IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

REVIEW PETITION NO. 3 OF 2024 IN APPEAL NO. 383 OF 2022

Dated: 18th November, 2024

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

IN THE MATTER OF:

1. **Uttar Haryana Bijli Vitran Nigam Limited**
Through its Chief Engineer,
C-6, Vidyut Sadan, Sector-6,
Panchkula- 134109, Haryana
Email ID: cehppc@uhbvn.org.in

2. **Dakshin Haryana Bijli Vitran Nigam Limited**
Through its Chief Engineer,
Vidyut Sadan, Vidyut Nagar,
Hissar-125005, Haryana
Email ID: cehppc@uhbvn.org.in

Collectively represent through:
Haryana Power Purchase Centre
Through its Chief Engineer,
Room No. UH 305, 2nd Floor, Shakti Bhawan
Sector 6, Panchkula - 134109, Haryana
Email ID: cehppc@uhbvn.org.in

3. **Haryana Vidyut Prasaran Nigam Limited**
Through its Managing Director,
Shakti Bhawan Sector-6,
Panchkula - 134109, Haryana
Email ID: cehppc@uhbvn.org.in … REVIEW PETITIONER

VERSUS

1. **Central Electricity Regulatory Commission**
Through its Secretary,

3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110001
Email: info@cerind.gov.in

2. **Power System Operation Corporation Limited**
Through its Managing Director,
B-9, First Floor, Qutab Industrial Area,
Katwaria Sarai, New Delhi – 110 016
Email: nldclaw@posoco.in

3. **Central Transmission Utility of India Limited,**
(Erstwhile Powergrid Corporation of India Limited)
Through its Managing Director,
"Saudamini", Plot No. 2,
Sector-29, Gurgaon-122001, Haryana
Email: commercialcc@powergrid.co.in

4. **Aravali Power Company Pvt. Limited**
Through its Managing Director,
NTPC Bhawan, Scope Complex, 7,
Institutional area, Lodhi Road,
New Delhi, 110003
Email: amit.hooda01@gmail.com … RESPONDENTS

Counsel on record for the Petitioner	:	Poorva Saigal Shubham Arya Pallavi Saigal Ravi Nair Reeha Singh Anumeha Smiti Devyanshu Sharma for App. 1 to 3
Counsel on record for the Respondent(s)	:	Shankh Sengupta Deep Rao Palepu Abhishek Kumar Harneet Kaur Arjun Agarwal Nived Veerapaneni Karan Arora Shubham Mudgil for Res.2 Suparna Srivastava for Res.3

O R D E R

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

Against the order passed by the CERC, in Petition No. 126/MP/2017 dated 04.05.2018, the Petitioners herein initially filed Appeal No.240 of 2018. This Tribunal passed an order, in the said appeal on 04.02.2020, remanding the matter to the CERC. On remand, the CERC passed an order on 30.07.2022, aggrieved by which the Petitioners herein filed Appeal No. 383 of 2022. Aggrieved in part, by the order passed by this Tribunal in Appeal No. 383 of 2022 dated 02.02.2024, the present review petition has been filed.

In its Judgment, in Appeal No. 383 of 2022 dated 02.02.2024, this Tribunal had held that the respondents CTUIL and POSOCO had acted illegally in levying and collecting inter-state transmission charges from the Petitioner for the subject intra state transmission line. This Tribunal, while allowing the Appeal and setting aside the impugned Order passed by the CERC in Petition No.126/MP/2017 dated 30.7.2022, directed the CERC to ascertain whether the Review Petitioners had passed on the financial liability imposed on them in terms of the invoices raised by CTUIL and POSOCO from 3.6.2014 till 4.5.2018. This Tribunal issued further directions as follows:

> *"In case the appellants are found to have passed on the financial burden to their customers, the CERC shall then undertake the exercise of identifying the customers to whom the financial burden was passed on by the appellant, and ensure that the Respondents pay the amounts, illegally collected by them from the appellant during the period 03.06.2014 to 04.05.2018, to such customers. The appeal stands disposed of accordingly."*

The present review petition is filed, by the Appellants in Appeal No. 383 of 2022, seeking review of the judgement of this Tribunal dated 02.02.2024, on

grounds that (i) the direction to the CERC to recognize consumers of the petitioner, during the time period from 2014 to 2018, is an unfeasible exercise; and (ii) their claim regarding carrying cost, applicable on the amount of PoC charges directed to be refunded by CTUIL and POSOCO, has not been considered.

I. A BRIEF BACKGROUND:

Petitioner Nos.1 and 2 herein are distribution licensees in the State of Haryana, and are engaged in distribution and retail supply of electricity, to consumers within the State, in their respective areas of supply. They established the Haryana Power Purchase Centre as their joint forum to undertake procurement of electricity on their behalf as per the Government of Haryana Notification dated 11.4.2008. Petitioner No.3 is the State Transmission Utility of Haryana undertaking functions stipulated in Section 39(2) of the Electricity Act, 2003. It owns, operates and maintains the intra-State Transmission System in the State of Haryana, which includes the subject 400kV D/C Transmission Line from IGSPTS to its Daulatabad sub- station. All the Petitioners are State Utilities wholly owned and controlled by the State/Govt of Haryana.

The origin of the present dispute is traceable to Petition No. 126/MP/2017, filed by the Petitioners herein before the CERC, which related to the levy of Point of Connection Charges ('POC Charges'), by the 2nd Respondent Power System Operation Corporation Limited ('POSOCO' for short) and the 3rd Respondent Central Transmission Utility of India Ltd ('CTUIL' for short), for the period 01.07.2011 till 04.05.2018. These charges were levied with respect to the power flow on the 400KV Jhajjar-Daulatabad Line ('STU Line**'**) owned, operated and maintained by Haryana Vidyut Prasaran Nigam Limited ('HVPNL' for short**).** The total amount paid by the Petitioners, on account of POC charges, was approximately Rs. 1258 crores (till 04.05.2018).

In its Order, in Petition No. 126/MP/2017 dated 04.05.2018, the CERC held that the "STU Line" owned, operated and maintained by 'HVPNL' was an Intra-State Line, and not an Inter-State Transmission System (ISTS) in terms of Section 2(36) of the Electricity Act, 2003; however, since bills were raised by POSOCO as per the '*prevailing regulatory regime*', the relief shall be prospective from the date of issue of the order. As a result, while they were not liable to pay transmission charges on and after the order of CERC dated 04.05.2018, the Petitioners were not entitled for refund of the amounts paid by them earlier, much less for interest/carrying cost on the said amount.

Aggrieved by the Order of the CERC dated 04.05.2018 being applied prospectively, the Petitioners filed Appeal No. 240 of 2018 and, by its judgment dated 04.02.2020, this Tribunal remanded the matter to the CERC on the limited issue of the earlier order of the CERC dated 04.05.2018 being given prospective application. Pursuant to remand, the CERC passed Order dated 30.07.2022 holding that the issue under consideration related to interpretation and applicability of the Sharing Regulations; no retrospective application could be granted on the reasoning that a statute that affects substantive rights is prospective in operation; this would avoid re-opening of settled issues; and the bills were issued under the then prevailing regulatory regime**.** As a result, the earlier order of the CERC dated 04.05.2018 continued to have prospective application. Aggrieved by the order of the CERC dated 30.07.2022, the Petitioners herein filed Appeal No. 383 OF 2022 before this Tribunal.

In its order, in Appeal No. 383 OF 2022 dated 02.02.2024, this Tribunal observed that, having permitted the order of this Tribunal in Appeal No. 240 of 2018 dated 04.02.2020 to attain finality, and not having preferred an appeal there-against to the Supreme Court, both the Petitioners and the Respondents were bound by what has been held by this Tribunal in Appeal No. 240 of 2018 dated 04.02.2020, and the observations of the CERC in Petition No. 126/MP/2017 dated 04.05.2018, except to the extent of remand which

was confined only to the issue of prospective application of the said order; the CERC had, in the impugned order dated 30.07.2022, rejected the objections raised by Respondents 2 and 3 that a majority of the Petitioners claims were barred by limitation; the CERC was of the view that the power exercised by it, while passing the earlier order dated 04.05.2018, was regulatory in character, and not adjudicatory in nature; and the provisions of the Limitation Act were inapplicable to regulatory orders passed by the CERC.

This Tribunal rejected the finding of the CERC, and held that the order dated 04.05.2018 was passed by the CERC in the exercise of its adjudicatory powers, and not its regulatory powers; Respondents 2 and 3 had chosen not to prefer an appeal against the order of the CERC dated 30.07.2022, and it is only the Petitioner which had preferred the present appeal; however, the respondent-defendant in an appeal could attack an adverse finding upon which a decree in part had been passed against them, for the purpose of sustaining the decree to the extent the lower court had dismissed the suit against the defendant-respondent; consequently, even in the present appeal filed by the Petitioner against the Order of the CERC dated 30.07.2022, it was open to Respondents 2 and 3 to sustain the impugned order of the CERC on the ground of limitation, though such a contention had been rejected by the CERC while passing the impugned order dated 30.07.2022; as the order of the CERC dated 04.05.2018 was not passed in the exercise of its regulatory powers, but was an adjudicatory order, the provisions of the Limitation Act would apply to such proceedings; even if the provisions of the Limitation Act are applied, the subject petition was initially filed by the appellant before the CERC on 02.06.2017, and claims falling within three years prior thereto (which would be the period for which a suit could have been filed), ie. from 03.06.2014, would undoubtedly fall within limitation, and not be barred under the law of limitation; it was only the Petitioners claim for the period from July 2011 to 02.06.2014 which could be said to be barred by limitation; the CERC

had erred in not considering the Petitioners claim, for refund of the amounts illegally collected from them by Respondents 2 and 3, for the period from 03.06.2014 till 04.05.2018, when the earlier order was passed by the CERC.

This Tribunal further held that the law declared by the Supreme Court, in **Mafatlal Industries Ltd,** was binding on all courts and tribunals in the country in view of Article 141 of the Constitution of India; therefore the Petitioners claim for refund, of the bills paid by them from 03.06.2014 to 04.05.2018, could only be considered in case they had not passed on the financial burden to their customers; in case they had so passed it on, then directing the Respondents to grant them refund would undoubtedly confer on the Petitioners a double benefit which they may not be entitled to; even if the Petitioners were found to have passed on such financial burden, their customers, to whom the said illegal imposition was passed on, would undoubtedly be entitled to be repaid the amount which they were called upon to pay earlier, albeit illegally.

This Tribunal set aside the order passed by the CERC, and remanded the matter again to enable the CERC to ascertain whether the Petitioners had passed on the financial liability imposed on it, in terms of the bills raised by POSOCO/CTUIL on them, from 03.06.2014 till 04.05.2018. This Tribunal observed that, in case the CERC found that they had not passed on the liability, representing the amount paid by them in terms of the bills raised, the CERC should have the dues quantified, and then direct refund thereof to the Petitioners; in case the Petitioners were found to have passed on the financial burden to their customers, the CERC should then undertake the exercise of identifying the customers to whom the financial burden was passed on by the Petitioners, and ensure that the Respondents pay the amounts, illegally collected by them from the Petitioners during the period 03.06.2014 to 04.05.2018, to such customers. The appeal was, accordingly, disposed of.

It is fairly conceded before us by Mr. M.G. Ramachandran, Learned Senior Counsel, that the Petitioners were required in law to pass on, and had in fact passed on, the liability, representing the transmission charges paid by them to POSOCO and CTUIL in terms of the bills illegally raised on them, to their customers.

Consequently, in terms of the order of this Tribunal review of which is sought in the present proceedings, the CERC is required (i) to quantify the amounts illegally collected by Respondents 2 and 3, from the Petitioners, during the period 03.06.2014 to 04.05.2018; (ii) identify the customers of the Petitioners to whom the financial liability in this regard was passed on by the petitioners; and (iii) pay the amount illegally collected by the Petitioners, consequent on Respondents 2 and 3 having illegally collected these amounts from them, to such identified consumers.

The Review jurisdiction of this Tribunal is invoked by the Petitioners contending that it is well-nigh impossible to identify each and every-one of the lakhs of customers to whom they had passed on the aforesaid liability in terms of the tariff orders, and to whom the amounts as directed by this Tribunal should be paid; instead, the amounts determined by the CERC, in compliance with the directions of this Tribunal, should be directed to be paid to them by Respondents 2 and 3, the amount so paid to them would, in terms of the applicable regulations, be deducted by the State Commission from their ARR, and the consequent lower tariff would, in effect, result in the said amounts being refunded to the prevailing customers. In addition, the Petitioners also claim carrying cost/interest on the amount quantified, as liable to be repaid by Respondents 2 and 3, in terms of the directions of this Tribunal in the order under review.

II. RIVAL CONTENTIONS:

Elaborate submissions, both oral and written, were made by Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Petitioners, Sri. Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of the 2nd Respondent – POSOCO, and Mrs. Suparna Srivastava, Learned Counsel appearing on behalf of the 3rd Respondent-CTUIL. It is convenient to examine the rival contentions, urged by Learned Senior Counsel and Learned Counsel on either side, under different heads.

III. LIMITED SCOPE UNDER REVIEW JURISDICTION:

A. SUBMISSIONS URGED ON BEHALF OF CTUIL:

Mrs. Suparna Srivastava, Learned counsel appearing on behalf of CTUIL, would submit that, considering that the role of Respondent No.3/CTUIL is limited to its functions as a nodal agency for billing, collection and disbursement of transmission charges, the pleadings and submissions of Respondent No.3 have been made in the limited context of the interest/carrying cost, if any, payable on the PoC charges that may be directed to be refunded by Respondent Nos.2 and 3 in the remand proceedings before the Commission; the limitations on exercise of the power of review are well settled; it is the first and foremost requirement of entertaining a Review Petition that there must be an error apparent on the face of the order; and, where the order in question is appealable and the aggrieved party has an adequate and efficacious remedy, the Courts should exercise the power to review its Order with the greatest circumspection (Refer: **Rajendra Kumar Vs. Rambai AIR 2003 SC 2095 at Para 6; S. Maurali Sundaram Vs. Jothibai Kannan & Ors. (2023) SCC OnLine SC 185 at Para 15; Haridas Das Vs. Usha Rani Banik (2006) 4 SCC 78 at Para 13)**.

B. JUDGEMENTS RELIED UNDER THIS HEAD:

In **Rajender Kumar v. Rambhai, (2007) 15 SCC 513,** the Supreme Court held that the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from an error apparent on the face of the order, and permitting the order to stand will lead to failure of justice; and, in the absence of any such error, finality attached to the judgment/order cannot be disturbed.

Relying on **Shanti Conductors (P) Ltd. v. Assam SEB, (2020) 2 SCC 677,** the Supreme Court, in **S.Murali Sundaram vs Jothibai Kannan: 2023 SCC OnLine SC 185,** observed that the scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited; under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided; and an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review under Order 47 Rule 1 CPC.

Relying on **Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753,** the Supreme Court, in **S.Murali Sundaram vs Jothibai Kannan: 2023 SCC OnLine SC 185,** observed that, while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order; a re-hearing of the matter is impermissible in law; a review is not an appeal in disguise; the power of review can be exercised for correction of a mistake but not to substitute a view; such powers can be exercised within the limits of the statute dealing with the exercise of power; Review proceedings are not by way of appeal and should be strictly confined to the scope and ambit of Order 47 Rule 1 CPC; the power of review may be exercised when some mistake or error apparent on the fact of record is found, but the error on the face of the record must be such an error which must strike one on mere looking at the record, and would not require any long-drawn process of reasoning on points where there may

conceivably be two opinions; the power of review may not be exercised on the ground that the decision was erroneous on merits; the power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate; an application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit; and an error, which is required to be detected by a process of reasoning, can hardly be said to be an error on the face of the record.

In **Haridas Das v. Usha Rani Banik, (2006) 4 SCC 78,** the Supreme Court observed that the parameters, to exercise the review jurisdiction, are prescribed in Order 47 CPC, and permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the record or for any other sufficient reason"; the former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible; neither of them postulate a rehearing of the dispute, because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court, and thereby enjoyed a favourable verdict; the Explanation to Rule 1 of Order 47 states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by a subsequent decision of a superior court in any other case, shall not be a ground for review of such judgment; and the court should exercise the power to review its order with the greatest circumspection.

Relying on **Thungabhadra Industries Ltd. v. Govt. of A.P : AIR 1964 SC 1372, Meera Bhanja v. Nirmala Kumari Choudhury: (1995) 1 SCC 170, AribamTuleshwar Sharma v. Aribam Pishak Sharma: (1979) 4 SCC 389, and Parsion Devi v. Sumitri Devi: (1997) 8 SCC 715,** the Supreme Court, in **Haridas Das v. Usha Rani Banik, (2006) 4 SCC 78**, held that, under Order 47 Rule 1 CPC a judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record; an error which is not self-evident

and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC; in exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be 'reheard and corrected'; and a review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

C. ANALYSIS:

Order 47 Rule 1 of the Code of Civil Procedure provides for filing an application for review. The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specific grounds, namely (*i*) discovery of new and important matter or evidence which, after the exercise of due diligence,was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (*ii*) mistake or error apparent on the face of the record and (*iii*) for any other sufficient reason. (***Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius* : AIR 1954 SC 526; *Board of Control for Cricket in India* v. *Netaji Cricket Club*, (2005) 4 SCC 741; Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).**

An application for review is maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparenton the face of the record, but also if the same is necessitated on account of some mistake or for any other sufficient reason. The words 'any other sufficient reason' must mean 'a reason sufficient on grounds, at leastanalogous to those specified in the rule'. (***Moran Mar BasseliosCatholicos* v. *Most Rev. Mar Poulose Athanasius* : AIR 1954 SC526; *Board of Control for Cricket in India* v. *Netaji Cricket Club*, (2005) 4 SCC 741; Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).**

The power of review is not to be confused with the appellate power which

may enable an appellate Court to correct all manner of errors committed by the subordinate Court (***Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma* : (1979) 4 SCC 389; *Meera Bhanja* v. *Nirmala Kumari Choudhury*, (1995) 1 SCC 170; *Mudiki Bhimesh Nanda* v. *Tirupati Urban Development Authority*, (2005) 4 ALD792 (DB); Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).**

The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correct or improve. The power of review canbe exercised for correction of a mistake and not to substitute a view. The mere possibility of two views on the subject is not a ground for review. (***LilyThomas* v. *Union of India* : (2000) 6 SCC 224; *Mudiki Bhimesh Nanda* v. *Tirupati Urban Development Authority*, (2005) 4 ALD792 (DB); Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).**

Review literally, and even judicially, means re-examination or reconsideration. The basic philosophy inherent in it is the universal acceptance of human fallibility. Yet, in the realm of law, Courts lean stronglyin favour of the finality of a decision-legally and properly made. Exceptions have been carved out to judicially correct accidental mistakes or errors whichresult in miscarriage of justice. **(*P. Neelakanteswaramma* v. *Uppari Muthamma* : (1998) 3 AnWR 132 (DB); *Shivdeo* v. *State of Punjab*, AIR 1963 SC 1909**; **Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4)**. An application for review would lie, *inter alia*, when the order suffers froman error apparent on the face of the record, and permitting the same to continue would lead to failure of justice. In the absence of any such error, the finality attached to the judgment/order cannot be disturbed. The ReviewCourt does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that, once a judgment is signed or pronounced, it should not be altered. (***Inderchand Jain* v. *Motilal*, (2009) 14 SCC 663; *Rajendra Kumar* v. *Rambai*, (2007) 15 SCC 513; *Lily Thomas* v. *Union of India* : (2000)**

6 SCC 224; Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).

An error, which is not self-evident and has to be detected by a long drawn process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. In the exercise of the review jurisdiction, it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first canbe corrected by the higher forum, the latter alone can be corrected by the exercise of the review jurisdiction. (***Parsion Devi* v. *Sumitri Devi*, (1997) 8 SCC 715; *Mudiki Bhimesh Nanda* v. *Tirupati Urban DevelopmentAuthority*, (2005) 4 ALD 792 (DB)**; **Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4)**. An error which is not self-evident, and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying exercise of the power of review. A review petition, it must be remembered, has a limited purpose. **(*Haridas Das* v. *Usha Rani Banik* : (2006) 4 SCC 78; Vedanta Ltd. v. Odisha ERC,2023 SCC OnLine APTEL 4).**

A review lies only for correction of a patent error. (***Thungabhadra Industries* v. *Government of A.P.*, AIR 1964 SC 1372; *Mudiki Bhimesh Nanda* v. *Tirupati Urban Development Authority*, (2005) 4 ALD792; *Delhi Administration* v. *Gurdip Singh Uban*, (2000) 7 SCC 296;Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).** The error contemplated under the rule is not an error which is to be fished out and searched. It must be an error of inadvertence. (***Lily Thomas* v. *Union of India* : (2000) 6 SCC 224; Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLineAPTEL 4).** It must be an error which must strike one merely on looking at therecord and not one which requires a long drawn process of reasoning on points where there may conceivably be two opinions. (***Meera Bhanja's case* (supra); *Mudiki Bhimesh Nanda* v. *Tirupati Urban DevelopmentAuthority*, (2005) 4 ALD 792 (DB)); *Satyanarayan LaxminarayanHegde* v. *Mallikarjun Bhavanappa***

Tirumale*, AIR 1960 SC 137; VedantaLtd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).** There can be no review unless the Court is satisfied that there exists a material error manifest on the face of the earlier order resulting in miscarriage of justice. (Avtar Singh* v. *Union of India*, 1980 Supp SCC 562 : AIR 1980 SC 2041; *P. Neelakanteswaramma* v. *Uppari Muthamma* : (1998) 3 AnWR 132 (DB); Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).**

An error, which necessitates review, should be something more than a mere error and it must be one which must be manifest on the face of the record. If the error is so apparent that, without further investigation or enquiry,only one conclusion can be drawn in favour of the petitioner, a review will lie.If the issue can be decided just by a perusal of the records, and if it is manifest, it can be set right by reviewing the order. If the judgment/order is vitiated by an apparent error or it is a palpable wrong, and if the error is self evident, review is permissible. (***S. Bagirathi Ammal* v. *Palani Roman Catholic Mission*, (2009) 10 SCC 464; Vedanta Ltd. v. Odisha ERC, 2023SCC OnLine APTEL 4).** A review proceeding cannot be equated with the original hearing of the case and the finality of the judgment will be reconsidered only where a glaring omission or patent mistake or like grave error has crept in by judicial fallibility. (***Northern India Caterers* v. *Lt. Governor Delhi*, (1980) 2 SCC 167; *Mudiki Bhimesh Nanda* v. *Tirupati Urban Development Authority*, (2005) 4 ALD 792 (DB); *Sow Chandra Kante* v. *Sheikh Habib :* (1975) 1 SCC 674; Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).**

A party is not entitled to seek review of a judgment merely for the purpose of a hearing and a fresh decision of the case. The normal principleis that a judgment pronounced by the Court is final, and departure from thatprinciple is justified only when circumstances, of a substantial and compelling character, make it necessary to do so. (***Northern India Caterers* v. *Lt. Governor Delhi*, (1980) 2 SCC 167; *Sajjan Singh* v. *Stateof Rajasthan*: AIR 1965 SC 845;**

Lily Thomas v. Union of India, (2000) 6SCC 224; Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).

