL from 2009 onwards, he was the Director-Projects in the year 2014-2015; he was a member of the committee on investment of projects, and a shareholder in the second respondent; he was also on the committees on award of contracts, and for transfer/split/re-materialization of shares of PGCIL; and the said member of CERC, as the then CMD of PGCIL, was responsible for, and in directing implementation of the Raigarh-Pugalur - Thrissur HVDC system.

271. Sri Nikhil Nayyar, Learned Senior Counsel appearing on behalf of the CERC, would submit that these allegations of bias, casting wholly unjust aspersions on the integrity of a member of the CERC, and on the institution itself , are false, frivolous and without merit; even in the present appeal, the Appellant has raised the issue of bias only at two places (Pr. (x) & (y) @ Pg 49 and Grounds XXV @Pg 68); and they rely only on two documents to substantiate their case namely: (1) a Power of Attorney 21.08.2018 filed in Petition No, 685/TT/2020 by PGCIL, and (2) Judgment passed by the High Court of Delhi in WP(c) No. 4537/2021 dated 20th May, 2021.

272. Learned Senior Counsel would submit that the Power of Attorney, filed as Annexure A-42 in the appeal, is a general power of attorney which was issued by PGCIL to one Zafrul Hassan to act on behalf of PGCIL in litigations; the said attorney was issued pursuant to a resolution passed by the Board of Directors of PGCIL on 9.11.1990; and the said POA was signed by Shri I.S. Jha in his earlier capacity of Chairman and Managing Director, acting on behalf of the Board of Directors, and not in his personal capacity.

273. Except for a bald assertion, that too in their written submissions, that Shri I.S. Jha, as the then CMD of PGCIL, was responsible for, and had directed implementation of the Raigarh-Pugalur-Thrissur HVDC system, no material has been placed on record by the appellant to substantiate such a contention. The plea taken in this regard, by the appellant in their appeal filed before this Tribunal, is also vague.

274. In para 7 (x) of the Appeal filed by them, the Appellant has stated as under:-

> *"Shri I. S. Jha was the Director (Projects) and was also holding the additional charge as CMD of the company. Later he became the Chairman & Managing Director of Power Grid Corporation of India Limited (POWERGRID) with effect from 10.11.2015. He was part and parcel of the decision-making process and execution of the projects in issue. The lead petition 685/TT/2020 was filed by one of the Chief Manager Commercial under the Power of Attorney issued by him in the capacity of CMD, PowerGrid of India for fling the tariff petition. However, the matter was heard and decided by the above said shri. I.S. Jha as Technical Member of CERC."*

275. A copy of the Power of Attorney, referred to in the aforesaid extracted paragraph of the Appeal, has been enclosed as an annexure to the appeal. The said Power of Attorney was given in favour of Shri Zafrul Hasan, Chief Manager (Commercial) of the Corporate Centre of POWERGRID in October, 2018, on behalf of Power Grid Corporation of India Ltd, by Shri I.S. Jha as its Chairman and Managing Director.

276. By way of the said Power of Attorney, Power Grid Corporation of India Ltd constituted and appointed Shri Zafrul Hasan as its lawful Attorney to do the following acts:-

> "1. To institute, defend, argue and conduct petitions, sign and verify petitions, written statements, written submissions and to file the same before the Supreme Court/ High Court/ Central Electricity Regulatory (Commission (CERC)/ State Electricity Regulatory Commission(s) (SERCs)/Appellate Tribunal for Electricity.
> 2. To appear, act and plead before the Supreme Court/ High Court/ CERC/SERCs/Appellate Tribunal for Electricity.
> 3. To compromise, compound or withdraw cases filed before the Supreme Court/ High Court/ CERC/ SERCs/Appellate Tribunal for Electricity.
> 4. To file petitions or affidavits before the Supreme Court/ High Court/ CERC/SERCs/Appellate Tribunal for Electricity and to obtain copies of documents, papers, records etc.
> 5. To apply for the inspection of the records of the proceedings of the Supreme Court/ High Court/ CERC/SERCs/Appellate Tribunal for Electricity.
> 6. To issue notices and accept service of any summons, notices or orders issued by the Supreme Court/ High Court/ CERC/SERCs/Appellate Tribunal for Electricity on behalf of the Company.
> 7. To sign the appeals, petition, etc. arising out of any summons, notices, or orders issued by the Supreme Court/ High Court/

CERC/SERCs/Appellate Tribunal for Electricity on behalf of the Company.

