

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL NO. 140 OF 2024**

**Dated:** 11.12.2024

**Present:** Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)

**In the matter of:**

**TAMIL NADU TRANSMISSION CORPORATION LTD.**

*Represented by its Chief Financial Controller/Revenue*

NPKRR Maaligai, 800,

Anna Salai, Chennai- 600002

... Appellant(s)

**VERSUS**

**1. CENTRAL ELECTRICITY REGULATORY COMMISSION**

*Represented by its Secretary,*

3 & 4<sup>th</sup> Floor, Chanderlok Building

Janpath, New Delhi - 110001

... Respondent No.1

**2. POWER GRID CORPORATION OF INDIA,**

*Represented by its Chief General Manager*

SAUDAMINI, Plot No.2, Sector-29,

Gurgaon – 122001 (Haryana)

... Respondent No.2

**3. BARATIYA NABHIKIYA VIDYUT NIGAM LIMITED (BHAVINI),**

*Represented by its Managing Director,*

Bhavini Station Building,

Kalpakkam – 603102

... Respondent No.3

Counsel on record for the Appellant(s) : S. Vallinayagam for App. 1

Counsel on record for the Respondent(s) : for Res. 1

Poorva Saigal  
Shubham Arya

Pallavi Saigal  
Ravi Nair  
Reeha Singh  
Anumeha Smiti for Res. 2

S. Senthilnathan  
T. Harishkumar for Res. 3

## JUDGMENT

### **(PER HON'BLE MRS. SEEMA GUPTA, TECHNICAL MEMBER)**

1. The Appellant-Tamil Nadu Transmission Corporation Limited has preferred present appeal against the Order passed by the 1<sup>st</sup> Respondent-Central Electricity Regulatory Commission dated 05.12.2022 in Petition No. 19/TT/2022, whereby the Appellant was directed to pay 50% of the transmission charges to the 2<sup>nd</sup> Respondent for the period 01.04.2014 to 28.02.2019, on the ground that the Appellant failed to commission its sub-station, for providing two bays, to connect the evacuation lines commissioned by the 2<sup>nd</sup> Respondent, for evacuating power from the 3<sup>rd</sup> Respondent generator.

2. The facts involved in the appeal, in brief, are as under:

The Appellant is the State Transmission Utility i.e. Tamil Nadu Transmission Corporation Limited. The 1<sup>st</sup> Respondent is the Central Electricity Regulatory Commission (in short referred as "**CERC/ Central Commission**"). The 2<sup>nd</sup> respondent is the Power Grid Corporation of India Ltd., (in short referred as "**POWERGRID**") the inter-State transmission service provider. The 3<sup>rd</sup> Respondents is the generator-Bharatiya Nabhikiya Vidyut Nigam Limited (in

short referred as “**BHAVINI**”), connected to the evacuation line built by the 2<sup>nd</sup> Respondent.

3. The present appeal relates to true-up of tariff relating to 230 kV D/C Kalpakkam PFBR-Kanchipuram transmission line and 2 Nos. 230 kV Bays at Kanchipuram Sub-Station of Appellant under the transmission system associated with Kalpakkam PFBR (500 MW) Project.

4. Following transmission elements, was agreed in the 20<sup>th</sup> Standing Committee Meeting on Power system Planning in Southern Region (SR) held on 07.10.2004 for evacuation of power from the proposed 500MW PFBR Reactor proposed to be installed by 3<sup>rd</sup> Respondent - BHAVINI at Kalpakkam i.e KPFBR .

(I) Transmission Lines: -

- i) KPFBR – Sirucheri 230kV D/C line [Asset I]
- ii) KPFBR – Arni 230 kV D/C line [Asset II]
- iii) KPFBR – Kancheepuram 230kV D/C line [Asset III]
- iv) KPFBR – MAPS 230kV S/C (With one spare phase)

5. The 2<sup>nd</sup> Respondent filed Petition No.105/TT/2012 for determination of tariff for the above system for the period 2009-2014 under the CERC Tariff Regulations, 2009. 1<sup>st</sup> Respondent-CERC directed the 2<sup>nd</sup> Respondent to submit the usage of the lines and whether they have been included in the PoC charges and provisions under which DOCO for the transmission lines has been declared. The 2<sup>nd</sup> respondent vide affidavit dated 13.11.2014 submitted that Asset-I and Asset-II have been included in PoC charges since

01.04.2012 and Asset-III has been included in PoC charges since 01.09.2012.