Review is not a rehearing of an original matter, and the power of review cannot be confused with the appellate power which enables a superior courtto correct all errors committed by a subordinate court. (***KamleshVerma* v. *Mayawati* : (2013) 8 SCC 320; Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).** The power of review must be exercised with extreme care, caution and circumspection and only in exceptional cases. (***Jain Studios Ltd.* v. *Shin Satellite Public Co. Ltd.* : (2006) 2 SCC 628; *Kamlesh Verma* v. *Mayawati* : (2013) 8 SCC 320))**. An error which is not self-evident, and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for a patent error. (***Kamlesh Verma* v. *Mayawati* : (2013) 8 SCC 320; Vedanta Ltd. v. Odisha ERC, 2023 SCC OnLine APTEL 4).**

While it is true that the scope of interference in review proceedings is extremely limited, and it is only where the tests stipulated in Order 47 Rule 1 CPC are satisfied that review of the earlier order can be sought, that does not mean that this Tribunal can, in no case, review its earlier order. However, limited the scope of interference in review proceedings may be, what is required to be ascertained is whether the review sought by the petitioner satisfies the requirements of Order 47 Rule 1 CPC and, if it does, then the earlier order of this Tribunal must, necessarily, be reviewed and set aside tothe extent it suffers from an error apparent on the face of the record.

i. WHEN CAN REVIEW BE SOUGHT:

As noted hereinabove, the Supreme Court, in **S. Murali Sundaram vs Jothibai Kannan: 2023 SCC OnLine SC 185,** (on which reliance was placed

on behalf of CTUIL itself), relied on **Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753,** to hold that the power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate; an application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.

The expression, 'for any other sufficient reason' in Order 47 Rule 1 of the Civil Procedure Code, has been given an expanded meaning and a decree or order passed under mis-apprehension of the true state of circumstances has been held to be sufficient ground to exercise the power of review. (**Lily Thomas v. Union of India, (2000) 6 SCC 224).** The words "sufficient reason", occurring in Rule 1 of Order 47 of the CPC, is wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invokingthe doctrine *'actus curiae neminem gravabit'"*. (***Board of Control of CricketIndia v. Netaji Cricket Club*:*(2005) 4 SCC 741;* S.Murali Sundaram vs Jothibai Kannan: 2023 SCC OnLine SC 185; and Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753).**

The Court may re-open its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. (***O.N. Mohindroo* v. *Distt. Judge, Delhi*** **[(1971) 3 SCC 5; Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [(1980) 2 SCC 167**; **Lily Thomas v. Union of India, (2000) 6 SCC 224).** Where, without any elaborate argument, one could point to the error and say here is a substantialpoint of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the faceof the record would be made out. **(Thungabhadra Industries Ltd. v. The Govt. of Andhra Pradesh, AIR 1964 SC 1372)**

ii. FAILURE TO NOTICE A STATUTORY PROVISION:

If the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment (***Girdhari Lal Gupta* v. *D.H. Mehta*:(1971) 3 SCC 189; Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [(1980) 2 SCC 167**; **Lily Thomas v. Union ofIndia, (2000) 6 SCC 224).** If the order is plainly and obviously inconsistent with a specific and clear provision of the statute, that must inevitably be treated as a mistake of law apparent from the record. (**M.K. Venkatachalam v. Bombay Dyeing and Mfg. Co. Ltd., (1958) 34 ITR 143).**

Failure to bring to the notice of the Tribunal, the relevant regulations, which are statutory in character and have the force of law, would constitute a ground to review the earlier order.

iii. FAILURE TO NOTICE A BINDING PRECEDENT:

When there is a legal position clearly established by a well-known authority and, by some unfortunate oversight, the Judge has gone palpably wrong by the omission of those concerned to draw his attention to the authority, it may be a ground coming within the category of an error apparenton the face of the record. **(M. Murari Rao v. Balavanth Dixit, AIR 1924 Mad98; Natesa Naicker v. Sambanda Chettiar, AIR 1941 Madras 918; Sri Karutha Kritya Rameswaraswami Varu v. R. Ramalinga Raju, AIR 1960Andh. Pra. 17; Tinkari Sen v. Dulal Chandra Das, AIR 1967 Cal 518; Medical and Dental College, Bangalore v. M.P. Nagaraj, AIR 1972 Mys. 44; Collector v. Bharat Chandra Bhuyan, 2014 SCC OnLine Ori 478).** Where there is a decision of the Supreme Court holding the field and the High Court (or a statutory tribunal) takes a contrary view, it needs no elaborate argument to point to the error. The error is self-evident. (**Collector v. Bharat Chandra Bhuyan, 2014 SCC OnLine Ori 478).**

Where there is a decision of the Supreme Court bearing on a point and where a Court (or Tribunal) has taken a view on that point which is not

consistent with the law laid down by the Supreme Court, it needs no elaborate argument to point to the error and there could reasonably be no two opinions entertained about such an error. Such an error would clearly be an error apparent on the face of the record. **(Selection Committee for Admission to the Medical and Dental College, Bangalore v. M.P.Nagaraj, 1971 SCC OnLine Kar 133 : AIR 1972 Mys 44)**

In **Amarjit Kaur v. Harbhajan Singh, (2003) 10 SCC 228,** the Supreme Court held that the order passed rejecting the review application summarily, despite the fact that a judgment of the Supreme Court relevant for the purpose had been brought to the notice of the Court, without even expressing any view on the matter, by itself, was sufficient to set aside the order made on the review petition.

In **Prism Johnson Ltd. v. M.P. ERC, 2023 SCC OnLine APTEL 2,** this Tribunal observed that it had only applied the law declared by the Supreme Court, in **MSEDCL v. JSW STEEL,** to the facts of the case beforeit , and they were satisfied that failure of the Counsel to draw the attention ofthis Tribunal to the relevant part of the said judgment of the Supreme Court,would constitute an error apparent on the face of the record.

iv. FAILURE TO CONSIDER CONTENTIONS:

In **Rajender Singh v. Lt. Governor, Andaman & Nicobar Islands, (2005) 13 SCC 289,** the Supreme Court held that the impugned judgment did not deal with and decide many important issues as could be seen from the grounds of review; the High Court was not justified in ignoring the material on record which, on proper consideration, may justify the claim of the appellant; the impugned judgment is a clear case of an error apparent on the face of the record and non-consideration of relevant documents; the power of review extends to correct all errors to prevent miscarriage of justice; Courts should not hesitate to review their own earlier order when there exists an error on the face

of the record and the interest of justice so demands in appropriate cases; the grievance of the appellant was that, though several vital issues were raised and documents placed, the High Court has not considered the same in its review jurisdiction; and the High Court's order in the review petition was not correct, and necessitated interference.

As held by the Supreme Court, in **Rajendra Singh Vs. Lt. Governor, Andaman and Nicobar: (2005) 13 SCC 289,** failure to consider and adjudicate the contentions raised by the petitioner is also a ground to review the order.

While interference in review proceedings is permissible only on limited grounds, it must be borne in mind that, among the grounds on which the earlier order can be reviewed, include (a) failure to notice a previous binding precedent of either the Supreme Court or the High Courts or of this Tribunal, (b) failure to notice the applicable law, such as the provisions of the Electricity Act or the rules or the governing statutory regulations, and (c) failure of the Tribunal to consider the contentions raised in the appeal. It is within these limited parameters are we required to examine whether or not the order under review necessitates interference. Bearing the afore-said principles in mind, let us now examine whether the contentions raised in the review petition justify exercise of the power of review to interfere with the earlier order passed by this Tribunal in Appeal No.383 of 2022 dated 02.02.2024.

IV. DO THE DIRECTIONS ISSUED IN THE ORDER UNDER REVIEW, REGARDING UNJUST ENRICHMENT, NECESSITATE MODIFICATION?

A. CONTENTIONS URGED ON BEHALF OF THE PETITIONERS:

Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Review Petitioners, would submit that, in the case of Regulated Entities, the reasonable return is fixed and, besides incentive for efficient performance, any excess revenue is always adjusted in favour of the consumers at large,

and there is no unjust enrichment to the utility; the Review Petitioners do not dispute that the amount recovered from CTUIL will not be retained by them for their benefit, and every paise will be accounted for and adjusted to the account of the consumers at large; the well accepted methodology, adopted in the electricity sector, is to invariably treat such recovery as income relating to prior period; such eventualities have arisen, from time to time, for various reasons including wrongful billing in the past, and subsequent increase or decrease in liability, court rulings etc; invariably, in all such cases, adjustment in favour of the consumer as a body is given by reducing the revenue requirements in the year or ensuing years where the income is recovered; it is not feasible to locate individual consumers of yester-years which are large in number, and identify and pass such dues proportionately based on their individual amount (as included in their tariff) in the past; the total consumer base in the State of Haryana was approximately 53,81,129 in 2014 which further increased to approximately 60,81,669 in 2018; it will be difficult to identify the specific share of each such individual consumers residing in the State of Haryana for the period from 2014 till 2018; these consumers may not, necessarily, be a part of the body of consumers for Haryana in February, 2024; further, the consumer base in the State is now approximately 78.57 Lacs in 2024; and, unlike in the case of refund of transmission charges to transmission licensees or the tariff payable to the generating companies, where there is definitive number of entities less than 100, the same is not the case for retail supply consumers.

Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Review Petitioners, would further submit that there has been an established methodology of dealing with prior period income arising out of refund to be given to any entity, namely that the same is adjusted in the revenue requirements of Haryana Discoms in the current year of refund; in the circumstances, the quantified amount would be automatically passed on to the body of consumers, and the same will reduce the chargeable retail tariff to the

consumers in the State of Haryana; the regulatory support, with respect to the above mechanism, can be found in the statutory regulations; the above methodology, of adjusting the refund in the ARR of the Licensee, has been upheld by this Tribunal in the following decisions – (a) **Meghalaya State Electricity Board v. Meghalaya State Electricity Regulatory Commission and Ors. (Judgment in Appeal No. 37 of 2010 dated 10.08.2010); (b) Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association v. Kerala State Electricity Regulatory Commission (Judgment in Appeal No. 247 of 2014 dated 03.07.2013);** (c) **Maharashtra State Electricity Transmission Co. Limited. v. Maharashtra Electricity Regulatory Commission. (Judgment in Appeal No. 242 of 2015 dated 29.08.2022);** and (d) **Bihar Industries Association v. Bihar Electricity Regulatory Commission & Ors. (Judgment in Appeal No. 121 of 2017 and Batch dated 25.10.2018).**

B. CONTENTIONS URGED ON BEHALF OF POSOCO:

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of POSOCO, would submit that, under the Impugned Order, this Tribunal directed CERC to undertake an exercise to ascertain whether the Petitioners, particularly UHBVNL & DHBVNL, had passed on the financial liability of POC charges, imposed on them from 03.06.2014 till 04.05.2018, to their consumers; if CERC were to find that financial liability had not been passed on, the refund amount had to be quantified and directed to be paid to the Petitioners; however, if CERC were to find that the aforesaid financial liability had been passed on, CERC had to undertake an exercise to identify consumers to whom the financial burden was passed on by UHBVNL & DHBVNL, and to ensure that refund is made to such consumers; from a bare perusal of the review petition, it is evident that UHBVNL and DHBVNL have already passed on the financial liability of POC charges which was imposed on them during 03.06.2014 to 04.05.2018 to their consumers; due to this *fait accompli*, the first step of the

exercise which was to be undertaken by CERC has been rendered infructuous; the next step to be taken by CERC is to quantify the amounts collected as POC charges between 03.06.2014 to 04.05.2018, identify the customers to whom the financial burden has been passed on, and ensure that the quantified amount is refunded to the consumers of the Petitioners.

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of POSOCO, would further submit that CERC has not expressed any difficulty in implementing the directions of this Tribunal; as the Petitioners had passed on the financial liability, qua POC charges payment during 03.06.2014 to 04.05.2018, they cease to have any *locus* to agitate the claim for refund; even before quantification of the amounts, and identifying consumers for effecting refund, the Petitioners cannot prejudge the entire matter by alleging non-feasibility, impossibility and difficulty; by making such allegations, the petitioners cannot seek to deprive persons who are entitled to these amounts; the Petitioners do not have *locus* to espouse the cause of the CERC; the term "*Feasibility*" has been defined by *P. Ramanatha Aiyar's Advanced Law Lexicon* as "*practicability; possibility*" and, therefore, the Petitioners' contention is that of impossibility; though notice has been issued to them, CERC has not come forward expressing difficulties or impossibility or non-feasibility qua implementation of the directions under the Impugned Order; and, in such a situation, the present petition filed by the Petitioners ought to be disallowed on this count.

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of POSOCO, would also submit that the law laid down by the Supreme Court, in **Mafatlal** case, is that, where it is not possible to refund the amount to the person who has ultimately borne the burden for one or the other reason, it is just and appropriate that the amount is retained by the State; applying the Supreme Court judgment in **Mafatlal**, it is just that the amounts are retained and not refunded considering the impossibility expressed by the Petitioners

qua refund; this would also be in compliance with the Impugned Order; the Impugned Order is implementable in terms of what is already stated thereunder; both POSOCO and the Central Transmission Utility of India Limited (**CTUIL**) are "State" within the meaning of the term employed by Article 12 of the Constitution; the principle against unjust enrichment, extensively quoted under the Impugned Order, cannot be applied partially or in piecemeal; the moment the aforesaid principle applies, and the Petitioners admit that the financial liability qua POC charges imposed during 03.06.2014 to 04.05.2018 has already been passed on by them to their consumers, and it is not feasible/ impossible to identify the consumers to whom refund can be made, the law dictates that the amounts ought to be retained; the petitioners cannot be allowed to unjustly enrich themselves even if they allege that the benefit would be passed on to the body of consumers who are currently availing supply of electricity in the State of Haryana; the principle against unjust enrichment does not permit enriching a particular group of consumers at the cost of the earlier group of consumers; if the course of action suggested by the Petitioners is adopted, law settled by the Supreme Court would be mutilated and unsettled; and no ground for reviewing the Impugned Order is made out

C. JUDGEMENTS RELIED UNDER THIS HEAD:

In **Meghalaya State Electricity Board versus Meghalaya State Electricity Regulatory Commission : (Judgement in Appeal No,37 of 2010 dated 10.08.2010),** this Tribunal observed that, by the impugned order, the State Commission had directed the Appellant to take effective steps to adjust the amount collected during the tariff period between 01.10.2008 and 31.03.2010; there was a specific direction to the effect that the Appellant had to give effect to the adjustment by 31.03.2010; the Appellant, being a public body, would not retain any amount which was unjustified, and should account for any surplus amount; in its order in Review Petition No. 1 of 2010 dated 24.2.2010, the Commission had observed that fixation of tariff depends upon

the estimated ARR after truing up the accounts of the preceding years; truing up exercise has to be necessarily taken up against each ARR approved by the Commission wherein any excess or shortfall of trued ARR, over the approved ARR, is adjusted in the subsequent tariff order; however, each time the accounts are trued up, the tariff may not be revised with retrospective effect; this is because the consumer base of distribution utilities in general is of the order of 10 to 50 lakh consumers and retrospective revision of bills for such a large number of consumers, every time the accounts are trued up, is not possible; retrospective revision of bills will also entail revision of all the monthly commercial data and correction of the Statement of Accounts 2008; and, **consequently, Revenue deficit or Revenue surplus in the trued-up ARR for the accounting year 2008-09, will be adjusted while working out and fixing the ARR of the prospective year 2010-11."**

This Tribunal referred with approval to its earlier judgment in **Karnataka Power Transmission Corporation Limited V/s Karnataka Electricity Regulatory Commission and Others: (**Appeal No. 100 of 2007) wherein it was held as under: -

> *"…….. Invariably, the projections at the beginning of the year and actual expenditure and revenue received differ due to one reason or the other. Therefore, truing up is necessary. Truing up can be taken up in two stages: Once when the provisional financial results for the year are compiled and subsequently after the audited accounts are available.* ***The impact of truing up exercises must be reflected in the tariff calculations for the following year. As an example; truing up for the year 2006-07 has to be completed during 2007-08 and the impact thereof has to be taken into account for tariff calculations for the year 2007-08 or/and 2008-09 depending upon the time when truing up is taken up. If any surplus revenue has been realized***

during the year 2006-07, it must be adjusted as available amount in the Annual Revenue Requirement for the year 2007-08 or/and 2008-09…….”

This Tribunal further held that, it was laid down in **Karnataka Power Transmission Corporation Limited V/s Karnataka Electricity Regulatory Commission and Others: (**Appeal No. 100 of 2007 dated), **that the impact of truing-up exercises must be reflected in the tariff calculations for the following year and not to be given retrospective effect. If any surplus/deficit has been realised during the financial year, it must be adjusted in the ARR of the utility in subsequent years.** The aforesaid principle of provisional truing-up leads to the conclusion that the State Commission cannot give any retrospective downward revision to the Appellant’s tariff for the FY 2008-09 since any surplus/deficit ought to have been adjusted in the ARR of the Appellant in the subsequent year.

In **the Kerala High Tension and Extra High Tension Industrial Electricity Consumers’ Association versus Kerala State Electricity Regulatory Commission : (Judgement in Appeal No. 247 of 2014 dated 03.07.2013),** this Tribunal observed that there was no need to open up the finalized ARR and ERC and truing up of accounts for the past period; **the refund which was ordered now could be included as an expenditure in the ARR of the Electricity Board for the year in which the disbursement takes place and passed on to the consumer in the tariff for the subsequent period.** The Kerala State Electricity Board was directed to refund the service connection charges unauthorizedly collected by them from the High Tension and Extra High Tension electricity consumers along with simple interest @ 10% per annum from the date of collection of the charges till the date of refund.

D. ANALYSIS:

The submission, urged on behalf of the Petitioners, is that it would be well-nigh impossible for the CERC to identify the consumers from whom the Petitioners had recovered the amounts pursuant to the illegal imposition of inter-state transmission charges on them by CTUIL/POSOCO; these amounts, paid by the Petitioners, were later recovered from the consumers through the ARR mechanism; the total consumer base in the State of Haryana during 2014 was approximately 53.81 Lakhs which increased to approximately 60.82 lakhs in 2018, and further increased to approximately 78.57 Lakhs in 2024; and it would not be possible for the CERC to identify each and every one of the consumers on whom the burden of the illegal imposition was passed on during the period 2014-18, and some of them may not even form part of the present consumer base.

The amounts, which the Petitioners had paid to CTUIL/POSOCO, towards inter-state transmission charges during July, 2011 to 2018, was added to their revenue requirement, and formed part of the tariff which the Petitioner was permitted to charge its customers. The submission now urged is that, likewise, the amount directed to be refunded to them would, on receipt of the amounts along with interest from POSOCO/CTUIL, be treated as prior-period income and adjusted in their revenue requirement; this would result in a reduction in tariff which the present consumers would be required to pay to the Petitioners herein for the electricity supplied to them; in this manner, the amount refunded by the Respondents to the Petitioners would be passed on to the consumers; the Petitioners would not be permitted by the State Commission to retain the said amount; and just like the amounts, they had paid during 2011-2018 to the Respondents, was added to their revenue requirement and passed on the consumers, the amounts, to be refunded by the Respondents to them along with interest, would also be adjusted in their ARR (reduced from their Annual Revenue Requirement), which would then result in a lower tariff being charged on the consumers.