8. Generally to do all lawful acts necessary for the above mentioned purposes."

277. The said Power of Attorney further states that PGCIL agreed to ratify and confirm all acts whatsoever to be done lawfully or cause to be done by virtue of this Power of Attorney. The said Power of Attorney concludes stating that the Company, in pursuance of the resolution of the Board of Directors of the company passed on 9th November, 1990, had, under the hands of its Chairman & Managing Director, executed these presents under the common seal of the company on this ....day of October, 2018.

278. It is clear from the said Power of Attorney that it has been issued by POWERGRID in favour of its Chief Manager (Commercial), and Mr. I.S. Jha has merely signed the said Power of Attorney on behalf of POWER GRID as its Chairman and Managing Director. By the Board resolution dated 09.11.1990, as is referred in the above mentioned Power of Attorney, it was resolved that :-

"FURTHER RESOLVED THAT-

the Chairman & Managing Director be and is hereby authorised to sub-delegate any or all the powers conferred upon him to full time Directors, Executive Directors, General Managers and other Officers under him, subject to due control being retained by him and further subject to such conditions, as he may deem fit, consistent with the need for prompt, effective and efficient discharge of responsibilities entrusted to such a

Director/Officer and for the purpose, he may execute Special or General Power of Attorney under the Common Seal of the Company."

279. It is relevant to note that the Board resolution dated 09.11.1990 only authorised the Chairman and Managing Director to issue the Power of Attorney on behalf of POWERGRID. It does not stand to reason, therefore, that a Power of Attorney, executed by POWERGRID in favour of its Chief Manager, would constitute bias on the part of the signatory to the said Power of Attorney ie Mr. I.S. Jha who was then its Chairman and Managing Director.

280. While the Power of Attorney, on which reliance is placed on behalf of the Appellant, was issued in favour of Shri. Zafrul Hasan, Chief Manager (Commercial), Petition No. 172/TT/2021 filed on behalf of Power Grid on 02.02.2021 (which resulted in the impugned order under appeal being passed by the CERC on 27.01.2023) was in fact deposed by Mr. A.K. Verma S/o Shri Dr. V.P. Verma working as the Senior General Manager (Commercial) as he was duly authorised to do so. As it is not even the appellant's case that Sri I.S.Jha had issued the Power of Attorney as C&MD of Power Grid in favour of Mr. A.K. Verma, it does not stand to reason that the Power of Attorney issued in favour of Shri. Zafrul Hasan, by Power Grid represented by its Chairman and Managing Director (ie Mr. I.S. Jha) in October, 2018 would constitute bias on the part of Mr. I.S. Jha because he was one of the three members of the CERC which heard and decided the Petition filed by POWERGRID in 2021.

JUDGEMENT OF THE DELHI HIGH COURT: ITS EFFECT:

281. The other ground, on which the allegation of bias is based, is that a similar order was passed against Sri I.S. Jha, Member-CERC by the Delhi High Court in WP(C) 4537 of 2021 dated 20.05.2021.