6. The 1<sup>st</sup> Respondent-CERC vide its order dated 29.04.2015 in 105/TT/2012 determined the tariff for two of the three D/C evacuation lines from the BHAVINI generator to the sub-stations of the 2<sup>nd</sup> Respondent herein, at Arani and Sirucheri ( Asset I and Asset II). In respect of the third line from the BHAVINI generator to sub-station of the Appellant at Kancheepuram, CERC did not grant tariff, on the ground that the line was not put to beneficial use due to non-commissioning of the 3<sup>rd</sup> Respondent's generator BHAVINI as well as bays at Kanchipuram Substation of Appellant herein. Aggrieved by the said order of the CERC, the 2<sup>nd</sup> Respondent herein filed an Appeal 168 of 2015 before this Tribunal.

7. This Tribunal in its judgement dated 20.09.2018 in Appeal 168 of 2015 accepted the findings of CERC and held as under:

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

8. 3<sup>rd</sup> Respondent i.e., BHAVINI also preferred an appeal before this Tribunal against the CERC order dated 29.04.2015 in Appeal No. 151 of 2015. This Tribunal vide its judgement dated 04.10.2018 in APL 151 of 2015 upheld the order of CERC, which fixed liability of payment of Transmission Charges of Asset I and Asset II on the 3<sup>rd</sup> respondent i.e. BHAVINI.

9. 2<sup>nd</sup> Respondent filed Tariff Petition 148/TT/2019 before the CERC for declaration of COD of 230 kV Kalpakkam – PFBR (Asset III) as 01.04.2014 under 2014 Tariff Regulations and approval of its Transmission Tariff for Tariff block 2014-2019. CERC vide its order dated 04.03.2021 in Petition No 148/TT/2019 held as under:

(a) Neither TANTRANSCO has completed the associated transmission bays under its scope nor BHAVINI has commissioned the generation project up to 01.04.2014.

(b) COD of Asset-III is approved as 01.04.2014 under proviso (ii) of Regulation 4(3) of 2014 Tariff Regulations.

(c) As BHAVINI and TANTRANSCO were not ready on 01.04.2014, we are of the view that the transmission charges of the instant asset should be shared by BHAVINI and TANTRANSCO. Therefore, the transmission charges from COD of the instant asset i.e., 01.04.2014 shall be shared by TANTRANSCO and BHAVINI in equal proportion. After the commissioning of generation by BHAVINI or transmission system by TANTRANSCO, when the instant asset is put to regular use, the transmission charges of the instant asset shall be included in the POC computation.”

10. Subsequently, 2<sup>nd</sup> Respondent filed Petition No. 19/TT/2022 on 21.08.2021 for approval under Regulation 86 of CERC (Conduct of Business) Regulations 1999 and CERC (Terms and Conditions of Tariff) Regulations 2014 seeking true-up of the transmission tariff for 2014-2019 along with tariff for the period 2019-2024 for the Kalpakkam PFBR transmission system (Asset I, II, & III). CERC vide its order dated 05.12.2022 in Petition 19/TT/2022 approved True up Annual Fixed Charges for 2014-19 Period and Annual fixed Charges for 2019-24 Period for Kalpakkam PFBR transmission System (Asset I, II & III). With regard to sharing of Transmission charges of combined Asset I & II, CERC held that it shall be borne by BHAVINI from date of commercial operation of the transmission Asset till COD of the first unit generating station as already held in CERC earlier orders dated 29.04.2015 in Petition No 105/TT/2012 and 29.01.2019 in Petition No an/TT/2018 and as upheld by the judgement of this Tribunal dated 04.10.2018 in APL No 151 of 2015. With regard to sharing of transmission charges for Asset III, CERC in its order dated 05.12.2022 reaffirmed its earlier direction of order dated 04.03.2021 and reiterated that same shall be shared by TANTRANSOCO and the Appellant herein in equal proportion. Being aggrieved by the said order of the Central Commission dated 05.12.2022 passed in 19/TT/2022, the Appellant has preferred the present Appeal.