Section 62(1)(d) of the Electricity Act enables the Appropriate Commission to determine the tariff for retail sale of electricity. Section 64(1) requires an application, for determination of tariff under Section 62, to be made by a licensee in such manner, and accompanied by such fee, as may be determined by regulations. Section 64(2) requires every applicant to publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission. Section 64(3)(a) requires the Appropriate Commission, after considering all suggestions and objections received from the public, to issue a tariff order accepting the application with such modifications or such conditions as may be specified in the order.

Any amount paid/ expenditure incurred by a licensee (such as the inter-state transmission charges hitherto paid by the Petitioners to the Respondents) is, subject to prudence check, included by the Appropriate Commission, in the Annual Revenue Requirement ("ARR" for short) of the Petitioner licensee, by way of a tariff order. The increased ARR, which included the subject inter-state transmission charges, would have been passed on to the consumers in the form of increased tariff, and would have been recovered by way of monthly invoices raised on them by the licensee (ie the Petitioners herein). The transmission charges, which the Petitioners had paid to the Respondent POSOCO/ CTUIL during July 2011 to May 2018, would have formed part of its Annual Revenue Requirement for the concerned years, and would have been passed on to its consumers in the form of increased tariff. It is in this manner that the inter-state transmission charges, which the Petitioners had hitherto paid to the Respondents, would have been recovered by them from their consumers. Likewise, the said amounts (representing the illegal inter-state transmission charges imposed on them earlier). on being refunded to the Petitioners, would constitute their prior period income. Such prior period income would be deducted from their ensuing Annual Revenue Requirement, which would result in a reduction in the tariff payable by the consumers to the

Petitioners in terms of the monthly bills raised on them. It is in this manner that the burden of transmission charges, which the consumers of the Petitioners had borne earlier, would be repaid to them.

The Haryana Electricity Regulatory Commission, in the exercise of the powers conferred on it by Section 181 of the Electricity Act 2003 (Act 36 of 2003) and all other powers enabling it in this behalf, after previous publication, framed the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2019 (the "2019 Regulations" for short) which came into force on 31.10.2019.

The 2019 Regulations are statutory in character and have the force of law. Regulation 8.3.4 thereof stipulated that the Aggregate Revenue Requirement of the Retail Supply Business to be recovered through retail supply tariff of the distribution licensee(s) shall comprise, among others, of all transmission charges (Inter State & Intra State). The first proviso thereto stipulates that the ARR, computed as per above, shall be net of Non-Tariff Income. The second proviso stipulates that the prior period expenses shall be considered at the time of truing-up on a case to case basis subject to prudence check. Regulation 67 relates to Non-Tariff Income. Regulation 67.3 (o) stipulates that the non-tariff income shall include prior period income.

The refund which the Petitioners would receive, consequent to the order under review, would form part of their prior period Income, which would be reduced from its ARR and, resultantly, the consumers would be required to pay a lower tariff. It is because of this refund that the tariff to be charged on the consumers would be lower than what it would have been if the Petitioners did not receive the said refund.

While directing the CERC, in the order under review, to identify the consumers, to whom the amount refunded by Respondent Nos. 2 and 3 should be paid, we had failed to notice the aforesaid statutory provisions both under the Electricity Act and the applicable Regulations. As this is the procedure which is followed, both when inter-state transmission charges were paid and are refunded, the Electricity Act and the Regulations made there-under do not contemplate identification of each individual consumers from whom either the amounts to be paid towards inter-state transmission charges was to be collected, or the amounts refunded is to be re-paid. Just as the liability of inter-state transmission charges, hitherto paid by the Petitioners to the respondents, were borne by the Petitioners' consumer base, likewise the amounts refunded along with interest, if any, is also required to be passed on to the prevalent consumer base of the Petitioners. Neither was the amount, paid earlier towards inter-state transmission charges, borne by the petitioners, nor would the amount, to be refunded with interest, be retained by them. While the consumers, who bore the financial liability of such transmission charges earlier, may largely be the same as the consumers who will receive the benefit of refund with interest, there may be certain consumers who had borne the liability earlier, but may have left the area of supply of the distribution licensee, and there may be some others who may have joined the area of supply later.

The Haryana Electricity Regulatory Commission, in the exercise of the powers conferred on it by section 181 of the Electricity Act 2003 (Act 36 of 2003) and all other powers enabling it in this behalf, after previous publication, made the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) (3rd Amendment) Regulations, 2023 (hereinafter referred to as the 2023 Regulations), amending the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation,

Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2019. The amended regulations came into effect from the date of its notification in the Haryana Government Gazette i.e. 12.04.2023. The 2023 Regulations are also statutory in character and have the force of law. Regulation 66 thereof relates to Fuel and Power Purchase Adjustment Methodology. Regulation 66(1) provides for computation of fuel and power purchase adjustment surcharge. Regulation 66(1)(1) defines "Fuel and Power Purchase Adjustment Surcharge" to mean the increase in cost of power, supplied to consumers, due to change in Fuel cost, power purchase cost and transmission charges. Regulation 62(2) stipulates that fuel and power purchase adjustment surcharge shall be calculated and billed to consumers, automatically, without getting through the regulatory approval process, on a monthly basis, according to the formula, prescribed in the Regulations, subject to true up, on an annual basis, as may be decided by the Commission. Regulation 66(1)(3) stipulates that fuel and power purchase adjustment charge shall be computed and charged by the distribution licensee, in (n+2)th month, on the basis of actual variation, in cost of fuel and power purchase and Interstate Transmission Charges for the power procured during the nth month. Regulation 66(1)(8) requires the distribution licensees to file a petition seeking true up of the fuel and power purchase for the year under consideration by 31st May of the next financial year, and requires the Commission to true up the same by 30th June, after applying the necessary prudence checks. Regulation 66(1)(10) requires the distribution licensee to submit details of the variation between expenses incurred and the fuel and power purchase adjustment surcharge recovered, and the detailed computations and supporting documents, along with the true up petition. Regulation 66(1)(10)(ii) stipulates that, for the purpose of recovery of Fuel and Power Purchase Adjustment Surcharge, power purchase cost shall include all invoices raised by the approved suppliers of power and credit received by the distribution licensees during the year irrespective of the period to which these pertain for any change

in cost in accordance with tariff approved by the Commission, and this shall include arrears/ refunds, if any, not settled earlier.

Just as the inter-state transmission charges, hitherto paid by the Petitioners to the Respondents, would have been passed on to the consumers, the credit received in the form of refund would result in reduction in the Fuel and Power Purchase Adjustment Surcharge, which the licensee can recover from its consumers. It is evident therefore that, while the earlier liability was borne by the consumers, the benefit of refund would also be received by them. The distribution licensee is, in law, neither required to bear the liability of such transmission charges nor is it permitted to retain the benefit of refund, as it is the consumers who bear the liability and receive the refund, albeit in the form of an increase or decrease in tariff.

The doctrine of unjust enrichment is intended only to prevent double benefit being secured by the entity claiming refund. Entities, regulated under the Electricity Act, are required, when they pay inter-state transmission charges, to include such expenditure in their Annual Revenue Requirement which would then result in a higher tariff being paid by its consumers. In other words, through this process, the Petitioners would have passed on their liability, towards inter-state transmission charges, to their consumers. Likewise, when they receive a refund of the amounts, they had paid earlier as a result of the illegal levy of inter-state transmission charges, such refund along with interest would either form part of their non-tariff (pre-paid) income to be reduced from their ARR or directly adjusted under the fuel surcharge mechanism. In cases where such refund is treated as non-tariff (pre-paid) income, the entire income is reduced from the licensee's revenue requirement and, as a result, the tariff which the licensee is entitled to charge its consumers would be reduced thereby. In other words, both the liability and the refund are passed on by the licensee to its consumers, and neither is the liability borne nor the benefit of

refund is retained by them. Consequently, the Petitioners would not be unduly enriching themselves as they do not receive any double benefit in the process.

The aforesaid regulations, which are in the nature of subordinate legislation, are statutory in character, and constitute “applicable law in force”. These Regulations were not noticed by this Tribunal as its attention was not drawn thereto. It is not as if the inter-state transmission charges, hitherto paid by the Review Petitioners to CTUIL in terms of the invoices raised on them earlier, were recovered individually from each consumer. The mode in which this liability was passed on is by inclusion of such expenditure in their Revenue Requirement which, automatically, resulted in a higher tariff being paid by the consumers.

As noted hereinabove, the transmission charges paid by the Review Petitioners to CTUIL, was over a seven-year period spread over from 2011 to 2018. As the Petitioners had invoked the jurisdiction of the CERC, to have the said invoices set aside, only in June 2017, this Tribunal had, in the order under review, opined that their claim for the period prior to June 2014 was barred by limitation. Consequently, it is only the amounts paid by the Review Petitioners to CTUIL as inter-state transmission charges from June, 2014, which this Tribunal had directed, by way of the order under review, as the amounts which they were entitled to receive as refund from CTUIL. The amounts, directed to be refunded, are also required to be adjusted in the manner stipulated in the statutory regulations. The amounts so refunded will be deducted from the ensuing ARR of the Petitioners licensees, thereby resulting in a reduction in their ARR, and consequently a reduction in the tariff to be charged to the consumers in the area of supply of the Petitioner-distribution licensees.

The mode in which the liability of transmission charges, (initially borne by the distribution licensee) was passed on to the consumers, and when the benefit of refund (which on receipt by the distribution licensee) would be passed

on the consumers, is by way of the aforesaid tariff determination mechanism. As the distribution licensee neither retains the burden of the liability incurred towards transmission charges nor the benefit of refund, and both are passed on to the consumers through the aforesaid mechanism, the question of the Review Petitioners retaining any such benefit, much less their receiving a double benefit, does not arise.

We find considerable force in the submission, urged on behalf of the Review Petitioners, that it may not be possible to identify each and every one of their 53.81 lakhs consumers in 2014 which number increased to 60.82 lakhs consumers in 2018, and further increased to 78.57 lakhs in 2024, to whom the liability of the illegal imposition of transmission charges was passed on. Neither the governing statutory regulations, relating to the mode and manner of tariff determination, nor the aforesaid judgments dealing with the mode in which the amount paid and recovered is adjusted through the ARR mechanism, provide for any such exercise of identification being undertaken by the appropriate commission for refund of the amounts. As these statutory regulations were not noticed by this Tribunal in the order under review, the said order passed in Appeal No.383 of 2022 dated 02.02.2024 necessitates review on this score.

V. PLEADINGS:

A. CONTENTIONS URGED ON BEHALF OF THE PETITIONERS:

Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Petitioners, would submit that, at no instance, have the Haryana Utilities given up their claim for carrying cost; further, in the pleadings before this Tribunal in Appeal No. 383 of 2022 (as well as the Central Commission), the Respondents had ample opportunity to deal with the contentions regarding carrying cost, and were aware that Haryana Utilities were seeking carrying

cost. Reference in this regard is made to certain extracts from the pleadings in Appeal No. 383 of 2022.

Sri M.G. Ramachandran, Learned Senior Counsel, would further submit that the cases cited on behalf of CTUIL, on the issue of pleadings/prayer/issue not pressed etc, are all distinguishable and not applicable to the present case – (a) the decision in **Virendra Nath Gautam v. Satpal Singh and Ors (2007) 3 SCC 617** dealt with the absence of material particulars being a fatal defect in an election petition; quite apart from the fact that the rigours of an election petition (Section 83 of the Representation of the People Act, 1950) are much more strict, in the present case, the Haryana Utilities had pleaded/prayed for and provided details of the interest claimed; it is the Respondents that chose not to respond to the computation put forth by the Haryana Utilities; accordingly, it cannot be said that the '*material particulars*' were missing in the claim of the Haryana Utilities; (b) similarly, reliance on the Constitution Bench decision in **New Delhi Municipal Council v State of Punjab and Ors (1997) 7 SCC 339** is misconceived, since the claim for interest was not missing from the written pleadings of the Haryana Utilities (or even the Respondents who had acknowledged that that the Haryana Utilities had claimed carrying cost); the Respondents had enough opportunity to deal with the claim of carrying cost and chose not to make any averments (either before the Central Commission or before this Hon'ble Tribunal); (c) unlike the case before the Supreme Court, in **Union of India and Ors v NV Phaneendran (1995) 6 SCC 45** wherein only point was urged, no similar submission has been recorded by the Tribunal in the Judgment dated 02.02.2024; in fact, in Para 3 of the Judgment, this Tribunal observed that the total amount paid by the Appellant on account of POC charges is said to be approximately Rs. 1258 crores (till 04.05.2018) which they claim is liable to be refunded to them along with applicable interest." (d) the judgment, in **Syed and Company v State of J&K (1995) Supp (4) SCC 422,** is also not applicable to the present case in as much as, along with the

prayer for carrying cost, the Haryana utilities have also pleaded that the same is admissible along with the computation of interest @ 15% p.a. as stated in the Affidavit dated 09.06.2020 placed on record before the Central Commission as well as this Tribunal; (e) the findings in **Bachhaj Nahar v Nilima Mandal and Anr (2008) 17 SCC 491,** do not apply since the Haryana Utilities had put forth pleadings for carrying cost; further, there was intimation of the claim for carrying cost to the Respondents, and an opportunity for the Respondents to deny/dispute such claim/computation; further, the said judgment supports the case of Haryana Utilities, namely that it is fundamental that, in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings'; (f) reliance on **National Thermal Power Corporation Limited v Madhya Pradesh State Electricity Board and Ors (2011) 15 SCC 580,** is misplaced, as the same proceeds on a completed different factual aspect and –(i) in the said case, there was no statutory provision, nor was there any industry practice for adjustment of interest after the final tariff is determined when such determined tariff is lower or higher than the earlier provisional tariff. The said provision was introduced subsequently; (ii) more importantly, the tariff charged by NTPC at the relevant time was in accordance with the applicable Notifications and were not illegal (as is the case of the action of CTU/POSOCO); the Respondents cannot, on the face of a clear and categorical finding of illegality on their part, claim any parity with the conduct of NTPC; (g) similarly, the attempt on the part of CTUIL to consider its actions on par with that of Small Industries Development bank of India (SIDBI), in **Small Industries Development bank of India v SIBCO Investment Pvt Limited (2022) 3 SCC 56,** is entirely misconceived; the actions of CTUIL/POSOCO were illegal, and not in accordance with the relevant regulations/provisions of the Act, as held by this Tribunal; in addition, the other DICs (and consequently the consumers of the other DICs) have derived an undue benefit at the cost of the consumers in the State of Haryana; and, further, at no instance was the issue of carrying cost waived by Haryana Utilities**.**

B. CONTENTIONS URGED ON BEHALF OF POSOCO:

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of POSOCO, would submit that It is indisputable that, in the initial round of proceedings, i.e., Petition No. 126/MP/2017, the Petitioners never prayed for interest payment; accordingly, no findings were returned by the CERC on this aspect (Refer: ***Bachhaj Nahar v. Nilima Mandal***, **(2008)17 SCC 491**); it is settled law that a Court cannot make out a case not pleaded; a decision ought to be confined to the question raised in the pleadings; the relief which is not claimed cannot be granted; the object and purpose of pleadings is to ensure that litigants come to Court with all issues clearly defined, and to prevent cases being expanded or grounds being shifted during trial; the object is also to ensure that each side is fully alive to the questions that are likely to be raised and considered so that they may have an opportunity of placing relevant evidence appropriate to the issue before the Court for its consideration; pleadings are meant to give to each side intimation of the case of the other, so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take; the object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon; since there was no prayer for grant of interest/ carrying cost, no issue was framed by CERC; when the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, Court cannot focus attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue; as a result, the respondent does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief; the question before a court is not whether there is some material on the basis of which some relief can be granted; the question is whether any relief can be granted, when the

defendant had no opportunity to show that the relief proposed by the court could not be granted; when there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the Court considers and grants such a relief, it will lead to miscarriage of justice.

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of POSOCO, would further submit that, only at the stage of appeal before this Tribunal, i.e., in Appeal No. 240 of 2018, a prayer for carrying cost was inserted without obtaining leave of this Tribunal; in ***Nandkishore Lalbhai Mehta v. New Era Fabrics (P) Ltd.***, **(2015) 9 SCC 755**, it was held that fresh pleadings, which is in variation to the original pleadings, cannot be taken unless such pleadings are incorporated by way of amendment; no such amendment was sought by the Petitioners in Appeal No. 240 of 2018; accordingly, even the order dated 04.02.2020 of this Tribunal in Appeal No. 240 of 2018 does not return any findings on grant of interest/ carrying cost; this Tribunal, in its order dated 04.02.2020, held that remand was only on the last sentence of prospective application of the decision; if this Tribunal's intent was to allow carrying cost/ interest, the order dated 04.02.2020 would have said so in so many words; If the Petitioners believed that non-consideration of prayer for interest/ carrying cost was a ground for review, they ought to have challenged the order dated 04.02.2020, which has attained finality; under the Impugned Order, this Tribunal concluded that the order of limited remand dated 04.02.2020 binds this Tribunal as well; there is no challenge by the Petitioners to such a conclusion; therefore, no ground for reviewing the Impugned Order is made out on this count.

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of POSOCO, would also submit that a prayer which was claimed but was not granted is deemed to have been rejected; in this regard, reliance is placed on the Supreme Court's judgment in ***State Bank of India vs. Ram Chandra***

Dubey and Ors., **(2001) 1 SCC 73**; the prayer for interest/ carrying cost, which was claimed by the Petitioners both in Appeal No. 240 of 2018 and Appeal No. 383 of 2022, should be deemed to have been rejected by this Tribunal; the order dated 04.02.2020 in Appeal No. 240 of 2018 having attained finality, claim for interest/ carrying cost cannot be agitated under the present review petition by terming it as an error apparent on the face of the Impugned Order; and there is no other sufficient reason for considering such a relief under the limited scope of review jurisdiction.

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of POSOCO, would contend that, even during the course of hearing of Appeal No. 383 of 2022 which culminated in the Impugned Order, the Petitioners never pressed their claim for interest/ carrying cost; although, in view of the binding nature of the limited remand order, a prayer for grant of carrying cost/ interest could not be pressed by the Petitioners in Appeal No. 383 of 2022, even assuming that such relief was capable of being pressed in the first place, it is a matter of fact that the Petitioners never pressed for this relief during the course of hearing; and, since the relief was not pressed, no findings have been returned by this Tribunal under the Impugned Order.

C. SUBMISSIONS URGED ON BEHALF OF CTUIL:

Mrs. Suparna Srivastava, Learned counsel appearing on behalf of CTUIL, would submit that the Review Petitioner had filed Petition No.126/MP/20217 before CERC seeking declaratory relief with regard to the status of the 400 kV transmission line from Indira Gandhi Super Thermal Power Station (Aravali power station) to Daulatabad (“the transmission line” for short), and also for setting aside the transmission charges invoices raised upon them by Respondent No.3 from July, 2011 onwards; no prayer was sought for refund of the amounts under the said invoices along with any interest thereon; vide Order dated 4.5.2018, the CERC decided the above Petition and held the

subject transmission line to be an intra-State line, not subject to sharing of transmission charges and losses under the PoC mechanism, and that the long-term access (LTA) capacity corresponding to the share of Haryana in the Aravali power station was to be included while computing the PoC charges and losses; the CERC further held that, since bills were being raised at that time on the basis of Haryana being a deemed LTA customer corresponding to its share in the Aravali power station and the relief was being granted in the light of the previous decisions of the Commission, the relief granted to the Review Petitioners was to operate prospectively; and, since the CERC declined to re-open the invoices already settled as per the then prevailing regulatory provisions, no question of any refund of any monies to the Review Petitioners, let alone any interest thereon, arose.

Mrs. Suparna Srivastava, Learned counsel appearing on behalf of CTUIL, would further submit that, aggrieved by the above Order of the Commission, the Review Petitioners filed Appeal No.240/2018 before this Hon'ble Tribunal, wherein, for the first time, the relief as regards interest was sought by the Review Petitioners in the appellate proceedings before this Tribunal; in Ground E, the plea of restitution was raised with the submission that the Commission ought to have implemented the Order retrospectively with a direction to pay carrying cost; vide Order dated 4.2.2020, this Tribunal disposed of the above Appeal and remanded the matter to the CERC on the limited aspect of prospective applicability of its directions; there was no adjudication as regards the specific claim/prayer of the Review Petitioners for grant of interest in case the benefit was to be applied retrospectively; more Importantly, during the hearing in the Appeal, no arguments were advanced by the Review Petitioners as regards their stated claim of payment of interest on the refunded amounts (if any) and, as such, the said claim was not pressed; in the remand proceedings before the Commission, the Review Petitioners filed additional affidavit dated 9.6.2022 in which a submission was made for

considering the refund of transmission charges along with interest as claimed; however, once again, during the hearing in the remand proceedings, the claim for interest was not argued and, as such, was not pressed; vide its Order dated 30.7.2022, the Commission reiterated its earlier stand of prospective applicability of the benefit granted to the Review Petitioners, and disposed of the Petition; and the recordings in para 12(o) and para 21 showed that the claim for grant of interest was not agitated during the proceedings before the Commission.