282. In para 7(y) of the present appeal, the Appellant has stated as under:-

> *"(y) The Hon'ble High Court of Delhi passed an order dated 20.05.2021 in WP(C) 4537 of 2021 filed by Shiga Energy Private Limited setting aside the order passed by Sri I.S. Jha, Member/ CERC and directed to place the petition before the bench with different members on the grounds of apprehension of bias. The Appellant submits that a similar ground that Shri I. S. Jha was the Director (Projects) and was also holding the additional charge as CMD of Powergrid during the relevant period and became the Chairman & Managing Director of Power Grid Corporation of India Limited (POWERGRID) with effect from 10.11.2015 exists in the present matter also. He was part and parcel of the decision-making process and execution of the projects in issue. Since Shri IS Jha had specifically dealt with the subject issue in his capacity as Director (Projects) and CMD of the petitioner company, the Central Commission should have placed the matter before a different bench of which Shri I.S. Jha was not a member as demanded by judicial propriety. Since the transmission system was implemented without obtaining Regulatory approval of the Central Commission, there is a clear bias in approving the tariff by the bench comprising of Shri. I.S. Jha and hence the impugned order is liable to be set aside."*

283. This contention has been reiterated again in Para 9(XXV) of the Appeal as under:-

> *"That the Hon'ble High Court of Delhi passed an order setting aside the order passed by Sri I.S. Jha Member/ CERC and directed to place the petition before the bench with different members on the grounds of apprehension of bias. Since the transmission system was implemented without the mandatory Regulatory approval of the Central Commission, there is an apprehension of bias in approving the tariff by the bench comprising of Shri. I.S. Jha and hence the impugned order is liable to be set aside."*

284. Sri Nikhil Nayyar, Learned Senior Counsel appearing on behalf of the CERC, would submit that, in the proceedings before the High Court of Delhi in WP (C) No. 4357/2021, which culminated in the judgment dated 20.05.2021, the Petitioner had moved an application before the CERC for recusal of Shri I.S. Jha, which was dismissed, and the said order was challenged by way of a Writ Petition; the Delhi High Court, in its judgment dated 20.05.2021, did not cast any aspersions of bias or on the conduct of the said member; and the said order, on the other hand, categorically records to the contrary.

285. It is necessary for us, therefore, to take note of what the Delhi High Court had held in the said judgment. The judgement in **"Shiga Energy Pvt Ltd Vs. Central Electricity Regulatory Commission & Ors"** (Order in W.P.(C) No.4537/2021 dated 20.05.2021) was passed in a Writ Petition filed against the order of the CERC adjourning sine die the application filed by the Petitioner requesting that the petition be placed for hearing before a bench not comprising

of Mr. I.S. Jha, Member of the Commission. The said application was filed by the Petitioner therein expressing apprehension of bias against Mr. I.S. Jha as he was earlier the Chairman and Managing Director of Power Grid Corporation of India Ltd, one of the Respondents in the petition, filed by the Writ Petitioner before the CERC. Mr. I.S. Jha was also alleged to have dealt with the said issue, and to have even corresponded with the Writ Petitioner on behalf of M/s. Power Grid Corporation of India Ltd in his capacity as its Chairman and Managing Director. The contention urged before the Delhi High Court, on behalf of Power Grid, was that, when the impugned order was passed, there were only three Members in the Commission and now there were five Members.

286. It is in this context that the Delhi High Court observed as under:-

> *"5. Without, in any manner accepting the plea of alleged bias or casting any aspersion on the independence and conduct of Mr. I.S. Jha, I am of the view that as Mr. I.S. Jha was the Chairman-cum-Managing Director of M/s Power Grid Corporation of India Ltd. and had specifically dealt with the subject issue and corresponded with the petitioner on behalf of M/s Power Grid Corporation of India Ltd., judicial proprietary demanded that the Commission should have placed the matter before a different bench of which Mr. I.S. Jha was not a member.*
>
> *6. Since it is stated that at the time when the subject impugned order was passed, there were only three members in the Commission and now the strength of the Commission has increased, it would be appropriate if the order adjourning the petition filed by the petitioner*

sine-die is set aside and the petition is placed before a bench of the Commission of which Mr. I.S. Jha is not a member.