### **Appellant submissions**

11. Learned counsel for the Appellant submitted that the 3<sup>rd</sup> Respondent i.e. Generator, Kalpakkam PFBR, has not declared the COD of the generation project till date, however the 2<sup>nd</sup> respondent has commissioned the three evacuation lines for Kalpakkam PFBR generator during the 2009-

2014 tariff period and filed Petition No. 105/TT/2012 seeking approval of the transmission tariff for these lines, in which KPFBR – Sirucheri 230kV D/C line [Asset I] and KPFBR – Arni 230 kV D/C line [Asset II] has been connected to the Substation of Respondents No 2 at Sirucheri and Arani; and third line, namely the 230 kV D/C Kalpakkam PFBR to Kanchipuram transmission line (Asset III), was to be connected to two bays to be provided at the Appellant's substation at the Kanchipuram for evacuation of power from the 3<sup>rd</sup> Respondent generator. The Appellant provided two 230 kV bays at its Kanchipuram Substation on 28.02.2019, however, there is no evacuation of power from the generator because the generator is not commissioned till date.

12. CERC in its order dated 29.04.2015 in Petition No 105/TT/2012, with regard to Asset –I and Asset II held that in the absence of commissioning of BHAVINI Generator, these assets could not be put to regular use for supply of power to the constituents of Southern Region. Therefore, till the unit of BHAVINI is commissioned, the transmission charges of Assets-I and II shall be borne by BHAVINI in accordance with Regulation 8 (6) of the CERC (Sharing of Transmission Charges) Regulations 2010. With Regard to Asset III, it was held that it is incapable of regular use in the absence of the generator at one end and the substation at the other end, to which the line is to be connected; the charging certificate dated 31.08.2012 issued by the CEA pertains solely to the testing of Asset III and considering all these factors CERC did not approve the declaration of commercial operation of Asset III with effect from 01.09.2012 as claimed by the 2<sup>nd</sup> Respondent herein. Learned Counsel for the Appellant placing reliance on the judgement of Hon'ble Supreme Court in Civil Appeal No. 9193 of 2012, "**Power Grid**

***Corporation of India Ltd. v. Punjab State Power Corporation Ltd. & Ors***

submitted that Asset III cannot be put into regular service even if declared under commercial operation.

13. Learned counsel for the Appellant submitted that this Tribunal in its judgement dated 04.10.2018 in the Appeal No. 151 of 2015 filed by 3<sup>rd</sup> Respondent challenging the above order of CERC dated 29.04.2015 in Petition 105/TT/2012, upheld the findings of the CERC. Learned counsel submitted that although the above appeal pertained to Assets I and II for the 2009-2014 tariff period, this Tribunal's finding that the generating unit has not yet been commissioned, that the referenced transmission system could not form part of the regional network, and that, as per the Indemnification Agreement dated 27.12.2012 signed by the 3<sup>rd</sup> Respondent Generator with the 2<sup>nd</sup> Respondent, the transmission charges are to be borne by the Generator until the commissioning of the generating unit. This finding, not having been challenged, has attained finality. Moreover, as the indemnification agreement covers all three Assets, the said finding is applicable to all of them. The generator's liability to bear the transmission charges remains unaffected until the generator starts generating power, regardless of whether the substation at the receiving end is ready or not. Thereafter, on the liberty granted by this Tribunal in Appeal No. 168 of 2015 filed by Respondent No 2 against the CERC order dated 29.04.2015, the Respondent No 2 filed Petition 148/TT/2019 before CERC seeking a declaration of COD of Asset III under the 2014 Tariff Regulations for the period 2014-2019 and prayed for sharing of transmission charges in line with this tribunal's judgment dated 04.10.2018 in Appeal No. 151 of 2015.