Mrs. Suparna Srivastava, Learned counsel appearing on behalf of CTUIL, would also submit that, being aggrieved, the Review Petitioners once again approached this Tribunal by filing Appeal No.383 of 2023, and sought setting aside of the Commission's Order together with refund of the inter-State transmission charges paid by them along with carrying cost; in Ground D and Ground N, refund of amounts was sought along with carrying cost as per applicable Regulations; however, no substantial pleadings were made in the Appeal in support of the said claim of interest, and no arguments were advanced by the Review Petitioners in support of their claim at the time of hearing before this Tribunal; the same is also evident from the fact that, in their Written Submissions filed upon conclusion of the arguments, there was no mention of any submission regarding their claim for payment of interest on the amounts, if any, to be refunded to them, except for a statement in the beginning as to the prayers made in the Appeal; and the said statement could not be construed to mean that the Review Petitioners had duly agitated, argued and pressed their claim for interest before this Tribunal.

Mrs. Suparna Srivastava, Learned counsel appearing on behalf of CTUIL, would contend that all 'material facts' must be pleaded by the party in support of the case set up by him, as the object and purpose is to enable the opposite party to know the case he has to meet; in the absence of pleading, a party cannot be allowed to lead evidence; further, in a situation where a party

may have raised various points in the petition, but if all of them have not been agitated at the time of hearing, the court is under no obligation to decide all the issues raised by such a party; the principles of fairness, equity, justice and good conscience requires that the other party must be given an opportunity to answer the line of reasoning adopted on a particular issue and if an issue, not agitated by a party at the time of hearing, is dealt with by a court, it may cause grave injustice to the other party (Refer: **Virendra Nath Gautam Vs. Satpal Singh (2007) 3 SCC 617; New Delhi Municipal Council Vs. State of Punjab & Ors. (1977) 7 SCC 339);** further, the Supreme Court has held that, where various contentions have been raised and the court does not deal with some of them because the same were not agitated at the time of hearing, it does not warrant remittance to the same court for re-hearing for review by such a party. (Refer: **Uda Ram Vs. The Central State Farm AIR 1998 RAJ 186; Union of India Vs. N.V. Phaneendran (1995) 6 SCC 45);** the Code of Civil Procedure (CPC) is an elaborate codification of the principles of natural justice to be applied to civil litigation, and in view of such principles, Courts have taken a consistent view that a prayer alone is not sufficient and there must be substantiating pleading explaining the basis of such prayer (Refer: **Syed and Company & Ors. Vs. State of Jammu & Kashmir & Ors. (1955) Supp 4 SCC 422; Bachhaj Nahar Vs. Nilima Mandal & Anr. (2008) 17 SCC 491)**; in view of the above settled law, the contention of the Review Petitioners that this Tribunal failed to consider their claim regarding carrying cost applicable on the PoC charges directed to be refunded to them, is untenable and is liable to be rejected.

D. JUDGEMENTS CITED UNDER THIS HEAD:

After referring to Section 83(1)(a) to (c) and its proviso, Section 83(2), Section 100, Section 101 and Section 123 of the Representation of the People Act, 1951, the Supreme Court, in **Virender Nath Gautam v. Satpal Singh, (2007) 3 SCC 617**, held that, from the said provisions of the Act, it was clear

that an election petition must contain a concise statement of “material facts” on which the petitioner relies; it should also contain “full particulars” of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice, and the date and place of commission of such practice; such an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) for the verification of pleadings; it should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof; all material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition; if the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (*a*) of sub-section (1) of Section 83 of the Representation of the People Act read with clause (*a*) of Rule 11 of Order 7 of the Code of Civil Procedure.

In **NDMC v. State of Punjab, (1997) 7 SCC 339,** the Supreme Court, while expressing its reluctance to deal with a proposition which was not based on any contention advanced by any of the counsel, either in their written pleadings or in their oral submissions, observed that such reluctance was not because they felt constrained to restrict themselves to the parameters prescribed by the submissions of counsel, but because they felt that the opposite side did not have a fair opportunity to answer the line of reasoning adopted in that behalf; as the contention had the effect of imposing considerable tax liabilities upon the properties of the State Governments, it would only be proper that their views in this behalf be obtained before visiting them with such liability; the rule of caution required that, ordinarily, courts should, particularly in constitutional matters, refrain from expressing opinions on points not raised or not fully and effectively argued by counsel on either side.

In **Union of India and Ors v NV Phaneendran (1995) 6 SCC 45,** the Supreme Court, after noting the submission that, though several contentions had been raised on merits, the Tribunal had only dealt with one issue and, therefore, an opportunity may be given to the respondent to agitate those questions by remitting the matter to the Tribunal, observed that they found it difficult to accept this contention; while It was true that several points appear to have been raised, but before the Tribunal only one contention was argued; in paragraph 4 of its order, the Tribunal had observed that the only point that was urged before them by the learned counsel appearing for the applicant was that the Divisional Railway Manager not being the appointing authority is not competent to impose a punishment of removal from service on the applicant; and, since the controversy was only limited to this point before the Tribunal, there was no justification to remit the matter.

In ***Syed and Co. v. State of J&K*, 1995 Supp (4) SCC 422,** the Supreme Court noted the submission that, by looking at the entire pleadings of the State before the prescribed authority, it could be seen that, nowhere, it had been stated as to what exactly was the basis for claiming the price of timber extracted by the respondent; and, without specific pleadings in that regard, evidence could not be led in since it is settled principle of law that no amount of evidence can be looked unless there is a pleading.

The Supreme Court observed that no doubt a prayer was made before the prescribed authority by the State requesting that a decree might be granted for the amount of price of timber extracted by the party; but that prayer alone was not enough; the pleadings ought to have been there as to what exactly was the basis of the prayer; the entire case of the State before the prescribed authority proceeded only with reference to royalty and interest thereof, but not with reference to the price of timber; the State, at that stage, should have amended the pleading and incorporated the basis for the claim for the price of timber; but for reasons best known, the State merely took out an application

under Order 41 Rule 27 to lead in evidence; evidence could have been allowed if there were pleadings to that effect; in this case, there was none; it is settled law that no evidence can be let in without the pleading; and the High Court was fully justified in rejecting the application.

In **Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491,** the Supreme Court observed that the High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure; the rules breached are: (*i*) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court, (*ii*) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint, and (*iii*) A factual issue cannot be raised or considered for the first time in a second appeal; the object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial; its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration; pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take; the object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon; when the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot

focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue; as a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief; and, therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief.

The Supreme Court further observed that the question before a court is not whether there is some material on the basis of which some relief can be granted; the question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted; when there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice; no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief; in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings; it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit; and in a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs.

In **Uda Ram v. Central State Farm, 1997 SCC OnLine Raj 112,** the Rajasthan High Court held that, even if a party does not pray for the relief in the earlier writ petition, he cannot file a successive petition claiming same relief, which he ought to have claimed in the earlier one, as it would be barred by the principle enshrined in Order 2 R. 2 of the Code of Civil Procedure; in the instant case, the petitioner had already claimed the same relief in Writ Petition No. 2175/88; the said petition was disposed of and no argument was made for this issue either in the earlier petition, nor in the subsequent one at the time of hearing by the counsel appearing for applicant-petitioner; it was difficult to understand how the review petition was maintainable as the case certainly did

not fall within the ambit of the principle enshrined in Order 47 R. 1 of the Code of Civil Procedure; a party may raise various points in the petition but if all of them were not agitated at the time of hearing, the court was under no obligation to decide all the issues taken in the petition; the court was not supposed to find out all the issues involved in a given case, conduct full-fledged research on them and then decide all of them on merit; it is not permissible for the court to deal with such issues as the other party could not have been in a position to reply the submissions so raised by the court suo moto; the principle of fairness, equity, justice and good conscience requires that the other party must be given an opportunity to answer the line of reasoning adopted on a particular issue; if an issue not agitated by a party at the time of hearing is dealt with by a court, it may cause grave injustice to the other party; in **State of Maharashtra v. Ramdas Srinivas Nayak (7)** it has been held that, if a point raised and agitated, is not dealt-with by the court in its judgment, the appropriate course for a party is to file a review petition before the same bench; in **Union of India v. N.V. Phaneendran (8),** the Supreme Court held that where various contentions had been raised and the Court/Tribunal does not deal-with some of them because the same were not agitated at the time of hearing, it does not warrant remittance to the same court for re-hearing for review by such a party; and the same view has been taken by the Supreme Court in *Kanwar Singh v. State of Haryana(9).*

In ***Nandkishore Lalbhai Mehta v.*** **New Era Fabrics (P) Ltd., (2015) 9 SCC 755,** the Supreme Court observed that, in the plaint filed by the appellant, the plea set up was that. at the instigation of the defendants and in collusion with them, the Mill Mazdoor Sabha had refused to give its permission to the sale of the mill premises of Defendant 1 to the plaintiff; it was not a case set up by the appellant that the Mill Mazdoor Sabha had agreed to the proposed sale on certain conditions offered by the respondents; and fresh pleadings and

evidence which is in variation to the original pleadings cannot be taken unless the pleadings are incorporated by way of amendment of the pleadings.

In **State Bank of India v. Ram Chandra Dubey, (2001) 1 SCC 73,** it was contended, on behalf of the appellant, that a proceeding under Section 33-C(2) of the Industrial Disputes Act was in the nature of an execution proceeding by which an existing right in favour of an employee under a settlement or award or under a statute can be executed. and since no such right of back wages had accrued in favour of the workmen in terms of the award which is silent on that question, the Labour Court could not have made an order computing back wages payable to the workmen.

The Supreme Court summarised the principles enunciated in its earlier decisions, and observed that the benefit sought to be enforced under Section 33-C(2) was necessarily a pre-existing benefit or one flowing from a pre-existing right; the difference between a pre-existing right or benefit on the one hand and the right or benefit, which is considered just and fair on the other hand, is vital; the former falls within the jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not; it could not be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted was confined only to the reinstatement without stating anything more as to the back wages; hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding; further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner; therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Industrial Disputes Act is made.

E. ANALYSIS:

The submission, urged on behalf of the Respondents CTUIL and POSOCO, is that the Petitioners had not sought the relief of carrying cost/interest in Petition No.126/MP/2017 originally filed by them before the CERC, and they are disentitled from seeking such a relief by way of the present Review Petition. It is necessary for us, therefore, to refer to the reliefs sought by the Petitioners, in Petition No.126/MP/2017 filed by them before the CERC on 31.03.2017. The prayer part of the said Petition reads thus:-

> *"a) Declare that the 400 kV Transmission Line from Indira Gandhi Super Thermal Power Station (Aravali Power Station) to Daulatabad is outside the scope of the jurisdiction of the Respondent 1 and 2 as well as the Sharing of Transmission Charges and Losses provided under the Sharing Regulations, 2010;*
>
> *b) Set aside the bills raised by Respondent No. 2 since the month of July, 201to the extent the claim therein related to Sharing of inter-state transmission Charges and Losses for the 400 KV Transmission Line from Indira Gandhi Thermal Power Station to Daulatabad;*
>
> *c) Restrain Respondent no. 1 and 2 from recovering any charges from the Petitioners in regard to the 400 kV Transmission Line from Indira Gandhi Super Thermal Power Station (Aravali Power Station) to Daulatabad;*
>
> *d) Pass ad-interim ex-parte Orders in terms of prayers (a) to (c) above; and*
>
> *e) Pass any such further order or Orders as this Commission may deem just and proper in the circumstances of the case."*

It is true that, while the Petitioners had sought to have the bills raised by POSOCO/CTUIL from July, 2011 onwards, to the extent the claim therein related to sharing of inter-state transmission Charges and Losses for the 400 KV Transmission Line from Indira Gandhi Thermal Power Station to Daulatabad, to be set aside, and for a direction to restrain both POSOCO and CTUIL from recovering any charges from them with respect to the subject 400 kV Transmission Line, no specific prayer was sought regarding payment of interest/carrying cost on the amount to be refunded.

It is necessary to note that the CERC, in its order in Petition No. 126/MP/2017 dated 04.05.2018, framed three issues. Issue no. 3 was whether any direction was required to be issued with regard to the bills raised on the Petitioners from July, 2011. In analysing Issue No. 3, the CERC observed that the Petitioners had been paying transmission charges and losses from July, 2011 when the sharing regulations came into effect; they had, however, approached the CERC only in 2017; the Commission had decided to exempt the subject 400 kV Transmission Line from payment of transmission charges and losses and from the POC mechanism in the light of its earlier orders in Petition No. 291/MP/2015, Petition No. 211/MP/2011 and Petition No. 20/MP/2017; in its order in Petition No. 20/MP/2017, the Commission had granted relief to the Petitioners therein prospectively from the date of the order passed by it; and the Commission was of the view that the relief in the present case should also be granted prospectively keeping in view that the bills raised by POSOCO earlier was as per the prevailing regulatory regime. The CERC directed that the relief should be applicable prospectively from the date of the order passed by it; and was, therefore, not inclined to set aside the bills raised on the Petitioners from July, 2011 onwards, in respect of the 400 kV Transmission Line, as prayed for by them. The CERC, thereafter, observed as under:-

"32. In the light of the above discussion, the prayers of the Petitioner are disposed of as under:

(a) As regards the first prayer seeking declaration that 400 kV Transmission Line IGSPTS-Daulatabad Transmission Lines should be outside the scope of the jurisdiction of the Respondent 1 and 2 as well as Sharing Regulations, it is directed that the subject transmission line being an intra-State Transmission Line shall not be subject to sharing of transmission charges and losses under the PoC mechanism. In the instant case, while RLDC shall continue to carry out scheduling of power from IGSTPS, ISTS charges and losses shall not be applicable to schedules on State network of Haryana. Respondent Nos.1 & 2 are directed not to include the LTA capacity corresponding to the share of Haryana in IGSPTS which computing PoC charges and Losses.

(b) The Petitioner, in the Second prayer, has sought direction to set aside the bills raised by CTU since the month of July, 2011 to the extent the claim related to ISTS Charges and Losses for the 400 KV IGSPTS-Daulatabad Transmission Line. ***In our view, POSOCO and CTU were raising the bills on the basis of the premise that the subject transmission line is connected to ISGS and therefore, Haryana is a deemed LTA holder corresponding to its share in IGSPTS. After considering the hardship faced by Haryana and in the light of the decision of the Commission in Petition No.20/MP/2017, relief is being granted to the Petitioners exempting them from payment of ISTS charges and losses. In our view, the decision shall operate prospectively.***

(c) In the third prayer, the Petitioners have sought directions to restrain Respondent Nos. 1 and 2 from recovering any charges from the Petitioners in regard to the 400 kV IGSPTS-Daulatabad Transmission Line. In the light of our decision with regard to first prayer exempting the Petitioner to pay the transmission charges and losses qua 400 kV IGSPTS-Daulatabad Transmission Line, no further direction is required to be issued with regard to third prayer."

(emphasis supplied).

In the light of the afore-said directions, the question of the Petitioners being granted the relief of refund, of the amounts illegally collected from them earlier by POSOCO and CTUIL, much less their being paid interest/carrying cost on such refund, did not arise. It is only if the Petitioners' prayer, for the bills raised on them by CTUIL and POSOCO to be set aside, was granted by CERC would the question of refund thereof along with carrying cost/interest have arisen for consideration.

Aggrieved by the order passed by the CERC, in Petition No.126/MP/2017 dated 04.05.2018, the Petitioners herein filed Appeal No. 240 of 2018 before this Tribunal. In the said appeal the Appellants herein sought the following relief:-

"(a) Allow the appeal and modify the order dated 04.05.2018 passed by the Central Commission in Petition No. 126/MP/2017 to implement the decision dated 04.05.2018 with effect from June, 2011;

(b) ***Direct that the Appellants 1 and 2 shall be given refund of the entire charges collected by Respondents 1 and 2 from July, 2011 with carrying cost;***

(c) Pass such other orders as this Tribunal may deem just and proper."

It is clear from prayer (b), as afore-extracted, that the Petitioners herein had sought a specific direction from the Tribunal that they be given refund of the entire charges collected by CTUIL and POSOCO from July, 2011 onwards with carrying cost.

In its order, in Appeal No. 240 of 2018 dated 04.02.2020, this Tribunal observed that the CERC had, in the impugned order, appreciated the contention of the Petitioners, considering the difficulties faced by them in light of the earlier decision of the CERC; it was held that its decision would apply prospectively; and this opinion of the CERC, that the decision shall operate prospectively, was not supported by any reasoning. In that view of the matter, this Tribunal remanded the matter to the CERC only with regard to the last sentences of prospective application of the decision of the CERC. The CERC was directed to look into the matter, and hear both the parties in accordance with law whether such benefit could be granted with retrospective effect. Both parties were given liberty to argue on this aspect before the CERC.

Soon after the matter was remanded to the CERC, by the order of this Tribunal in Appeal No. 240 of 2018 dated 04.02.2020, the Petitioners herein filed an additional affidavit dated 17.03.2020, in Petition No. 126/MP/2017, before the CERC on 09.06.2020. In the said additional affidavit, the Petitioners herein extracted (i) the prayers they had sought earlier in Petition No. 126/MP/2017, and (ii) the order of this Tribunal in Appeal No. 240 of 2018. Thereafter, in paragraph 8 of the said additional affidavit, the Petitioner stated that, consequent upon the decision of the Commission that the 400 kV Transmission Line from Aravali generating station be treated as an Intra-State Transmission system of Haryana Vidyut Prasaran Nigam Limited, the Point of Connection Charges, under the Sharing of Inter State Transmission Charges and Losses) Regulations, 2010, was not applicable for the said Transmission Line; the transmission charges levied by Respondent Nos.1 and 2 (CTUIL and POSOCO) in respect of the said line, for the period from 01.07.2011 till

04.05.2018, was required to be considered by the Commission; and the statement of the amount of transmission charges paid and the interest thereon was attached and marked as Annexure-'F'. The Petitioners requested the Commission to initiate proceedings for considering the above issue on the refund of transmission charges, along with interest and as claimed by them pursuant to the decision of APTEL in Appeal No. 240 of 2018 dated 04.02.2020.

The CERC, in its order in Petition No. 126/MP/2017 dated 30.07.2022, observed that they did not find any reason to allow the Petitioners request for quashing of the bills raised by the Respondents, retrospectively considering that the same were issued under the then prevailing regulatory regime. Petition No. 126/MP/2017 was accordingly disposed of. Aggrieved thereby the Petitioners herein filed Appeal No. 383 of 2022 before this Tribunal. Para 7 of the said appeal details the facts of the case and sub-para (R) reads thus :-

> *"R. On 09.06.2020, in pursuance to the above remand, the Appellants have filed an additional affidavit before the Central Commission in Petition No. 126/MP/2017. A copy of the additional affidavit dated 09.06.2020 (without Annexures) filed by the Appellants before the Central Commission in Petition No. 126/MP/2017 is attached hereto and marked as* ***Annexure - 'J'."***

Para 9 of the appeal's ground with legal provisions and ground N thereunder to the extent relevant reads thus:-

> ***"N. ……***
>
> ***……***
>
> *In the present case, the transmission charges amounting to Rs. 1236 crores (approx) were wrongly claimed by CTU/POSOCO and*

the same are liable to be refunded to the Appellants. ***The refund of the said amount along with Carrying Cost as per applicable regulations (till the disposal of the Appeal) will be adjusted in the Annual Revenue Requirements (ARR) of the Appellants and shall lead to a significant reduction in the tariff payable by the consumers in the state of Haryana."***

(emphasis supplied)

Para 21 of the appeal gives details of the relief sought, and reads thus:

"21 Relief Sought…..

(a) Allow the appeal and set aside the order dated 30.07.2022 passed by the Central Electricity Regulatory Commission in Petition No. 126/MP/2017 to the extent challenged herein; and

(b) ***Direct that the Appellants No. 1 and 2 shall be entitled to the refund of the PoC charges collected by Respondents No. 2 and 3 from 01.07.2011 till 04.05.2018 with carrying cost****.*

(c) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper."

Prayer (b), as afore-extracted, is to direct that the Petitioners shall be entitled to refund of the POC charges collected by CTUIL and POSOCO from 01.07.2011 till 04.05.2018 with carrying cost.