7. *Accordingly, order dated 08.02.2021 is set aside. Order adjourning the petition sine-die is recalled and it is directed that the petition be placed before a bench of which Mr. I.S. Jha is not a member.*

8. *It is once again clarified that this order is passed without, in any manner, accepting the allegation of bias or casting any aspersion on the impendence or conduct of Mr. I.S. Jha."*

287. Reliance placed by the Appellant, on the said judgment of the Delhi High Court, is misplaced. Firstly because, unlike in the aforesaid case, the Appellant herein has not raised the plea of bias during the hearing of Petition No. 172/TT/2021 filed by POWERGRID before the CERC. Secondly the plea of bias, urged in the Writ Petition filed before the Delhi High Court, was that Mr. I.S. Jha, who was hearing a petition in which POWERGRID was one of the Respondents, had not only dealt with the issue but had even corresponded with the Writ Petitioner on behalf of POWERGRID in his capacity as its Chairman and Managing Director. The allegation, in short, was that, since Mr. I.S. Jha was involved in the very same transaction and had corresponded with the Writ Petitioner, he ought not to have heard the petition filed by the Writ Petitioner in which POWERGRID was one of the Respondents. No such allegation has been made in the present appeal.

288. In any event, the Delhi High court has, in its judgement dated 20.05.2021, made it abundantly clear that they were not accepting the plea of bias or casting any aspersions on the independence and conduct of Mr. I.S. Jha. It was only

because Mr. I.S. Jha, as the Chairman-cum- Managing Director of M/s Power Grid Corporation of India Ltd, had specifically dealt with the subject issue, and had corresponded with the Writ Petitioner on behalf of POWERGRID, that the Delhi High Court was of the view that judicial propriety demanded that the matter should have been heard by a different bench of the CERC.

289. Reliance placed by the Appellant on the judgment of the Delhi High Court, in support of their allegation that the impugned order is vitiated by bias, necessitates rejection.

ALLEGATIONS OF BIAS MADE BY THE APPELLANT IN THEIR WRITTEN SUBMISSIONS:

290. In the written submissions filed on behalf of the appellant, by Sri P. Wilson, Learned Senior Counsel, it is contended that the appellant's apprehends that the decision, taken in the impugned order, is vitiated by bias since there has been (i) Non-compliance of CERC Regulatory Approval Regulations, 2010; (ii) Proceeding with the project without applying for funds with the PSDF and no direction to first apply for PSDC funds as directed by CERC in Petition No.67/TT/2015; (iii) Non-compliance of three amendments to the Sharing Regulations 2010, though the same was made applicable to Biswanath-Chariali-Agra HVDC transmission system vide order dated 08.01.2016 & 31.08.2017 in Petition No. 67/TT/2015 by CERC; (iv) The Central Commission constituted the Bakshi Committee to revisit the Sharing Regulations 2010; after the Bakshi Committee submitted its report, a Committee was constituted under the Chairmanship of Shri. I.S. Jha to examine the Bakshi Committee report, and formulate / draft amendments / re- enactment of the Sharing Regulations 2010;

the Jha Commission Report overruled the Bakshi Committee report, and changed the sharing methodology of HVDC transmission systems; (v) the Jha Committee Report recommended to continue sharing of transmission charges of Mundra-Mohindergarh and Biswanath-Chariali-Agra by DICs throughout the country, and the same was included in the 2020 Sharing Regulations; however a similar HVDC system, ie the Raigarh-Pugalur-Thrissur HVDC, was not considered as an asset of strategic and national importance for sharing of transmission charges on a national basis; (vi) the COD of the assets were intentionally delayed beyond the date of notification of the 2020 Sharing Regulations; (vii) the HVDC system of Mundra Mohindergarh and Biswanath Chariali-Agra were treated as national assets, and transmission charges were directed to be recovered from all DICs across the country through the pool; (viii) the Commission itself, vide order dated 08.01.2016, declared Biswanath-Chariali-Agra as an asset of strategic and national importance, and directed PGICL to implead all DICs in the said petition. However, in the case of the present HVDC, no such order was passed; (ix) the letter from Ministry of Power to the Central Commission, in Biswanath-Chariali-Agra was considered by the Commission, but the letters of Ministry of Power in the case of Raigarh-Pugalur-Thrissur HVDC system was not even adverted to.

291. The Appellant has sought to further improve its case beyond what has been stated in their Appeal, with respect to allegations of bias levelled by them against Mr. I.S. Jha, by referring to fresh facts in their written submissions. As written submissions are filed on behalf of the Appellant, by the Counsel appearing on their behalf, and facts cannot be urged afresh therein, they cannot form the basis of an enquiry into the allegations of bias levelled against Mr. I.S. Jha, the then

Member-CERC. We have, nonetheless, proceeded to examine the allegations of bias made therein and, as shall be detailed hereinafter, are of the view that these allegations would also not constitute bias on the part of Mr. I.S. Jha necessitating the order, passed in Petition No. 172/TT/2021 dated 27.01.2023, being set aside on this score.

292. While the contentions, urged on behalf of the Appellant on merits, are being dealt with separately in this judgement, suffice it to observe that errors, even if there be any in the impugned order, would, by itself, not constitute bias vitiating the order under appeal. The validity or otherwise of the Sharing Regulations (both 2010 and 2020) cannot be subjected to examination in appellate proceedings under Section 111 of the Electricity Act and the vires of such regulations, which are in the nature of subordinate legislation, can only be examined in judicial review proceedings before the High Courts under Article 226 of the Constitution of India. The plea of bias vitiating the impugned order, urged in the written submissions filed on behalf of the appellant, do not merit acceptance.

FAILURE TO IMPLEAD THE MEMBER, AGAINST WHOM BIAS IS ALLEGED, AS A RESPONDENT IN THE APPEAL: ITS CONSEQUENCES:

293. Sri Nikhil Nayyar, Learned Senior Counsel appearing on behalf of the CERC, would submit that the allegation of bias, against one of the members of the Commission, namely Shri I.S. Jha (who demitted office on 20.01.2024), were levelled without impleading the said member as a respondent in this appeal.

294. Allegations of bias are more easily made than established. Any finding on such allegations can only be recorded in proceedings where the person, against

whom bias is alleged, is arrayed as a respondent, and that too after he is given an opportunity of being heard. The person, to whom bias is imputed, should therefore be impleaded *eo-nominee* as a party respondent to the proceedings, and should be given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations should be made. Otherwise this, itself, would be violative of principles of natural justice as it would amount to condemning a person without giving him an opportunity of being heard. **(*State of Bihar* v. *P.P. Sharma, 1992 Supp (1) SCC 222 : AIR 1991 SC 1260*; Madhu Bahuguna v. Uttarakhand Public Service Commission, 2020 SCC OnLine Utt 18).**

295. In the present case the Appellant has chosen not even to implead Mr. I.S. Jha as a Respondent in the present Appeal. As no order can be passed behind his back, the allegations of bias, levelled against Mr. I.S. Jha, Technical Member of CERC, ought not to be examined in the present appeal.

FAILURE TO RAISE THE PLEA OF BIAS BEFORE THE CERC: ITS EFFECT:

296. Sri Nikhil Nayyar, Learned Senior Counsel appearing on behalf of the CERC, would submit that the Appellant never raised this issue of bias during the hearing or in the pleadings filed before the CERC in Petition in 172/TT/2021 or in any of the other tariff petitions filed by PGCIL seeking determination of tariff of the Raigarh-Pugalur HVDC Transmission System.