In its reply filed to the said Appeal No. 383 of 2022 in March, 2023 CTUIL had stated thus:-

"1. That the Appellants have filed the present appeal seeking setting aside of the Order dated dated 30.07.2022 passed by the Respondent No. 1 Commission in Petition No 126/MP/2017 to the

extent of prospective applicability of the directives contained therein and for a direction that Appellant No 1 and 2 are entitled to a refund of the Point Of Connection (PoC) charges collected by Respondent No 2 and 3 from 1/7/2011 till 4/5/2018 ***with carrying cost****….."*

(emphasis supplied

Likewise POSOCO in its reply, to the said Appeal, filed on 08.12.2022 stated as under:-

"53…..It is reiterated that the amounts towards PoC charges prior to 04.05.2018 had been recovered from the Haryana Discoms in line with the then prevailing regulatory regime, therefore, any refund of the same is not warranted or sustainable in the law ***let alone the carrying cost on such refund as is claimed by the Appellants****…."*

(emphasis supplied)

In the rejoinder filed by the Petitioners herein, to the reply filed by the POSOCO, on 02.02.2023, it is stated thus :-

"Rejoinder dated 02.02.2023 filed by *54 (Paras 9 -14) :*

The Appellants, having succeeded in the proceedings in regard to their claim that the PoC Charges are not payable since the transmission line in question is an Intra State Transmission line and the same having been declared by the Central Commission as an Intra State Line belonging to Appellant No. 3- HVPNL and also has been admitted by POSOCO in Para 2 of the instant Reply, the consequential relief for the refund of the charges wrongfully and illegally collected by POSOCO ought to have been passed for the entire period from 01.07.2011 till 04.05.2018 ***with carrying cost****…."*

Likewise in the rejoinder filed by the Petitioners on 21.03.2023, to the reply filed by CTUIL, it is stated thus :-

> "*Paras 26 -31 ….The Appellants, having succeeded in the proceedings in regard to their claim that the PoC Charges are not payable since the transmission line in question is an Intra State Transmission line and the same having been declared by the Central Commission as an Intra State Line belonging to Appellant No. 3- HVPNL and also has been admitted by CTU in the instant Reply, the consequential relief for the refund of the charges wrongfully and illegally collected by CTU/POSOCO ought to have been passed for the entire period from 01.07.2011 till 04.05.2018* ***with carrying cost****…."*

In the Written Note dated 22.09.2023 filed by the Petitioner in Appeal No. 383 of 2022, it was submitted as under:

> *"The matter in issue relates to the levy of Point of Connection Charges ('****POC Charges'****) by Respondent No. 2 - Power System Operation Corporation Limited ('****POSOCO****') and Respondent No. 3 – Central Transmission Utility ('****CTU****') (then forming part of POWERGRID) for the period from 01.07.2011 till 04.05.2018. Such charges have been levied in respect of the power flow on the 400KV Jhajjar Daulatabad Line ('****STU Line'****) owned, operated and maintained by Haryana Vidyut Prasaran Nigam Limited ('****HVPNL')*** *on the Appellant – Haryana Utilities.* ***The total amount paid by the Appellant on account of POC charges is approximately Rs. 1258 crores (till 04.05.2018). The same is liable to be refunded along with applicable interest."***

It is evident, therefore, that the Petitioners claimed refund of the amount with carrying cost in Appeal No. 240 of 2018, thereafter before the CERC consequent on remand, and eventually in Appeal No. 383 of 2022 also. The fact that they had sought such a relief, of refund along with carrying cost, is acknowledged both by CTUIL and POSOCO in their respective replies filed to Appeal No. 383 of 2022. While the Petitioners herein may not have specifically sought refund initially when they filed Petition No. 126/MP/2017 before the CERC, they had sought for the bills, raised on them by the Respondents herein, to be set aside. As a consequence of the said bills being set aside, the Petitioners would have been entitled to refund of the amounts illegally collected from them by the Respondents under the said bills. The relief of refund along with interest was specifically sought by them in Appeal No. 240 of 2018 filed before this Tribunal against the order passed by the CERC in Petition No. 126/MP/2017 dated 04.05.2018. In the said appeal, the Petitioners herein had made a specific prayer for refund of the amount along with interest. The plea that they were entitled for refund along with carrying cost was also taken by the Petitioners herein in the additional affidavit filed by them before the CERC on 09.06.2020 in Petition No.126/MP/2017. They continued to seek such a relief thereafter, in all subsequent proceedings, ie for refund of the amount illegally collected from them from July, 2011 till 04.05.2018 along with interest/carrying cost. It is not as if the Petitioners have sought for carrying cost, on the amount to be refunded to them, for the first time in the present review petition.

It is evident, from the afore extracted Paragraphs in the affidavit filed by the Petitioners before the CERC, in the appeals filed by them before this Tribunal, and in the orders passed both by the CERC and this Tribunal, that the Petitioners have raised the plea and sought the relief of payment of carrying cost/ interest. Absence of such a prayer in the original petition matters little, since the Petitioners' claim, to have the invoices raised on them by CTUIL set aside, was rejected by the CERC, and the direction to treat the subject

transmission line as an intra-state transmission line was held to apply prospectively only from the date of the order of the CERC i.e. 04.05.2018. As the Petitioners were not even granted refund, the question, of their being granted interest/ carrying cost on the amount liable to be refunded, did not arise for consideration in the order of the CERC dated 04.05.2018.

While it is true that the original petition filed by them before the CERC did not contain either a plea or a prayer for grant of interest/ carrying cost, in all subsequent proceedings, commencing from Appeal No. 240 of 2018, there is both a plea and a prayer in this regard. No objection appears to have been taken by CTUIL/ POSOCO, in any of the subsequent proceedings, to the petitioners' claim for interest/ carrying cost. The Respondents have not drawn our attention to any material on record to show that they had raised any objection thereto in the reply filed by them in the Appeals or in the subsequent proceedings before the CERC. In any event, since the Respondents were aware of the Petitioners' claim for payment of interest/ carrying cost, they cannot be said to have been deprived of the opportunity to rebut or to put forth their objections to such a claim or relief. The Respondents had every opportunity to do so and have, in fact, done so in the present review proceedings wherein they have taken all conceivable objections available to them in this regard.

The contention that a prayer which is claimed but was not granted is deemed to have been rejected is based on the application of the principles of res judicata under Explanation V to Section 11 of the Civil Procedure Code. As noted hereinabove, Appeal No. 240 of 2018 was filed by the Petitioner herein against the order passed by the CERC in Petition No. 126/MP/2017 dated 04.05.2018, as they were aggrieved by the order passed by the CERC giving its decision prospective application. The consequence, of the order of the CERC giving its decision prospective application, was that the invoices raised by CTUIL earlier were not set aside. It is only if the said invoices had been set

aside, would the question of the Petitioners being granted refund, of the amounts paid by them under the said invoices, arise for consideration, and it is only if the Petitioners were held entitled to refund would the question of their entitlement for interest/ carrying cost on such refund arise for consideration. All that this Tribunal did, in its order in Appeal No. 240 of 2020 dated 04.02.2020, was to remand the matter to the CERC after faulting it for its failure to assign reasons for applying its decision prospectively. It is only if the decision of the CERC was held to relate back to the period when the invoices were raised on them by CTUIL, would the question of grant of refund arisen for consideration. Since this Tribunal, in its order in Appeal No. 240 of 2020 dated 04.02.2020, chose not to examine this issue, and had confined the order of remand only to the issue of the order of the CERC dated 04.05.2018 being applied prospectively, it cannot be said that the Petitioners claim for refund and for interest/ carrying cost on such refund, should be deemed to have been rejected by this Tribunal. In so far as the order in Appeal No. 383 of 2022 dated 02.02.2024 is concerned, the Petitioners have sought review of the said order and, therefore, this issue of deemed rejection would also have no application in so far as the order under review is concerned.

The submissions urged on behalf of CTUIL is that, while the Petitioners may have taken such a plea, the very fact that they did not press for grant of such a relief is evident from the fact that this Tribunal had, in the order now under review, choose not to direct the CERC pay them carrying cost on the amount liable to be refunded to them. As noted hereinabove, in Appeal No. 383 of 2022 which culminated in the order under review dated 02.02.2024 being passed, a written note was filed on behalf of the Petitioners herein on 22.09.2023. In para 1 thereof, it is specifically stated that the matter in issue related to the plea on Point of Connection Charges (POC) by CTUIL and POSOCO for the period from 01.07.2011 till 04.05.2018; such charges have been levied in respect of the power flow 400 kV Jhajjar-Daulatabad Line (HTU

Line) owned, operated and maintained by Haryana Vidyut Prasaran Nigam Limited (HVPNL) on the Haryana utilities (Petitioners herein); the total amount paid by the Appellant (Petitioners herein) on account of POC was approximately Rs.1258 Crores (till 04.05.2018); and the same was liable to be refunded along with applicable interest.

As is evident, from the written submissions filed by CTUIL itself, in the present review proceedings, such a contention, though not originally urged in Petition No. 126/MP/2017, was subsequently raised in all subsequent proceedings and such a prayer has also been sought. Failure on the part of this Tribunal to consider this issue is, evidently, an error apparent which would necessitate the order under review being set aside to this limited extent.

The contention that the Petitioners did not press for such a relief is belied by the afore-extracted Paragraphs including their contention in their written submissions that they were entitled to the grant of such a relief. It is difficult for us, therefore, to accept the submission, urged on behalf of the CTUIL, that the Petitioners had not pressed for grant of such a relief, more so as the claim of interest has been specifically sought from when Appeal No. 240 of 2018 was filed till written submissions were filed in Appeal No. 383 of 2022, which culminated in the order under review being passed by this Tribunal.

We shall now consider the judgements relied on behalf of the Respondents under this head. The law declared by the Supreme Court, in **Virender Nath Gautam v. Satpal Singh, (2007) 3 SCC 617**, is that failure to state all material facts, in accordance with the provisions of the Representation of People Act, 1951, would render an election petition liable to be dismissed. The observations in the said judgement, made in the context of an election petition, cannot be extrapolated to proceedings under the Electricity Act.

In **NDMC v. State of Punjab, (1997) 7 SCC 339,** the Supreme Court chose not to consider a proposition which was not based on the contentions

raised either in the pleadings or in the oral submissions, because the opposite side did not have a fair opportunity to answer the line of reasoning adopted; and as courts should, in constitutional matters, refrain from expressing opinion on points not raised or not fully and effectively argued by counsel on either side.

As detailed hereinabove, the respondents, in these review proceedings, were well aware of, and had ample opportunity to raise all possible objections on, the Petitioners' claim of interest/carrying cost on refund. They have, in fact, raised several objections to the said claim in the present review proceedings, all of which have been considered and dealt with in the present order.

In **Union of India and Ors v NV Phaneendran (1995) 6 SCC 45,** the appellant had sought remand on the ground that several points raised by it was not considered in the impugned order. The Supreme Court refused to accede to this request since the controversy was limited only to one point as was evident from the observations of the Tribunal, in the impugned order, that only one point was urged before them. No observation, such as that found in the order of the Tribunal in **NV Phaneendran**, are made in the order under review.

In ***Syed and Co. v. State of J&K*, 1995 Supp (4) SCC 422,** the Supreme Court observed that merely seeking a prayer was not sufficient; such a prayer should be based on pleadings; at the appellate stage, the State should have amended the pleading and incorporated the basis for the claim; merely taking out an application under Order 41 Rule 27 to let in evidence was not enough; evidence could have been allowed if there were pleadings to that effect; and no evidence can be let in without the pleading. As noted hereinabove, there is both a plea and a prayer for grant of interest/carrying cost in all proceedings commencing from Appeal No. 240 of 2018; and, though they had an opportunity to do so, the Respondents herein have not raised any objection to

such a plea having been taken, and a prayer having been made, at the appellate stage.

In **Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491,** the Supreme Court observed that (*i*) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings; (*ii*) the court cannot grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint, and (*iii*) a factual issue cannot be raised or considered for the first time in a second appeal; when there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, grant of such a relief by the court will lead to miscarriage of justice; and, in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. By way of an illustration, the Supreme Court pointed out that, in a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs.

The Petitioners had, even in the original petition filed by them before the CERC, sought to have the invoices raised by CTUIL set aside, meaning thereby that the amounts paid by them earlier be refunded. In Appeal No. 240 of 2018, filed by them against the order of the CERC dated 04.05.2018, and thereafter in all subsequent proceedings both before the CERC and this Tribunal, the Petitioners had sought the relief of refund with interest/carrying cost. While the Respondents have put forth their objection to the grant of refund contending that the invoices raised by them were in terms of the prevalent regulatory regime, no specific objection was taken to the Petitioners' claim for interest/carrying cost, or that such a relief could not be sought at the appellate stage. Reliance placed by the Respondents, on **Bachhaj Nahar**, is misplaced.

All the proceedings commencing from Petition No.126/MP/2917 filed by the Petitioner before the CERC till the order under review was passed on 02.02.2024 form part of the same proceedings as an order passed on remand

does not constitute a distinct proceeding. It is well settled that a remand order is a finding in an intermediate stage of the same litigation, and when it came to the trial court and escalated to the-appellate court/tribunal, it remains the same litigation. (**Uttar Haryana Bijli Vitran Nigam Ltd. v. CERC, 2024 SCC OnLine APTEL 4 (Order in Appeal No. 383 of 2022 dated 02.02. 2024); Jasraj Inder Singh v. Hemraj Multanchand, (1977) 2 SCC 155).** Consequently, the provisions of Order 2 rule 2 CPC have no application. As noted hereinabove, while the claim for the invoices to be set aside which would result in refund was agitated right through, the claim for interest/carrying cost on such refund was made from the stage of Appeal No. 240 of 2018 onwards. Reliance placed on **Uda Ram** is therefore misplaced.

As fresh pleadings, at variation with the original pleadings, have not been taken by the Petitioners, reliance placed by the Respondents, on ***Nandkishore Lalbhai Mehta v.* New Era Fabrics (P) Ltd., (2015) 9 SCC 755**, is of no avail. It is because the relief granted in Appeal No.383 of 2022 dated 04,02,2024 was confined to refund, and interest/carrying cost thereon was not granted, have the Petitioners sought review of the said order. Reliance placed on **State Bank of India v. Ram Chandra Dubey, (2001) 1 SCC 73,** is also misplaced.

VI. IS THE PETITIONERS' CLAIM FOR INTEREST INADMISSIBLE:

A. CONTENTIONS URGED ON BEHALF OF THE PETITIONERS:

Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Review Petitioner, would submit that this Tribunal has held that the concept of unjust enrichment has no application in the case of commercial entities such as the Distribution Licensee – (a) **Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association v. Kerala State Electricity Regulatory Commission – (Judgment in Appeal No. 247 of 2014 dated 03.07.2013); (b) Alps Industries Limited v. Uttarakhand**

Electricity Regulatory Commission and Ors. (Order in Appeal 329 of 2019 dated 14.07.2021); the very foundation of the argument of CTUIL/POSOCO, to the effect that they acted in accordance with the prevalent regulatory regime, is misconceived as already having been rejected by this Tribunal; in essence, CTUIL/POSOCO acted illegally; and, therefore, they cannot proceed on the basis that they had acted in accordance with the law prevalent at the relevant time.

Sri M.G. Ramachandran, Learned Senior Counsel, would further submit that, if interest was not to be allowed on the basis of any special equities/peculiarities as sought to be argued by CTUIL/POSOCO, it was for them to have so specifically pleaded, and an opportunity ought to have been granted to Haryana Utilities to respond to the same; this is particularly, when, by way of Affidavit dated 09.06.2020, the Haryana Utilities had specifically sought for refund of Rs 1266 crores along with Interest of Rs 780.99 crores (calculated @ rate of 15% per annum upto 15.03.2020); in response, neither POSOCO (Written Submissions dated 26.06.2020) nor CTUIL (Written Submissions dated 10.09.2020) disputed the computation nor filed an Affidavit controverting the claim of Haryana Utilities; and, at no instance, before the filing of the response to the present review petition, have either of the Respondents raised an objection or pleaded regarding the inadmissibility of the claim for carrying cost on the ground that the same was not prayed for in the first Petition filed before the Central Commission.

B. SUBMISSIONS URGED ON BEHALF OF CTUIL:

Mrs. Suparna Srivastava, Learned counsel appearing on behalf of CTUIL, would submit that, by claiming carrying cost under the present review proceedings, the Review Petitioners are seeking a re-hearing of the above Appeal, without demonstrating any error apparent in the Order under review, which is impermissible; when, at various stages in the litigation, the Review

Petitioners have failed to make any supporting submissions in the pleadings or press/argue the same both before the Commission, and thereafter before this Tribunal, there can never be said to be an error apparent on the face of the record necessitating review of the Order under review; and the Review Petitioners have sought to introduce a new cause of action at the appellate stage which contravenes the established principles of law and is thus impermissible.

Mrs. Suparna Srivastava, Learned counsel appearing on behalf of CTUIL, would further submit that the claim of the Review Petitioners regarding carrying cost is inadmissible on general principles of equity and restitution; in similar facts and circumstances of the present case, the Supreme Court has taken a view that, where money is being not paid under force, coercion or threat, the principles of equity, justice and fair play cannot be brought in to award interest to the aggrieved party; the Hon'ble Court has further held that: *"The tariff that was being charged at the relevant time was as per the previous notification. Once the tariff was finalized subsequently, NTPC has adjusted the excess amount which it has received. It cannot be said that during this period NTPC was claiming the charges in an unjust way to make a case in equity."* (Refer: **National Thermal Power Corporation Ltd. Vs. Madhya Pradesh State Electricity Board &Ors. 2011 15 SCC 580;** as per Section 34 of the CPC, award of interest is a discretionary exercise, steeped in equitable considerations; even otherwise, in a case where withholding an amount legally due to a party, is bonafide in nature and within the four corners of the regulatory framework, the claim for interest cannot arise on the basis of principles of equity (Refer: **Small Industries Development Bank of India Vs. SIBCO Investment Pvt. Ltd. (2022) 3 SCC 56**; keeping in view the above principles laid down by the Supreme Court, in the present case also, the transmission bills have been raised by Respondent No.3 as per the applicable regime, and the same have been paid by the Review Petitioners without any coercion, threat, force or

protest; as such, it cannot be contended that Respondent No.3 has billed excess amount upon the Review Petitioners to unjustly enrich themselves; the principles of equity and restitution therefore do not apply in the present case for claiming carrying cost; besides, any liability of carrying cost imposed on the amounts to be refunded to the Review Petitioners would operate prejudicially towards the constituents of the PoC pool on whom the said liability would inevitably pass; contrary to the contentions of the Review Petitioners, the interest component is not automatically attracted whenever a refund is directed by the Court; under Section 34 of the CPC, in a decree for payment of money, the Court has the power to grant interest pendente lite and future interest; this power is, however, discretionary; hence, the amounts or financial liability under a money decree does not per se include the interest component, and has to be specifically ordered by the Court; and, even under Section 144 of the CPC, the requirement of an application to be made by the aggrieved party is a pre-requisite and, as such, the same cannot be suo motu applied by the Courts.

Mrs. Suparna Srivastava, Learned counsel appearing on behalf of CTUIL, would also submit that the judgments relied upon by the Review Petitioners regarding interest/ carrying cost being a natural corollary to the grant of relief, are inapplicable to the present case; the said Judgments are in the context of tariff proceedings, wherein provisions exist under the applicable Tariff Regulations for grant of interest or surcharge; in the present case, the Review Petitioner are not seeking a decision on tariff determination, but are instead seeking grant of interest from this Tribunal on payments made under the previous regulatory framework, which have subsequently been held to involve 'illegal collections' made by Respondent No.3; moreover, in none of the Judgments, there appears to be a case of not pressing for grant of interest which is not the case herein.

C. JUDGEMENTS UNDER THIS HEAD:

In **Alps Industries Limited v. Uttarakhand Electricity Regulatory Commission and Ors: (Order in Appeal No.239 of 2019 dated 14.07.2021),** this Tribunal held that, once the Appellant is entitled for refund of such amount, how UPCL has used the said amount to lower its annual requirement and how it treated the said amount or how process of retail supply tariff determination was done, should not come in the way of right, interest, and privilege of the Appellant who seeks refund of the amounts unauthorizedly and illegally recovered from it; Distribution licensees are commercial entities which charge prices for the goods supplied and services rendered; based on unjust enrichment, no case can be decided by the State Commission or the Tribunal whenever illegal recoveries of moneys are made by the distribution licensees; the principle of unjust enrichment normally is seen in the case of indirect taxation; however, the State Commission has applied the said principle in an erroneous manner.

In **NTPC Ltd. v. M.P. SEB, (2011) 15 SCC 580,** the Central Commission, while determining the tariff, had determined the final tariff at a rate lesser than the pre-existing tariff, as a result of which NTPC was found to have collected excess amounts during this intervening period, and the Electricity Boards became entitled to get the refund/adjustment of these differential amounts; the Central Commission had, however, disallowed the claim of the Electricity Boards for payment of interest on the differential amounts between (*i*) the tariff finally determined by the Central Commission and (*ii*) the pre-existing tariff continued by the Central Commission until the final determination of the tariff. Thereafter NTPC duly and immediately adjusted the excess amounts in favour of the purchaser Electricity Boards in their subsequent bills.

MPSEB, PSEB and Delhi Vidyut Board invoked Section 111 of the Electricity Act, 2003 and filed appeals against the orders of the Central Commission before this Tribunal which rejected the claim of the Electricity Boards for interest as being payable under Section 62(6) of the Electricity Act,

2003. It, however, held by its impugned common order that NTPC was liable to pay interest on the differential amounts on the grounds of justice, equity and fair play. NTPC, therefore, filed three civil appeals challenging this order. As against that, PSEB and Delhi Vidyut Board filed Civil Appeals challenging the same order of the Appellate Tribunal to the extent it rejected their claim for interest under Section 62(6) of the Electricity Act.