297. Allegations of bias are made against Mr. I.S. Jha, the erstwhile Technical Member of the CERC, for the first time in the present Appeal. Curiously neither in Petition No. 685/TT/2020 filed by POWERGRID before the CERC which culminated in an order dated 29.09.2022 being passed, nor in Appeal No. 433 of

2022 preferred there-against by the Appellant herein before this Tribunal which culminated in a remand order being passed on 18.07.2023, has any such allegations of bias been levelled against Mr. I.S. Jha. Having participated in the proceedings before the CERC in Petition No.172/TT/2021 without demur or protest, and having chosen not even to ask him to recuse from hearing the said petition filed by POWERGRID, allegations of bias are levelled for the first time before this Tribunal in the present Appeal preferred against the order passed by the CERC in Petition No.172/TT/2021 dated 27.01.2023.

298. It is well settled that greater the passage of time between the event relied on as showing a danger of bias, and the case in which the objection is raised, the weaker (other things being equal) the objection will be. (**Locabail (UK) Ltd V Bayfield Properties Ltd, 2000 (1) ALL ER 65).** The appellant's act of participation in the proceedings before the CERC, both in Petition No. 685/TT/2020 filed by POWERGRID before the CERC which culminated in the order dated 29.09.2022 being passed, their having chosen not to raise the plea of bias in Appeal No. 433 of 2022 preferred by them against the order passed in Petition No. 685/TT/2020 dated 29.09.2022, and having participated in the hearing of Petition No.172/TT/2021, filed by POWERGRID before the CERC, without demur or protest, the Appellant is not justified in alleging bias against Mr. I.S. Jha for the first time in the present appeal only because they suffered an adverse order in Petition No.172/TT/2021 dated 27.01.2023.

IS THE PLEA OF BIAS, RAISED FOR THE FIRST TIME IN THIS APPEAL, AN AFTER THOUGHT?

299. Sri Nikhil Nayyar, Learned Senior Counsel appearing on behalf of the CERC, would submit that, when a person participates and takes a chance in a proceeding or process, being fully aware of the identity of the decision makers, he cannot, because of an adverse outcome, turn around to contend that the process was vitiated by bias; the Appellant is estopped from raising the plea of bias, more so when it did not raise the said issue during the hearing before the CERC, not only in the present matter but also in connected matters; and the Appellant's failure to raise the issue, not once but in connected proceedings as well, would constitute waiver. Reliance is placed in this regard on the judgement of the Supreme Court in **Mohd Mustafa vs Union of India and Others (2022) 1 SCC 294.**

300. In examining the question, whether the appellants were estopped from challenging the recommendations made by the Empanelment Committee, given the fact that they had taken a calculated chance, and not protested till the selection panel was made public, the Supreme Court, in ***Mohd. Mustafa v. Union of India*****, (2022) 1 SCC 294,** observed that, in its opinion, the ratio in ***Madan Lal*** **v.** ***State of J&K*****, (1995) 3 SCC 486** would apply in the present case as when a person takes a chance and participates, thereafter he cannot, because the result is unpalatable, turn around to contend that the process was unfair or the selection committee was not properly constituted; the ratio in ***Madan Lal*** would apply to the present case as the appellant too had taken a calculated chance in spite of the stakes, that too without protest, and then has belatedly raised the plea of bias and prejudice only when he was not recommended; in ***Madan Lal*** **v.** ***State of J&K*****, (1995) 3 SCC 486,** the Supreme Court had referred to an earlier decision in ***Om Prakash Shukla*** **v.** ***Akhilesh Kumar***

***Shukla*, 1986 Supp SCC 285**, wherein the petitioner, who had appeared at an examination without protest, was not granted any relief, as he had filed the petition when he could not succeed in the examination; and this principle has been reiterated in ***Manish Kumar Shahi* v. *State of Bihar*, (2010) 12 SCC 576**, and ***Ramesh Chandra Shah* v. *Anil Joshi*, (2013) 11 SCC 309.**

301. The Supreme Court, in ***Mohd. Mustafa v. Union of India*, (2022) 1 SCC 294,** further observed that more appropriate to the case before it was the earlier decision in ***G. Sarana* v. *University of Lucknow*, (1976) 3 SCC 585**, wherein a similar question had come up for consideration before a three-Judge Bench of the Supreme Court; as the petitioner therein, after having appeared before the selection committee and on his failure to get appointed, had challenged the selection result pleading bias against him by three out of five members of the selection committee. Rejecting the challenge, the Supreme Court, in ***G. Sarana*,** had held :

> *"…….. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in* ***Manak Lal v. Prem***

Chand Singhvi, AIR 1957 SC 425 *where in, more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting :*

> *' … It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point…….. "*

302. In the light of the law declared in **Mohd Mustafa vs Union of India and Others (2022) 1 SCC 294,** as also in the various judgements of the Supreme Court referred to therein, the appellant, which had participated in the hearing of the petition filed by POWERGRID, before a three member bench of the CERC (one of whom was Sri I.S.Jha), cannot, merely because the result was not in their favour, turn around to contend that the order was vitiated by bias of one of the three members who heard the Petition; and their failure to take the plea of bias before the CERC, or to seek recusal of the said member, creates an effective bar of waiver against them.

SUBSEQUENT RECUSAL BY THE MEMBER AGAINST WHOM BIAS IS ALLEGED: ITS EFFECT:

303. Sri Nikhil Nayyar, Learned Senior Counsel appearing on behalf of the CERC, would submit that the Appellant had contended, during the hearing of the appeal, that, after the allegation of bias was raised in the appellate proceedings

before this Tribunal, Mr. I.S. Jha had subsequently recused, and this implied an admission of bias; this contention is wholly fallacious; the decision to recuse is a decision personal to a judge to whom the request of recusal is made; such recusal is not a decision of a bench or the Commission; furthermore, a recusal is not required to be accompanied by reasons, and therefore the Appellant's submissions on this count are required to be deprecated for being purely hypothetical and based on surmises and conjectures.

304. After the order impugned in this appeal was passed by the CERC on 27.01.2023, this Tribunal had remanded the matter to the CERC by its order in Appeal No. 433 of 2022 dated 18.07.2023 (in an appeal preferred against the order of the CERC in Petition No. 685/TT/2020 dated 29.09.2022). Pursuant to the remand, and when the CERC took up the Petition for hearing, the Appellant sought recusal of Mr. I.S. Jha, who is said to have acceded to their request and recused himself from hearing the said petition. When such requests are made, the Presiding Officers, more often than not, recuse themselves from hearing the lis with a view to avoid the possibility of being faulted later for having heard the Petition despite one of the parties expressing lack of confidence in their impartiality. The mere fact that Sri. I.S. Jha, Member-CERC had so recused in subsequent proceedings, cannot be construed as an admission of bias on his part. That the Appellant has suffered an adverse order, that too in a Petition heard by a three member bench of the CERC (Sri. I.S. Jha was one of them) would not necessitate an inference of bias, that too one which would vitiate the impugned order.

305. Viewed from any angle the submissions urged on behalf of the appellant, that the impugned order must be set aside as having been vitiated by bias of Sri. I.S. Jha – Member CERC, necessitates rejection.

306. In the light of the above, we are not inclined to accept the contentions of the Appellant and Respondent Nos. 4,8 and 9 to consider the impugned asset as part of the National Component in the absence of bi-directional flow.

ORDER

In the light of above, the captioned Appeal No. 777 of 2023 is dismissed as devoid of merit, the Impugned Order dated 27.01.2023 passed by the Central Electricity Regulatory Commission in Petition No. 172/TT/2021 is upheld.

The pending IAs are also disposed of accordingly.

PRONOUNCED IN THE OPEN COURT ON THIS 20th DAY OF NOVEMBER, 2024.

(Sandesh Kumar Sharma)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

pr/mkj