Two principle questions arose for determination by the Supreme Court in the Civil Appeals: (*a*) Whether the Appellate Tribunal erred in denying the interest on the differential amounts to the Electricity Boards concerned under Section 62(6) of the Electricity Act, 2003, and (*b*) Whether the Appellate Tribunal was justified in allowing interest on the differential amounts on the basis of justice, equity and fair play.

It is in this context that the Supreme Court, in **NTPC Ltd. v. M.P.SEB, (2011) 15 SCC 580,** observed that, prior to 1-6-2006 there was no specific provision for claiming interest for the intervening period; the very fact that such a regulation was required to be issued, indicated the necessity for having such a regulation, but at the same time it was not possible to make it applicable retrospectively; the provision for charging interest was a substantive provision which had to be specifically provided, and would become operative when provided; *Union of India* v. *A.L. Rallia Ram*, AIR 1963 SC 1685, was one of the earliest cases where the principles concerning payment of interest by way of restitution came up for consideration; fhe Supreme Court had noted that there was no provision for interest in the contract or in the Act, and laid down the proposition that interest is payable in equity only if there are circumstances attracting equitable jurisdiction or under the Interest Act; the power to make restitution is inherent in every Court as observed in ***Kavita Trehan* v. *Balsara Hygiene Products Ltd.*:(1994) 5 SCC 380;** restitution will apply even where the case does not strictly fall under Section 144 CPC; however, ***Kavita Trehan*: (1994) 5 SCC 380,** was a case where the submission was made to the effect

that termination of the contract was wrong and an injunction was sought in a civil suit to restrain the respondent from interfering with the disposal of goods; it was in this context that the principle of restitution was applied; the Appellate Tribunal could not bring in either the principles of justice, equity and fair play or that of restitution in the present case; in Para 16 of its order the Appellate Tribunal has specifically observed in terms that this was not a case where the beneficiaries were made to pay the excess tariff at the instance of NTPC through force, coercion or threat; this being the position the principles of equity, justice and fair play could not have been brought in to award interest to the Electricity Boards; while there was delay in the process of determination of the tariff, NTPC was not in any way responsible; ultimately, the tariff was reduced, but the tariff charged by NTPC, in the meanwhile, was in accordance with the rates permitted under the notifications issued by the Commission; it could not be said that NTPC had held on to the excess amount in an unjust way to call it unjust enrichment on the part of NTPC, so as to justify the claim of the Electricity Boards for interest on this amount.

The Supreme Court further held that the tariff that was being charged at the relevant time was as per the previous notifications; once the tariff was finalised subsequently, NTPC had adjusted the excess amount which it had received; it could not be said that, during this period NTPC was claiming charges in an unjust way to make a case in equity; the industry practice also showed that, on all such occasions, interest had never been either demanded or paid when price fixation takes place; the claim for interest could not be covered under Section 62(6); the provision for interest had been introduced by the Regulations subsequent to the period which was under consideration before the Commission; if the propositions in ***Union of India* v. *A.L. Rallia Ram*, AIR 1963 SC 1685, and *Union of India* v. *Watkins Mayor and Co.*, AIR 1966 SC 275,** were to be applied, the terms of the supply agreement, the governing regulation and notifications did not contain any provision for interest;

the industry practice did not provide for it as well; and, in view thereof, interest could not be claimed either on the basis of equity or on the basis of restitution.

ii. In ***Small Industries Development Bank of India v. SIBCO Investment (P) Ltd.*****, (2022) 3 SCC 56, a** suit was originally filed against the Small Industries Development Bank of India ("SIDBI") seeking interest on the alleged belated payment of the principal sum and accrued interest to the plaintiff for the bonds issued by SIDBI. The question which arose for consideration was whether or not the plaintiff had set forth a just claim, based on the bonds issued by the defendant, for payment of interest on delayed payment on the bonds purchased by the plaintiff. The 41 bonds were initially issued by SIDBI to M/s CRB Capital Markets Ltd which sold them to one Shankar Lal Saraf who, in turn, sold them to SIBCO — the plaintiff. In the meantime, CRB Capital faced winding-up proceedings at the instance of RBI in the Delhi High Court.

The plaintiff SIBCO purchased the bonds in the form of promissory notes issued by the defendant SIDBI. These SIDBI bonds 2003 (4th series) carried 13.50% interest and SIDBI bonds 2004 (5th series) generated interest @ 12.50%, payable on a half-yearly basis on/or before 21st day of June and 21st day of December of every year. The 5th series bonds were agreed to be redeemed on 21-12-2004 whereas the 4th series bonds were to be redeemed on 21-12-2003. The bonds were freely tradable in the market. SIBCO purchased 15 bonds (interest payable @ 13.50%) and 26 bonds (interest payable @12.50%) of face value of ten lakhs each for an aggregate price of Rs 3.69 crores from the said Shankar Lal Saraf. The bonds were deposited with SIDBI (defendant) on 2-7-1998 with the request to endorse the name of the plaintiff purchaser on the said bonds. On refusal to register and/or record the name of SIBCO by the defendant on the ground that CRB Capital had gone into involuntary liquidation proceedings at the instance of RBI. The Company Court held that the subject bonds were beyond the

purview of the liquidation proceedings. The defendant made the payment of the principal amount together with interest calculated up to the date, as promised in the said bond to SIBCO with TDS deduction at around 20%. By its letter dated 24-2-2005, the plaintiff raised an objection over the rate on which the TDS was deducted, which was accepted by the defendant as it issued a further warrant covering a sum of Rs 58,86,833 on account of excess TDS deductions.

A demand was raised by the Plaintiff, by their letter dated 10-11-2005, on account of interest on delayed payment of the principal amount and the interest on bonds. The defendant refused to accede to the demand made by the plaintiff. Aggrieved by the refusal, SIBCO filed CS No. 79/2006 for a sum of Rs 3,25,54,483 from SIDBI. The defendant disputed the claim on account of delayed payment contending that liquidation proceeding was initiated against CRB Capital, who at one point of time was the holder of the aforesaid bonds and sold it to the said Shankar Lal Saraf on 20-2-1997 and on 7-4-1997; RBI issued a facsimile dated 9-6-1997 advising the defendant not to effect any transfer, register any lien or otherwise deal with such security invested by CRB Capital and its Group Companies, without prior permission of the Official Liquidator appointed by the Company Court at Delhi; since Shankar Lal Saraf as well as the plaintiff were pressing hard for enfacing their name on the said bonds, a clarification was sought on 23-12-1997 by the defendant from RBI seeking advice for further action in the matter on 29-1-1998; and RBI advised the defendant to take up the matter with the Official Liquidator which was accordingly done on 3-4-1998.

The defendant further stated that, despite multiple reminders till 18-7-2001, no reply was received from the Official Liquidator in this regard. The specific stand was that, due to the embargo imposed by RBI, the defendant could not act in defiance of RBI's directions; because of the pendency of the writ petition before the Calcutta High Court, the matter was not taken up; and,

therefore, neither the interest nor the redemption was paid; after the Company Court order in the liquidation proceeding, the plaintiff's name was put down upon the said bonds and the holder was paid the principal, as well as the interest up to the date of redemption; as such there are no laches, negligence and delay on the part of the defendant to honour the bonds to the plaintiff.

The case projected by the plaintiff was that the amount, both principal and interest, were paid beyond the maturity period and, therefore, the defendant is liable to pay the interest for delayed payment; and the defendant had unreasonably withheld the said amount.

It is in this context that the Supreme Court observed that the plaintiff had failed to show how the defendant derived any undue benefit by withholding the payment accrued on the bonds; the amount due on the bonds was immediately transferred to the “accrued interest” head and was not used by the defendant for their business; and, hence, the plaintiff's contention that the defendant's actions of withholding payment were mala fide, was not acceptable.

On the Plaintiff’s entitlement for interest on delayed payment and pendente lite interest, the Supreme Court observed that the defendant was justified in withholding the accrued dues; the actions of SIDBI were bona fide, in furtherance of RBI directives, which were issued in public interest; in **Clariant International Ltd. v. SEBI [Clariant International Ltd. v. SEBI, (2004) 8 SCC 524**, the Supreme Court had held that two conditions need to be satisfied before awarding interest; f*irst*, that money should be wrongfully withheld from the rightful owners; *second*, that there should be equitable considerations for awarding said interest; and, in the case at hand, neither of these conditions were found to be satisfied.

The Supreme Court further observed that, as per Section 34 of the Code of Civil Procedure (“CPC”), award of interest is a discretionary exercise, steeped in equitable considerations; interest is payable for different purposes

such as compensatory, penal, etc, but these are not the situations in the present case; *firstly*, the defendant was justified in withholding payment, as they were under RBI's direction to do so; *secondly*, the defendant had not derived any undue benefit by their act, and *thirdly*, due payment was promptly made to the plaintiffs upon settlement of rights by the court; moreover, the transactions concerned were during the *"suspect spell"*; this showed that the defendant acted bona fide and there was no undue delay on their part to remit the dues; the plaintiff did pray for pendente lite interest in the trial court but neither did the trial court frame any issue in this regard, nor were any arguments recorded; this showed that such claim was not pressed by the plaintiff; further, no ground was urged in the appeal memo, that such an issue ought to have been framed; and, hence, it was clear that the plaintiff was not serious on its claim for pendente lite interest.

On the question whether the plaintiff's demand was barred by waiver/acquiescence, the Supreme Court held that, it was evident from the record, that when the payment warrants were received by the plaintiff, it effaced the warrants by handwritten remark "Received"; pertinently, in the first instance, protest was only raised in reference to excessive TDS deduction by the defendant while remitting the dues; the demand for interest on delayed payment, was raised after passage of 7 months, when the books of SIBCO were allegedly audited; this justification did not appear to be reasonable; the plaintiff was entitled to demand interest for delayed payment in its writ petition as well; but SIBCO had consistently failed to raise this demand at every stage including at the stage of accepting the sum tendered by the defendant, without any protest; the plaintiff had accepted payment from the defendant as due settlement of its claims; SIBCO'S failure to raise protest and demand for interest at the earliest possible stage, amounted to sub silentio acceptance; and, accordingly, the plaintiff was barred from raising this demand after several months applying the principle of waiver/acquiescence.

D. ANALYSIS:

As noted hereinabove, the question of the Petitioners unduly enriching themselves does not arise as entities, such as the distribution licensees, regulated under the Electricity Act, are statutorily obligated to pass on the liability of transmission charges, paid by them earlier to CTUIL, to their consumers through the tariff determination mechanism. Likewise, the refunded amount, on its receipt from CTUIL, would also be passed on, through the ARR mechanism, to the consumers. While the body of consumers may undergo a change over a period of time, the fact remains that the distribution licensee does not enrich itself in the process, much less does it derive a double benefit thereby, as it neither retains the principal amount refunded nor the interest received thereon.

This Tribunal has, in the order under review, held that, since the transmission charges collected by CTUIL from the Review Petitioners was on the erroneous premise that the subject transmission line was an inter-state transmission line when, in fact, it was an intra-state transmission line, such imposition and collection of transmission charges was illegal. The claim of CTUIL/ POSOCO that they had collected the amount in accordance with the prevalent regulatory regime was specifically rejected by this Tribunal in the order under review. This finding of the Tribunal, not having been subjected to challenge either by CTUIL or POSOCO by way of appeal or review, is binding on them; and it is, therefore, not open to them to now contend that the invoices raised by them on the Review Petitioners was in terms of the then prevailing regulatory regime.

On the entitlement of the Review Petitioners for carrying cost/ interest on the amount to be refunded, it is relevant to note that they had, in Petition No. 126/MP/2017 filed by them before the CERC on 03.06.2017, sought for the invoices, raised on them by CTUIL, to be set aside. The only consequence, of

the invoices being set aside, is refund of the amount paid by the Petitioners in terms of the said invoices raised on them. While it is true that no specific relief was sought, in the said Petition, for interest/ carrying cost of the amount to be refunded, such a relief was specifically sought in all proceedings subsequent thereto. Not only in the grounds raised in the Appeal have the Petitioners sought refund with carrying cost, even in the written submissions filed by them before this Tribunal they had sought such a relief. Our attention has not been drawn to any objection having been taken thereto by the Respondents CTUIL or POSOCO in any of the afore-said proceedings. It is for the first time, in the present review proceedings, that objections have been raised in this regard. The contention that the Petitioners have not pressed for such a relief before this Tribunal, in the Appeal which culminated in the order under review being passed, does not therefore merit acceptance.

This Tribunal had, in the order under review, clearly held that imposition of transmission charges on the petitioners, with respect to the subject intra-state transmission line, was illegal. Since imposition of transmission charges has, itself, been held to be illegal, the Respondent- CTUIL was held liable to refund the amounts so illegally collected by them from the review petitioners earlier. As what was directed to be refunded is an illegal levy/ imposition, the Respondents were not entitled to retain such illegal benefit. It matters little that payment of such illegal imposition was not because of undue force/ coercion or threat. The Petitioners had made payment in terms of the invoices raised on them by CTUIL. Having illegally raised the invoices for payment of transmission charges, though no such transmission charges were in fact payable, CTUIL/ POSOCO cannot now be heard to contend that, notwithstanding their act of illegally imposing such transmission charges, the Review Petitioners are not entitled to claim interest/ carrying cost, since they could have refused to comply with the directions of CTUIL for payment of the amounts in terms of the invoices raised by them. The Petitioners had, in fact,

acted lawfully in making payment, and then challenging such imposition in appropriate legal proceedings before the CERC.

i. SECTION 34 CPC:

Section 34 of the Civil Procedure Code relates to interest. Section 34(1) provides that, where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. Under the proviso thereto, where the liability, in relation to the sum so adjudged, had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

In **Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161,** the Supreme Court observed, on the legal position under the Code of Civil Procedure, that, one reason the law had not developed was because of the wording of Section 34 of the Code of Civil Procedure which still proceeded on the basis of simple interest; it is this difference which prompts much of our commercial litigation because the debtor feels—calculates and assesses—that to cause litigation and then to contest with obstructions and delays will be beneficial because the Court is empowered to allow only simple interest; a case for law reform on this is a separate issue; in the point under consideration, which did not arise from a suit for recovery under the Code of Civil Procedure, the inherent powers in the court and the principles of justice

and equity are each sufficient to enable an order directing payment of compound interest; and the power to order compound interest, as part of restitution, cannot be disputed, otherwise there can never be restitution.

In **SLS Power Limited v. Andhra Pradesh Electricity Regulatory Commission, 2012 SCC OnLine APTEL 209 (Order of APTEL in Appeal. No 150 of 2011 dated 20.12.2012),** this Tribunal held that carrying cost is the compensation for time value of money or the monies denied at the appropriate time, and paid after a lapse of time; carrying cost is not a penal charge if the interest rate is fixed according to commercial principles; and it is only a compensation for the money denied at the appropriate time.

Since the value of money, representing the amounts paid by the Review Petitioners during the period June 2014 to May 2018, would be far more than the amount which they would receive today, and as they would have earned interest on the said amount but for their having been called upon to make payment to CTUIL, they are entitled to claim interest/carrying cost on the said amount. It is not as if this Tribunal had considered the issue in the order under review, and had declined to exercise discretion to grant interest/carrying cost. Though the Petitioners herein had raised such a plea and had sought such a prayer in their appeals and in their written submissions, this aspect was not noticed by this Tribunal. Failure on the part of this Tribunal to consider this issue is, evidently, an error apparent necessitating the order being reviewed under Order 47 Rule 1 CPC.

ii. RESTITUTION:

Section 144 of the Civil Procedure Code relates to restitution. Section 144(1) stipulates that, where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of

restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified, and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

iii. DOCTRINE OF RESTITUTION : ITS SCOPE:

The word restitution, in its etymological sense, means restoring to a party, on the modification, variation or reversal of a decree or order, what has been lost to him in execution of the decree or order of the court, or in direct consequence of a decree or order. In law, the term restitution is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (**South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648; *Zafar Khan* v. *Board of Revenue, U.P:* 1984 Supp SCC 505 : AIR 1985 SC 39; Blacks Law Dictionary, 7th Edn., p. 1315; The Law of Contracts by John D. Calamari & Joseph M. Perillo)**. Restitution sometimes refers to the disgorging of something which has been taken, and at times to compensation for injury done. Often, the result under either meaning of the term would be the same. Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. (**South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648; Blacks Law Dictionary, 7th Edn., p. 1315; The Law of Contracts by John D. Calamari & Joseph M. Perillo).**

The concept of restitution is a common law principle, and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the Court which prevents a party from retaining the benefit

derived from another which it has received by way of an erroneous decree of the Court. (**Essar Oil Ltd.**). The obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit. (***Essar Oil Ltd*; Halsburys Laws of England, 4th Edn., Vol. 9, p. 434).**

That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the Court. The act of the court embraces, within its sweep, all such acts which the court may form an opinion in any legal proceedings that it would not have so acted had it been correctly apprised of the facts and the law. The factor, attracting applicability of restitution, is not the act of the Court being wrongful or a mistake or an error. The test is whether, on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, the earlier order had resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. (**South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648**).

When a decree is reversed, the law imposes an obligation on the party, who received the unjust benefit of an erroneous decree, to restitute the other party for what the other party had lost during the period the erroneous decree was in operation. The Court, while granting restitution, is required to restore the parties, as far as possible, to the same position as they were in at the time when the Court, by its erroneous action, displaced them. (***Essar Oil Ltd.***). The Court has the inherent jurisdiction to order restitution so as to do complete justice between the parties. It is the duty of the Court to place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed. This duty or jurisdiction is inherent in the general jurisdiction of the Court to act rightly and fairly, according to the circumstances, towards all the parties involved. (**South Eastern Coalfields**

Ltd. v. State of M.P., (2003) 8 SCC 648; *Jai Berham* v. *Kedar Nath Marwari*).

The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned, if it was not interdicted by the order of the Court, would be restored to, or conferred on, the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust, if not disastrous, consequences. Litigation may turn into a fruitful industry. Unscrupulous litigants may feel encouraged to approach the Courts, persuading it to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and, if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits which the interim order yielded, even though the battle is lost at the end. This cannot be countenanced. (***South Eastern Coalfields Ltd.*2**).

The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made, but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding that they be placed in the same position in which they would have been had the Court not intervened by its order when, at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its earlier verdict. (**South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648).**

On the liability of the consumers/purchasers, to pay interest to the Coalfields for the period for which the restraint order passed by the Court remained in operation, the Supreme Court, in **South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648,** noted the submission, urged on behalf of the consumers/purchasers, that their non-payment of enhanced

amount of royalty was protected by judicial orders, though of an interim nature, passed by the courts, and therefore, they should not be held liable for payment of interest so long as the money was withheld under the protective umbrella of the court order; merely because the writ petitions were finally held liable to be dismissed, it cannot be urged that the interim orders passed by the courts were erroneous; soon, on dismissal of their writ petitions, the payment of the enhanced amount of royalty which was disputed earlier was promptly cleared by the writ petitioners; and, therefore, their act was *bona fide.*

While holding that they found no merit in this submission, the Supreme Court observed that the principle of restitution took care of this submission; the principle of restitution has been statutorily recognized in Section 144 of the Civil Procedure Code, 1908 which speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree; and the scope of the provision is wide enough to include therein almost all kinds of variation, reversal, setting aside or modification of a decree or order.

The Supreme Court further observed that the successful party at the end would be justified, with all expediency, in demanding compensation and being placed in the same situation in which it would have been if the order would not have been passed against it; the successful party can demand (a) the delivery of benefit earned by the opposite party under the order of the court, or (b) to make restitution for what it has lost; undoing the effect of the order by resorting to principles of restitution, is an obligation of the party which has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed; and there is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the order would not have existed.

The law declared by the Supreme Court, in **South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648,** is that it is the duty of the Court (or Tribunal) to make restitution for what a party has lost unless it feels that, in the facts and on the circumstances of the case, the restitution, far from meeting the ends of justice, would defeat the same.

Application of the doctrine of restitution requires the Review Petitioners to be restituted to the same position they would have been in but for the illegal imposition by CTUIL, ie the position they were in on 03.06.2014. The only manner in which the Petitioners can be so restituted is by payment of carrying cost/ interest on the amount to be refunded to them.

iv. ACTUS CURAIE NEMINEM GRAVABIT: ITS SCOPE:

The maxim "actus curiae neminem gravabit" means that an act of a court/quasi- judicial authority shall prejudice no man. This maxim is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law. **(Arora Enterprises v. Dy. Commr., CT, 2010 SCC OnLine AP 586; Devesh Kumar Sharma v. State of Uttarakhand, 2019 SCC OnLine Utt 215). T**he maxim “actus curiae neminem gravabit”, obligates the Court to undo the wrong done to a party by the act of the Court. Any undeserved or unfair advantage gained by a party, invoking the jurisdiction of the Court, must be neutralized as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. **(Kalabharati Avertising v. Hemant Vimalnath Narichania: (2010) 9 SCC 437; A.R. Sircar (Dr.) v. State of U.P.: 1993 Supp (2) SCC 734; Shivsankar v. Board of Directors, U.P. SRTC: 1995 Supp (2) SCC 726; Inter College, Arya Nagar Kanpur v. Sree Kumar Tiwary: (1997) 4 SCC 388; GTC Industries Limited v. Union of India: (1998) 3 SCC 376; and Jaipur Municipal Corporation v. C.L. Mishra: (2005) 8 SCC 423).** No person can suffer from the act of the Court. Interests of justice requires that any

undeserved or unfair advantage gained by a party, invoking the jurisdiction of the Court, must be neutralized. (**Ramakrishna Verma v. State of U.P.: (1992) 2 SCC 620; Grindlays Bank Ltd. v. ITO: (1980) 2 SCC 191; Mahadeo Savlaram Shelke v. Pune Municipal Corporation: (1995) 3 SCC 33).**

The delay in directing refund from May 2018, when CERC passed its first order in Petition No.126/MP/2017 filed by the Petitioners herein, till date, is an error attributable to the orders passed by the CERC and this Tribunal. The doctrine of *actus curiae neminem garavabit* would squarely apply to the facts of the present case, and would require this Tribunal to restore the Petitioners to the same position they were in but for the order of the CERC giving its decision, in the order dated 04.05.2018, prospective effect. As noted hereinabove, on a challenge to this order, this Tribunal had initially, by its judgement in Appeal No. 240 of 2018 dated 04.02.2020, remanded the matter to the CERC for its failure to assign reasons for its earlier conclusion that its order dated 04.05.2018 would only have prospective effect. As the CERC reiterated its earlier view that its order dated 04.05.2018 would only apply prospectively, the matter was again carried in appeal to this Tribunal. It is only thereafter, by the order under review, that the Petitioners herein were held entitled to refund of the amounts paid by them from 03.06.2014 till 04.05.2018.

The error, in the order under review, is in directing the CERC to identify each individual consumer on whom the liability of transmission charges was fastened earlier, and to refund the said amounts to them, when the statutory regulations require adjustment of such amounts through the tariff determination mechanism and determination of tariff by the appropriate Commission. The error on the part of this Tribunal should not result in the Petitioners being made to suffer for no fault of theirs.

It is true that the Supreme Court, in **Mafatlal Industries,** held that, where it is not possible to identify the person to whom the amount is to be refunded,

the amount should be retained by the State and thereby avoid double benefit being derived by the person who had paid the illegal levy/imposition earlier, and had thereafter passed on such burden to another. These observations of the Supreme Court would not apply in the present case for the following two reasons: Firstly, because the Petitioners cannot, under the prevalent statutory regulations, retain the amount refunded to them by CTUIL, and are statutorily obligated to pass it on to their consumers through the tariff determination mechanism. Secondly, the Petitioners herein are also state utilities of the Government of Haryana, and are also instrumentalities of the State under "Article 12 of the Constitution", like CTUIL and POSOCO. The only difference is that, while CTUIL and POSOCO are Central Government Utilities, the Petitioners herein are State Government Utilities. This submission, urged on behalf of POSOCO, does appear to disclose their intention of retaining the amounts in flagrant violation of the order passed by this Tribunal which order, at least in so far as CTUIL/ POSOCO are concerned, has attained finality. At the cost of repetition, it is reiterated that the Petitioners herein have not enriched themselves in the process, since they are obligated in law to pass on the benefit of refund to their customers through the tariff determination mechanism.

Before concluding our analysis under this head, we must also examine whether, and if so to what extent, the judgements relied under this head are applicable to the facts of the present case.

What was faulted by this Tribunal, in **Alps Industries Limited v. Uttarakhand Electricity Regulatory Commission and Ors: (Order in Appeal No.239 of 2019 dated 14.07.2021)**, is the erroneous application of the doctrine of unjust enrichment by the Commission. As held, earlier in this order, the earlier error on our part, in applying the said doctrine, justified the review petitioner invoking our review jurisdiction.

A stray sentence, in **NTPC Ltd. v. M.P. SEB, (2011) 15 SCC 580,** is sought to be relied on behalf of the Respondents to submit that, since payment of transmission charges by the Petitioners, at the instance of the Respondents CTUIL and POSOCO, was not through force, coercion or threat, the principles of equity, justice and fair play cannot be brought in to award interest.

It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed; for the said purpose, the judgment of the Court is required to be read in its entirety; a judgment cannot be read as a statute; construction of a judgment should be made in the light of the factual matrix involved therein; what is more important is to see the issues involved therein and the context wherein the observations were made **(Goan Real Estate & Construction Ltd. v. Union of India, (2010) 5 SCC 388);** a judgment is a precedent for the issue of law, which is raised and decided; discussions in a judgment cannot be read out of context, and interpreted as the dictum of the Court **(Vijayan v. State of Kerala, (2022) 17 SCC 177);** words and/or phrases in a judgment cannot be read as "Euclid's Theorems" **(State of Bihar v. Meera Tiwary, (2020) 17 SCC 305);** and observation made in a judgment should not be read in isolation and out of context. **(Goan Real Estate & Construction Ltd. v. Union of India, (2010) 5 SCC 388).**

Bearing these principles let us take note of the law declared by the Supreme Court in **NTPC Ltd. v. M.P. SEB, (2011) 15 SCC 580.**

In **NTPC Ltd. v. M.P. SEB, (2011) 15 SCC 580,** the CERC had determined the final tariff at a rate lesser than the pre-existing tariff, as a result of which NTPC was found to have collected excess amounts during this intervening period, and the Electricity Boards became entitled to get the refund/adjustment of these differential amounts. The CERC had, however, disallowed the claim of the Electricity Boards for payment of interest on the

differential amounts between (*i*) the tariff finally determined and (*ii*) the pre-existing tariff which was continued until the final determination of the tariff. Thereafter NTPC duly and immediately adjusted the excess amounts in favour of the purchaser Electricity Boards in their subsequent bills.

It is in this context that the Supreme Court, in **NTPC Ltd. v. M.P.SEB, (2011) 15 SCC 580,** observed that there was no specific provision earlier for claiming interest for the intervening period; the provision for charging interest was a substantive provision which had to be specifically provided, and would become operative when provided; interest is payable in equity only if there are circumstances attracting the equitable jurisdiction or under the Interest Act; the power to make restitution, which is inherent in every Court, will apply even where the case does not strictly fall under Section 144 CPC; ***Kavita Trehan*: (1994) 5 SCC 380,** where the principle of restitution was applied, was a case where termination of the contract was held to be wrong.

The Supreme Court further observed that, in the case before it, the Appellate Tribunal has specifically observed that this was not a case where the beneficiaries were made to pay the excess tariff at the instance of NTPC through force, coercion or threat; consequently, the principles of equity, justice and fair play could not be brought in to award interest to the Electricity Boards; NTPC was not responsible for the delay in determination of tariff; the tariff charged by NTPC, in the interregnum, was in accordance with the rates permitted under the notifications issued by the CERC; NTPC had not held on to the excess amount in an unjust way to call it unjust enrichment or to make a case in equity, so as to justify the claim of the Electricity Boards for interest; and, in view thereof, interest could not be claimed either on the basis of equity or on the basis of restitution.

As noted hereinabove, this Tribunal had, in the order under review, held that there was nothing in the order dated 04.05.2018 to indicate that the CERC

had exercised its regulatory power to make a regulation which is of general application; the conclusion of the CERC that its interpretation was a departure from the prevailing regulatory regime is not borne out by any reference either to a statutory regulation then in existence, or to any regulatory order of general application having been passed by the CERC prior to its jurisdiction being invoked by the Petitioner on 02.06.2017 by way of a petition which resulted in the order dated 04.05.2018 being passed; the fact that POSOCO and CTUIL were of the view that the subject Transmission Line was an Inter-State Transmission Line, falling under the POC mechanism, did not amount to a regulatory regime being in existence, as regulatory power is conferred by the Electricity Act only on the CERC, and not on POSOCO or CTUIL; in the light of the specific finding recorded by the CERC, that the 2010 Sharing Regulations did not contain any specific provision in this regard, it was only if the CERC had passed a specific order of general application, exercising its regulatory powers, could it then be said that a regulatory regime was then in existence; no such regulatory exercise, having been undertaken by the CERC, had been referred to either in the order passed by it on 04.05.2018 or even in the impugned order dated 30.07.2022; the CERC had erred in not considering the Petitioners' claim, for refund of the amounts illegally collected from them by Respondents 2 and 3, for the period from 03.06.2014 till 04.05.2018, when the earlier order was passed by the CERC; and the customers of the Appellant, to whom the said illegal imposition was passed on, would undoubtedly be entitled to be repaid the amount which they were called upon to pay earlier, albeit illegally.

As referred to hereinabove, the Supreme Court, in **NTPC Ltd. v. M.P.SEB, (2011) 15 SCC 580,** had noted that ***Kavita Trehan*: (1994) 5 SCC 380** was a case where the principle of restitution was applied on the termination of the contract being held to wrong. Since this Tribunal has also held, in the order under review, that collection of transmission charges from the Petitioners by the Respondents CTUIL/POSOCO was illegal, the principle of restitution would

apply in the present case also justifying the Petitioners claim for interest/carrying cost on the amounts directed to be refunded to them.

In ***Small Industries Development Bank of India v. SIBCO Investment (P) Ltd.*, (2022) 3 SCC 56,** the claim of the plaintiff for payment of interest was denied, as the Supreme Court was of the view that the defendant was justified in withholding the accrued dues; and their actions were bona fide as it was taken in furtherance of RBI directives which were issued in public interest. The Supreme Court had relied on **Clariant International Ltd. v. SEBI, (2004) 8 SCC 524**, wherein it was held that two conditions need to be satisfied before awarding interest; f*irst*, that money should be wrongfully withheld from the rightful owners; *second*, that there should be equitable considerations for awarding said interest; and, in the case before it, neither of these conditions were found to be satisfied.

This Tribunal had, in the order under review, directed refund after holding that the Respondents had illegally imposed inter-state transmission charges on the Petitioners. As the Respondents had wrongfully withheld the amounts, illegally collected by them from the Petitioners, the Petitioners' claim for payment of interest, on the amounts wrongfully withheld, must be held to be justified.

VII. IS PAYMENT OF INTEREST A NATURAL CONSEQUENCE OF THE DIRECTION TO REFUND AMOUNTS?

A. CONTENTIONS URGED ON BEHALF OF THE PETITIONERS:

Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Review Petitioner, would submit that the Prayer in Petition 126/MP/2017 originally filed before the CERC was for setting aside the bills raised by CTUIL for transmission charges/losses; the interest/carrying cost is a natural corollary/consequence to the grant of such a relief; the bills raised by CTUIL

have been set aside *vide* Judgment dated 02.02.2024 passed by this Tribunal on the ground that CTUIL/POSOCO have acted illegally; the natural corollary would be to allow interest on the same; and, in this regard, reference may be made to the following decisions: (a) **Maharashtra State Electricity. Dist. Company Ltd. v. Maharashtra Electricity Regulatory Commission through its Secretary and Ors. (Judgement in Appeal No. 15 of 2007 dated 05.02.2008); (b) PTC India Limited v. Gujarat Electricity Regulatory Commission: (Judgement in Appeal Nos. 47 and 62 of 2013 dated 30.06.2016); (c) Lanco Amarkantak Power Limited v. Haryana Electricity Regulatory Commission and others: (Order in Appeal No. 308 of 2017 dated 22.05.2019); (d) Lanco Amarkantak Power Limited v. Haryana Electricity Regulatory: (Order in Appeal No. 48 of 2019 dated 13.01.2022); (e) Torrent Power Limited v. Gujarat Electricity Regulatory Commission: (Order in Appeal No. 190 of 2011 and Batch dated 28.11.2013).**

B. JUDGEMENTS UNDER THIS HEAD:

i. In **Maharashtra State Elecy. Dist. Co. Ltd Versus Maharashtra Electricity Regulatory Commission : (Judgement in Appeal No. 15 of 2007 dated 05.02.2008),** this Tribunal held that interest is a natural corollary of any delayed payment; the Supreme Court, in **Central Bank of India Vs. Ravindra &Ors. (2002) 1 Supreme Court Case 367,** quoted with approval the judgment of the Punjab High Court in **CIT Vs. Shyam Lal Narula (AIR 1963 Punjab 411),** wherein it was held that the words 'interest' and 'compensation' are sometimes used interchangeably; 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owned to another; in whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and, thus, it is a charge for the use or forbearance of money; in this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money,

belonging to another, or for the delay in paying money after it has become payable.

This Tribunal further held that interest is basically intended to compensate the party who was entitled for payment of amount due to it; the appellant was in fact in default in not making payment of the electricity which it had received from the members of respondent No. 2; the appellant was liable to pay interest from the date payment became due ie when the energy was received by the appellant from the members.

In **PTC India Limited v. Gujarat Electricity Regulatory Commission: (Judgement in Appeal Nos. 47 and 62 of 2013 dated 30.06.2016),** this Tribunal observed that there was no provision in the PPA with regard to payment of delayed payment charges on 'take or pay' liability; Gujarat Urja had sought interest on the principles of restitution and equity; in **South Eastern Coalfields Ltd. vs. State of M.P. (2003) 8 SCC 648,** the Supreme Court held that interest was also payable in equity in certain circumstances; the rule in equity was that interest was payable even in the absence of any agreement or custom to that effect, though subject to a contrary agreement (***Chitty on Contracts, 1999 Edn., Vol.II, Para 38-248 at p. 712)***; interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest; applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many; the basis proposition of law was that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages and this proposition was unmistakable and valid; the efficacy and binding nature of such law could not be either diminished or whittled down; and, in the absence of there being a prohibition either in law or in the contract

entered into between the two parties, there was no reason why the Coalfields should not be compensated by payment of interest,

This Tribunal also relied on **Sovintorg (India) Ltd. vs. State Bank of India, (1999) 6 SCC 406**, wherein the Supreme Court held that the general provision of Section 34, being based upon justice, equity and good conscience would authorize the redressal Forums and Commissions to also grant interest appropriately under the circumstances of each case; interest may also be awarded in lieu of compensation or damages in appropriate cases; interest can also be awarded on equitable grounds; in **Mahanadi Multipurpose Industries vs. State of Orissa &Anr. AIR 2002 Orissa, 150,** it was held that the trial Court can award interest even in the absence of a contract, if the same is equitable; award of interest can be sustained on the principle that the defendants are bound to disgorge the benefit they might have derived out of the amount advanced by the plaintiffs towards the value of the articles which they had failed to supply. This Tribunal concluded that, on the ground of equity, interest is payable to Gujarat Urja from the date Gujarat Urja informed PTC about its decision not to waive the amount of compensation.

In **Lanco Amarkantak Power Limited v. Haryana Electricity Regulatory Commission and others:(Order in Appeal No. 308 of 2017 dated 22.05.2019),** this Tribunal held that It was well established that money not paid in time but paid subsequently at a much later stage after lapse of several years, looses its real money value to a great extent and is effectively less money paid; therefore, for equity and restitution payments made at a later stage, of the amount due in the past, must be compensated by way of appropriate rate of interest so as to compensate for the loss of money value; and this is a proven concept of time value of money to safeguard the interest of the receiving party.

In **Lanco Amarkantak Power Limited v. Haryana Electricity Regulatory Commission: (Order in Appeal No. 48 of 2019 dated 13.01.2022),** this Tribunal followed its earlier judgement in Appeal No. 308 of 2017 dated 22.05.2019, and held that the legitimate expectation of the appellant, the generator and supplier of electricity, was for recovery of actual cost; payments made after a long gap cannot be treated as the recovery of full or actual charges in as much as real value has eroded over the period; and denial of interest was unjust and unfair.

In **Torrent Power Limited v. Gujarat Electricity Regulatory Commission: (Order in Appeal No. 190 of 2011 dated 28.11.2013),** this Tribunal held that carrying cost is allowed based on the financial principle that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accruals, has to be paid for by way of carrying cost; carrying cost is a legitimate expense and therefore recovery of such carrying cost is legitimate expenditure of the distribution company; and, in view of the settled position of law, the Appellant was entitled for t Carrying Cost.

C.ANALYSIS:

The law declared by this Tribunal in **Maharashtra State Elecy. Dist. Co. Ltd Versus Maharashtra Electricity Regulatory Commission : (Judgement in Appeal No. 15 of 2007 dated 05.02.2008),** relying on **Central Bank of India Vs. Ravindra &Ors. (2002) 1 SCC 367,** and **CIT Vs. Shyam Lal Narula (AIR 1963 Punjab 411),** is that interest is a natural corollary of any delayed payment; 'Interest' is the return or compensation for the use or retention by one person of a sum of money belonging to or owned to another; it is a charge for the use or forbearance of money; and interest is intended to compensate the party who was entitled for payment of amount due to it.

Even in the absence of a provision in the PPA with regards payment of delayed payment charge, interest was claimed by the Respondent on principles of restitution and equity. In **PTC India Limited v. Gujarat Electricity Regulatory Commission: (Judgement in Appeal Nos. 47 and 62 of 2013 dated 30.06.2016),** this Tribunal, relying on **South Eastern Coalfields Ltd. vs. State of M.P. (2003) 8 SCC 648, Sovintorg (India) Ltd. vs. State Bank of India, (1999) 6 SCC 406**, **Mahanadi Multipurpose Industries vs. State of Orissa &Anr. AIR 2002 Orissa, 150,** and **Chitty on Contracts, 1999 Edn., Vol.II, Para 38-248 at p. 712,** observed that interest was payable in equity even in the absence of any agreement or custom to that effect, though subject to a contrary agreement; interest in equity is payable on the market rate even though the deed contains no mention of interest; a person deprived of the use of money, to which he is legitimately entitled, has a right to be compensated for the deprivation be it as interest, compensation or damages; and, in the absence of a prohibition either in law or in the contract, there was no reason not to compensate by payment of interest; Section 34 CPC, which is based upon justice, equity and good conscience, authorizes grant of appropriate interest under the circumstances of each case; interest may also be awarded in lieu of compensation or damages or on equitable grounds; and interest can be awarded on the principle that the defendants are bound to disgorge the benefit they might have derived out of the amount advanced by the plaintiffs.

The law declared by this Tribunal, in **Lanco Amarkantak Power Limited v. Haryana Electricity Regulatory Commission and others:(Order in Appeal No. 308 of 2017 dated 22.05.2019),** is that money not paid in time, but paid subsequently at a much later stage after lapse of several years, loses its real money value to a great extent and is effectively less money paid; therefore, for equity and restitution, payments made at a later stage, of the amount due in the past, must be compensated by way of appropriate rate of interest so as

to compensate for the loss of money value, and to safeguard the interest of the receiving party.

The law declared by this Tribunal, in **Lanco Amarkantak Power Limited v. Haryana Electricity Regulatory Commission: (Order in Appeal No. 48 of 2019 dated 13.01.2022),** is that payments made after a long gap cannot be treated as the recovery of full or actual charges in as much as real value has eroded over the period; and denial of interest, in such cases, would be unjust and unfair.

The principles, culled out from the afore-said judgements, are summarised thus: (i) interest is a natural corollary of any delayed payment, it is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another, and it is a charge for the use or forbearance of money; (ii) interest is payable in equity even in the absence of any agreement or custom to that effect, though subject to a contrary agreement; a person, deprived of the use of money to which he is legitimately entitled, has a right to be compensated for the deprivation; and Section 34 CPC, which is based upon justice, equity and good conscience, authorizes grant of appropriate interest in the facts and circumstances of each case; and (iii) money not paid in time, but paid subsequently at a much later stage after lapse of several years, loses its real money value to a great extent, and is effectively less money paid; therefore, for equity and restitution, payments made at a later stage, of the amount due in the past, must be compensated by way of appropriate rate of interest so as to compensate for the loss of money value, and to safeguard the interest of the receiving party.

In the present case, the Petitioners have been deprived of the money which they would have retained with themselves, but for the illegal imposition of inter-state transmission charges by the Respondents, with respect to an intra-state transmission line. Since these amounts were paid by the Petitioners

during the period 03.-6.2014 to 04.05.2018, (ie between six to ten years ago), the present value of the money, they were hitherto forced to part with, would be much lower. The only manner in which they can be suitably restituted, for the loss caused to them in this regard, is by payment of interest.

VIII. CAN CARRYING COST BE GRANTED EVEN IF NOT PRAYED FOR?

A. CONTENTIONS URGED ON BEHALF OF THE PETITIONERS:

Sri M.G. Ramachandran, Learned Senior Counsel, would submit that this Tribunal has also held that even when not prayed for, carrying cost has to be allowed - **(a) Tata Power Company Limited. v. Maharashtra Electricity Regulatory Commission: (Order in Appeal No. 212 of 2013 dated 27.10.2014), and (b) Shree Dhanvarsha Steels (Pvt.) Ltd. v. Uttaranchal Electricity Regulatory: (Order in Appeal No. 214 of 2006 dated 01.04.2008);** and it has been settled by the Supreme Court that, even in the absence of a provision for interest in the Contract/law, interest is liable to be granted so long as there is no prohibition: (a) **Southern Easter Coalfields Ltd. v. State of M.P. and Ors. - AIR 2003 SC 4482;** (b) **State of Rajasthan & Anr v. J.K. Synthetics Ltd. & Anr. - (2011) 12 SCC 518; (c) Union of India v. Parmal Singh &Ors. - AIR 2008 SC (SUPP) 1031.**

B. JUDGEMENTS UNDER THIS HEAD:

In **Tata Power Company Limited. v. Maharashtra Electricity Regulatory Commission (Order in Appeal No. 212 of 2013 dated 27.10.2014),** it was submitted on behalf of the Respondent Commission that the Appellant, in its Petition, did not consider carrying cost beyond FY 2012-13; it did not pray for carrying cost even for its own proposed instalment period beyond FY 2012-13; and, therefore, there was no merit in the contention of the appellant that carrying cost had been disallowed on the payment to be

recovered in ten instalments. The contention, urged on behalf of the appellant, was that, even assuming that the Appellant had not prayed for the interest component on the instalment, the Commission should have allowed carrying cost based on the financial principle that. whenever the recovery of cost is deferred, financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accruals, had to be paid by way of carrying cost; and this principle had been upheld in a catena of judgments by this Tribunal including in **Tata Power Vs. MERC, 2011 ELR (APTEL).**

In this context, this Tribunal held that carrying cost had been allowed by the State Commission up to the end of 2012-13; if payment of the past dues had to be made in lump sum, at the beginning of FY 2013-14, no carrying cost would have been necessary to be provided for in FY 2013-14; the Appellant had prayed for lump sum payment of Rs. 279.39 crores within one month of issue of MYT order and the balance payment in 9 equal instalments; however, in this case, payment had been ordered to be made by the Distribution Companies in ten equal instalments from June 2013 to March 2014; the request of the Appellant for lump sum payment of Rs. 279.39 crores was rejected; the amount which was required to be recovered by the Appellant in FY 2011-12 is now allowed to be recovered in FY 2013-14; and carrying cost should be allowed to the Appellant for the period April 2013 to March 2014.

In **Shree Dhanvarsha Steels (Pvt.) Ltd. v. Uttaranchal Electricity Regulatory Commission: (Order in Appeal No. 214 of 2006 dated 01.04.2008),** the application was opposed, inter alia, on the ground that no prayer for interest had been actually made in the appeal. This Tribunal held that although no prayer for interest was made in so many words, there was no bar on passing a direction for refund with interest; in **South Eastern Coalfields Ltd. Vs. State of M.P. and Others (2003) 8 SCC 648,** the Supreme Court considered the nature of the claim towards interest, and held that the successful party, finally held entitled to a relief assessable in terms of money

at the end of litigation, was entitled to be compensated by award of interest at a suitable reasonable rate; the doctrine of restitution was attracted, and interest was a normal relief to be given in restitution; and the appellant who had been found entitled to refund of the amount recovered from him in excess of the legitimate tariff that it was liable to pay, was entitled to interest.

In **South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648**, the Supreme Court referred to its earlier decision in **Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj: (2001) 2 SCC 721,** wherein the controversy related to the power of an arbitrator (under the Arbitration Act, 1940) to award interest for the pre-reference period. It was opined therein that a person deprived of the use of money, to which he is legitimately entitled, has a right to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages; and, in the absence of anything in the arbitration agreement, excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract, and in the absence of any other prohibition, the arbitrator can award interest.

The Supreme Court, in **South Eastern Coalfields Ltd.**, thereafter held that, in the absence of there being a prohibition either in law or in the contract entered into between the two parties, there was no reason why the Coalfields should not be compensated by payment of interest for the period for which the consumers/purchasers did not pay the amount of enhanced royalty which was a constituent part of the price of the mineral for the period for which it remained unpaid.

On the liability of consumers/purchasers to pay interest to the Coalfields, for the period for which the restraint order passed by the Court remained in operation, the Supreme Court, in **South Eastern Coalfields Ltd**, observed that the principle of restitution took care of this submission; the

principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908; Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified ut also includes an order on par with a decree; the scope of the provision is wide enough to include therein almost all kinds of variation, reversal, setting aside or modification of a decree or order; Section 144 CPC is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play; that is why it is often held that even away from Section 144 the court has inherent jurisdiction to order restitution so as to do complete justice between the parties; in **Jai Berham v. Kedar Nath Marwari: AIR 1922 PC 269,** the Privy Council held that it was the duty of the court under Section 144 of the Civil Procedure Code to 'place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed'; nor indeed does this duty or jurisdiction arise merely under the said section; and it is inherent in the general jurisdiction of the court to act rightly and fairly according to the circumstances towards all parties involved.

The Supreme Court, in **South Eastern Coalfields Ltd,** referred to **Rodger v. Comptoir D'Escompte de Paris: (1871) 3 PC 465** wherein it was held that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression, 'the act of the court', is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case.

The Supreme Court concluded holding that, once the doctrine of restitution is attracted, interest is often a normal relief given in restitution; and such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

In **State Of Rajasthan & Anr v. J.K. Synthetics Ltd. &Anr. (2011) 12 SCC 518,** the Supreme Court held that, even in cases where there is no statutory or contractual provision for payment of interest, the court will have to direct payment of interest at a reasonable rate, by way of restitution, unless there are special reasons for not doing so; if the obligation to make restitution by paying appropriate interest on the withheld amount is not strictly enforced, the loser will end up with a financial benefit, and the winner will end up as the loser financially for no fault of his.

In **Union of India v. Parmal Singh, (2009) 1 SCC 618,** the Supreme Court held that the general principle regarding payment of interest will not apply in two circumstances; one is where a statute specifies or regulates the interest. In that event, interest will be payable in terms of the provisions of the statute; the second is where a statute or contract specifically bars or prohibits payment of interest. In that event, interest will not be awarded; where the statute is silent about interest, and there is no express bar about payment of interest, any delay in paying the compensation would require award of interest at a reasonable rate on equitable grounds.

C. ANALYSIS;

In **Tata Power Company Limited. v. Maharashtra Electricity Regulatory Commission (Order in Appeal No. 212 of 2013 dated 27.10.2014),** the Appellant, in the Petition filed before the Commission, did not pray for carrying cost even for its own proposed ten instalments.

On the question whether the Commission should have allowed carrying cost, even in the absence of a prayer for payment of interest, this Tribunal held that, if payment of past dues had to be made in a lump sum, no carrying cost would have been necessary to be provided; the Appellant had prayed for partial lump sum payment, and the balance payment in 9 equal instalments; however payment had been ordered to be made in ten equal instalments, rejecting the

request for lump sum payment; the amount which was required to be recovered by the Appellant in FY 2011-12 is now allowed to be recovered in FY 2013-14; and carrying cost should be allowed to the Appellant for the period April 2013 to March 2014.

In **Shree Dhanvarsha Steels (Pvt.) Ltd. v. Uttaranchal Electricity Regulatory Commission: (Order in Appeal No. 214 of 2006 dated 01.04.2008),** the application was opposed, inter alia, on the ground that no prayer for interest had been actually made in the appeal. This Tribunal, relying on **South Eastern Coalfields Ltd. Vs. State of M.P. and Others (2003) 8 SCC 648,** held that, although no prayer for interest was made, there was no bar on passing a direction for refund with interest; the successful party, finally held entitled to a relief assessable in terms of money at the end of litigation, was entitled to be compensated by award of interest at a reasonable rate on application of the doctrine of restitution.

In **South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648**, the Supreme Court, relying on **Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj: (2001) 2 SCC 721,** held that a person deprived of the use of money, to which he is legitimately entitled, has a right to be compensated for the deprivation; in the absence of anything in the agreement, prohibiting award of interest, interest could be awarded; Section 144 CPC is wide enough to include almost all kinds of variation, reversal, setting aside or modification of a decree or order; Section 144 CPC is a statutory recognition of a pre-existing rule of justice, equity and fair play; that is why it is often held that even away from Section 144 the court has inherent jurisdiction to order restitution so as to do complete justice between the parties; in **Jai Berham v. Kedar Nath Marwari: AIR 1922 PC 269,** the Privy Council held that it was the duty of the court under Section 144 of the Civil Procedure Code to 'place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed'; once the

doctrine of restitution is attracted, interest is often a normal relief given in restitution; and such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

The law declared, in **State of Rajasthan & Anr v. J.K. Synthetics Ltd. &Anr. (2011) 12 SCC 518,** is that, if the obligation to make restitution by paying appropriate interest on the withheld amount is not strictly enforced, the loser will end up with a financial benefit, and the winner will end up as the loser financially for no fault of his.

In **Union of India v. Parmal Singh, (2009) 1 SCC 618,** the Supreme Court held that the general principle regarding payment of interest will not apply in two circumstances; one is where a statute specifies or regulates the interest, and the second is where a statute or contract specifically bars or prohibits payment of interest.

As in **Parmal Singh**, there is no express bar for payment of interest, in the PPA or the Statutory Regulations in the case on hand. As held earlier in this Order, the Petitioner has been illegally deprived of its money in view of the illegal imposition of inter-state transmission charges by the Respondents with respect to an intra-state transmission line. The doctrine of restitution is attracted, requiring the Petitioners to be adequately compensated by payment of reasonable interest. As detailed earlier in this Order, the Petitioners have specifically claimed interest on refund in all proceedings commencing from when Appeal No.240 of 2018 was filed before this Tribunal against the order of the CERC in Petition No.126/MP/2017 dated 04.05.2018, till the proceedings culminated in the order under review being passed by this Tribunal. As no objection to the maintainability of such a claim appears to have been taken by the Respondents in any of the earlier proceedings, and such objections appear to have been taken for the first time in the present Review Petition, we re-iterate that the Petitioners are entitled to a reasonable rate of interest, on the amount

to be refunded to them, making it clear that we have not considered the question whether interest should be paid, as a measure of restitution, even if no prayer is made for grant of interest.

IX. REGULATIONS PROVIDE FOR PAYMENT OF LPS:

A. CONTENTIONS URGED ON BEHALF OF THE PETITIONERS:

Sri M.G. Ramachandran, Learned Senior Counsel, would submit that, even otherwise, the Sharing Regulations and/or the Billing, Collection & Disbursement Procedure notified in terms of the Sharing Regulations contemplate and provide for payment of Late Payment Surcharge, as under: (a) Regulation 11 and 12 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010; (b) Regulation 3.4 of the Billing, Collection & Disbursement Procedure, 2011; and (c) Regulation 18 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020.

B. ANALYSIS:

In exercise of the powers conferred under Section 178 read with Part V of the Electricity Act, 2003, the Central Electricity Regulatory Commission made the “Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010” (for short “the 2010 Regulations). These regulations were to apply to all Designated ISTS Customers, Inter State Transmission Licensees, NLDC, RLDC, SLDCs, and RPCs. Regulation 11 of the 2010 Regulations related to billing. Regulation 11(1) stipulated that the CTUIL shall be responsible for raising the transmission bills, and collection and disbursement of transmission charges to ISTS transmission licensees. It further stipulated that any expenses incurred by CTUIL on account of this function shall be reimbursed as part of the yearly

transmission charge. Regulation 11(2) stipulated that the bill for the use of ISTS shall be raised by CTUIL on the concerned Designated ISTS Customers; the STU may recover transmission charges, for use of ISTS, from the distribution companies, generators and bulk customers connected to the transmission system. Regulation 11(3) stipulated that the billing for ISTS charges, for all Designated ISTS Customers, shall be on the basis of Rs./ MW/ Month, and shall be raised by CTUIL in three parts. Regulation 11(6) stipulated that the third part of the bill shall be used to adjust any variations in interest rates etc, as allowed by the Commission, for any ISTS Transmission Licensee; the total amount to be recovered/ reimbursed, because of such under recovery / over recovery, shall be billed by CTUIL to each Designated ISTS Customer in the proportion of its average approved injection / approved withdrawal over previous six months on a bi-annual basis. Regulation 12 related to collection, and prescribed the mode of collection of charges for each of the three parts of the bill. Regulation 12(6) required every Designated ISTS Customer to ensure that the charges payable by them were fully discharged within the time-frame specified in the Transmission Service Agreement or the amended Bulk Power Transmission Agreement; disputes, if any, shall be resolved as per the provisions of the Transmission Service Agreement or the amended Bulk Power Transmission Agreements as specified in Chapter VI of these Regulations. Regulation 12(7) stipulated that delayed payment in a month, by any Designated ISTS Customer, shall result in pro-rata reduction in payouts to all the ISTS Licensees, and other non-ISTS Licensees, whose assets had been certified as being used for inter-state transmission by the RPCs. Regulation 12(8) required the Designated ISTS Customers to provide payment security as determined through detailed procedures developed by the CTUIL; and the level of such payment security shall be related to the approved withdrawal or approved injection. Regulation 12(9) required CTUIL to prepare a detailed procedure for billing, collection and disbursement, and present the same to the Commission for approval within 30 days of the notification of these regulations.

In terms of Regulation 12(9), the Billing, Collection and Disbursement procedure, 2011 were made, and were later amended. Regulation 3.4 of the Billing, Collection and Disbursement Procedure, 2011 (as amended) required CTUIL to raise surcharge bills as per the following procedure: (a) The late payment surcharge shall be as per Regulation 18 of the Sharing Regulations 2020 as amended from time to time, (b) Surcharge on outstanding dues of the First Bill and the Second Bill beyond due date shall be calculated and billed on a monthly basis. (c) Surcharge on outstanding dues of the Third Bill beyond the due date shall be calculated and billed on monthly basis, and the payment received against this surcharge bill shall be adjusted to the DICs in the ratio of the First Bill.

In exercise of powers conferred under Section 178 read with Part V of the Electricity Act, the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2020 were made. Regulation 18 of the 2020 Regulations relates to late payment surcharge and stipulates that, notwithstanding any provision to the contrary in the applicable Tariff Regulations or the Transmission Service Agreement under tariff based competitive bidding, in case the payment of any bill for charges payable under these Regulations is delayed by a DIC, beyond the due date, a late payment surcharge, at the rate of 1.50% per month, shall be payable by the concerned DIC.

While we have noted the contents of the Regulations, to the extent reliance is placed thereon on behalf of the Review Petitioners, and are of the view that the Petitioners are entitled for interest on the amount to be refunded to them, it is unnecessary for us to delve into these aspects, since we are directing CERC to consider the rival submissions and then determine whether the Petitioners are entitled for refund of the amount along with simple or compound interest, the rate of interest to which they are entitled to and, in case compound interest is granted, whether it should be bear monthly/quarterly/half yearly/yearly rests.

X. RATE OF INTEREST TO BE PAID, IF AT ALL INTEREST/CARRYING COST IS GRANTED?

SUBMISSIONS URGED ON BEHALF OF POSOCO:

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of POSOCO, would submit that, without prejudice and in the alternative, if this Tribunal were to review its decision under the Impugned Order to grant interest/ carrying cost, the rate of interest applicable ought to be the savings bank rate as on 1st April of the respective financial year; Regulation 6.10.2 of the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014 (**Supply Code 2014**) reads thus:–

> "*6.10 Erroneous / Disputed Bills*
>
> *…*
>
> *6.10.2 On review of the complaint,* ***if the licensee finds that the consumer has paid any excess amount, such excess amount along with the interest at saving bank rate of State Bank of India as on the 1st of April of the financial year*** *shall be adjusted in the subsequent bill(s).*"
>
> (Emphasis supplied)

Learned Senior Counsel would further submit that, as is discernible from the above, in cases of erroneous billing by the distribution licensee, where the consumer has already paid the distribution licensee, interest/ carrying cost is paid at savings bank rate as on 1st April of the respective financial year; as financial liability qua POC charges payment during 03.06.2014 to 04.05.2018 has already been passed on by the Petitioners to its consumers under retail tariff bills, refund is required to be made only to the same consumers who had suffered financial liability due to imposition of POC charges on the Petitioners during such period; such refund ought to attract the same rate as is applicable

for adjustment qua erroneous bills by the distribution licensee i.e., at a rate equal to savings bank rate as on 1st April of the respective financial year; and CERC may be directed to compute the applicable interest/ carrying cost to be paid to the consumers directly.

B. ANALYSIS:

While reliance is placed on behalf of POSOCO on Regulation 6.10.2 of the HERC (Electricity Supply Code) Regulation, 2014 to contend that, even if interest/carrying costs were to be granted, it should only be at saving bank interest rate of the State Bank of India as on the 1st April of the Financial Year, the Petitioners had, in the affidavit filed by them before the CERC on 09.06.2020, claimed refund of Rs.1266 Crores (representing the principal) along with interest of Rs.780.99 Crores (calculated at 15% per annum) up to 15.03.2020.

While the Petitioners are undoubtedly entitled for interest/ carrying cost on the principal amount liable to be refunded to them by CTUIL, the rate of interest, and whether it should be simple or compound, are matters to be considered by the CERC in accordance with law.

As parties on either side are required to be heard in this regard, we deem it appropriate to direct CERC; after it determines the principal amount liable to be refunded by the Respondents to the Review Petitioners, in terms of our earlier order in Appeal No. 383 of 2023 dated 02.02.2024, to then determine the rate of interest to which the Review Petitioners shall be entitled to, on the amount liable to be refunded, from the date on which these amounts were recovered from them earlier till the date of payment. The CERC shall give (a) both parties a reasonable opportunity of being heard before determining whether the Petitioners are entitled for simple or compound interest, (b) if they are entitled for simple interest, then the rate at which simple interest should be granted, (c) if they are entitled for compound interest, the rate at which they

should be granted such compound interest, and (d) whether such compound interest should be based on monthly/quarterly/half early/yearly rests.

After the amount, liable to be refunded is computed, the CERC shall stipulate a time frame within which the Respondents shall make payment of the principal amount to be refunded to the Review Petitioners, and such refund need not await computation of interest. The CERC shall, simultaneously, undertake the exercise of determining the interest payable on the amount to be refunded, and pass appropriate orders in this regard with utmost expedition preferably within four months from the date of the receipt of a copy of this order.

XI. NO PARTY CAN BE PERMITTED TO TAKE ADVANTAGE OF ITS OWN WRONG:

A. CONTENTIONS URGED ON BEHALF OF THE PETITIONERS:

Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Petitioners, would submit that, admittedly, when the matter was remanded by this Tribunal by its judgment dated 04.02.2020, it was for the Central Commission to determine whether retrospective effect has to be given; if the Central Commission had decided to give retrospective effect, the necessary restitutive relief would have been granted by the Central Commission inclusive of interest; having chosen not to respond to the claim/computation for carrying cost at the relevant time, it is not open for the Respondents to now seek to deny the legitimate claim of Haryana Utilities, contrary to the provisions of the Sharing Regulations, the BCD procedure, the Tariff Regulations, the settled principles by this Tribunal as well as the Supreme Court, equity and good conscience; this is particularly when it was owing to the illegal actions on the part of POSOCO/CTU that the Haryana Utilities (and consequently their consumers) were illegally charged PoC charges for the entire period from 2011 to 2018 (out of which this Tribunal has admitted the

claim from 03.06.2014 to 04.05.2018); and it is not open for any party to take advantage of its own wrong.

B. ANALYSIS:

As has been held by this Tribunal, in the order under review, the Respondents herein acted illegally in raising invoices and collecting Inter-state Transmission Charges, from the Review Petitioners, with respect to, what has been held by the CERC, in its order dated 04.05.2018, to be an Intra-State Transmission Line. Having acted illegally, in imposing and collecting such inter-state transmission charges, the Respondents cannot now be heard to contend that, while the Petitioners may be entitled for refund of the principal amount, they are not entitled for restitution by payment of interest/carrying cost, consequent on their being deprived of these amounts from the date on which they had made payment, in terms of the invoices raised on them by CTUIL, till the said amount is refunded to them.

CONCLUSION:

For reasons afore-mentioned, the Order under review shall stand modified, and the concluding part of the order passed in Appeal No. 383 of 2023 dated 02.02.2024 shall stand substituted as under:-

> *"We consider it appropriate, in such circumstances, to set aside the impugned order passed by the CERC and remand the matter again to the CERC to quantify the amount to be refunded to the Review Petitioners (Appellants), in terms of the bills raised by POSOCO/CTUIL on them from 03.06.2014 till 04.05.2018. After quantifying the principal amount to be refunded to the Appellants (Review Petitioners), the CERC shall pass appropriate orders directing the Respondents to make payment of the said amount within a specified time frame. The CERC shall, simultaneously,*

undertake the exercise of determining whether the Appellants (Review Petitioners) should be paid simple/compound interest, as a measure of restitution on account of the illegal act of the Respondents in raising invoices on them, and on the principle of actus curiae neminem gravabit; the rate of interest to which the Petitioners shall be entitled to, on the amount to be refunded, from the date on which they had made payment in terms of the invoices raised earlier till the date of refund; and, in case compound interest is granted, to determine whether such compound interest should be based on monthly/quarterly/half yearly/yearly rests. The entire exercise, culminating in appropriate directions being issued to the Respondents to pay both the principal amount of refund and interest thereon, shall be completed with utmost expedition preferably within four months from the date of receipt of a copy of this order.

The amounts received by the Review Petitioners (Appellants), both towards the principal amount of refund, and interest thereon, as determined by the CERC, shall be duly adjusted in the next tariff determination exercise, undertaken by the Haryana Electricity Regulatory Commission, after receipt, by the Review Petitioners (Appellants), of the afore-said amounts"

Pronounced in the open court on this the **18th day of November, 2024**.

(Sandesh Kumar Sharma)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~