14. CERC vide its order dated 04.03.2021 in Petition 148/TT/2019 held that as BHAVINI and TANTRANSCO were not ready on 01.04.2014, transmission charges from COD of the instant asset i.e., 01.04.2014 shall be shared by TANTRANSCO and BHAVINI in equal proportion. Learned counsel for Appellant submitted that CERC cannot pass an order contrary to its finding in earlier order dated 29.04.2015 that as per *Indemnification Agreement signed by the Respondent No 3 i.e. Generator with the Respondent No 2 i.e. Transmission Licensee, on 27.12.2012*, the transmission charges are liable to be borne by the Generator up to the commissioning of their generating unit”

15. Learned counsel submitted that Regulation 4(3) of the 2014 Tariff Regulations and the Sharing Regulations, 2010, issued by the CERC, place the entire liability for transmission charges on the generator and do not contemplate a 50% sharing of transmission charges by the Appellant , as held by the CERC. Additionally, in the present case, the transmission line is a dedicated evacuation line. The 2<sup>nd</sup> Respondent i.e. Transmission Licensee has duly completed its obligation by constructing the line, however, the 3<sup>rd</sup> Respondent i.e. Generator has not commissioned its generating station. In the absence of Commissioning of generating station BHAVINI, the availability of a substation at the other end, where the bays for connecting the Respondent No. 2 transmission lines are to be provided, is inconsequential. The evacuation lines cannot be put to regular service in the absence of generation from the 3<sup>rd</sup> Respondent. Regulation 4 (3) (i) refers to Regulation 12 (2) of Tariff Regulation 2014 and second proviso to Regulation 12 (2) states that the generating company shall bear the IDC or transmission charges if the transmission system is declared under

commercial operation by the Commission till the generating station is commissioned. Learned counsel thus asserted that the second proviso to Regulation 12(2) of the 2014 Tariff Regulations places the liability to pay transmission charges for the dedicated evacuation line upon the generator. The regulation further stipulates that the Transmission Licensee shall approach the Commission for approval of the date of declaration of Commercial Operation of the dedicated evacuation line. The second proviso to Regulation 4(3) only outlines the procedure for the approval of the COD, while the liability to bear transmission charges is specifically governed by the second proviso to Regulation 12(2) of Tariff Regulation 2014. The

16. It was submitted that the Sharing Regulations, 2010, relating to sharing of transmission charges for inter-State transmission lines, specifically states that the generator can bill transmission charges to Long-Term customers availing supply from an inter-State generating station only after the commercial operation of the generator. Transmission charges in respect of the evacuation line become payable only when the power from the generator starts flowing and it is drawn by the beneficiaries under the PPA with the generator.

17. Learned counsel relying on the judgment of this tribunal in Appeal No. 51 of 2018 dated 01.09.2020 wherein it has been held that pending COD of the entire generating station (Generating station and dedicated line), the generator is liable to bear the transmission charges for the completed assets till the commissioning of their dedicated transmission lines. In the present case, the dedicated line though constructed by the Respondent No 2 are part of the generating station and the charges can be recovered only on the COD of the generating station. Learned counsel further contended that the

findings of the Central Commission are contrary to the express provisions of the Tariff Regulations and the Sharing Regulations.

18. Learned counsel also contended that though Respondent No 2 in its true up Petition No 19/TT/2022 under the CERC (Terms and Conditions of Tariff) Regulations, 2014, seeking the true-up of transmission tariff for the period 2014-2019 and determination of tariff for the period 2019-2024 sought the sharing of transmission charges consistent with the decision rendered in Petition No. 148/TT/2019 up to the commissioning of Kancheepuram substation of Appellant, CERC in the impugned order, merely reiterated the order passes by it in Petition No. 148/TT/2019. The order, however, provides no reference to any applicable Regulation to justify its conclusion or any reasoning as to why the Regulations do not apply to the facts of the case. CERC failed to address the detailed submissions made by the Appellant, both in its reply and in its written submissions, regarding the applicability of the relevant Regulations.

19. Learned counsel for the Appellant submitted that in the present case, the original tariff order was not in accordance with the Tariff Regulations, 2014, and Sharing Regulations, 2010, applicable for the period in dispute. The Central Commission failed to discuss or provide reasoning in Petition Nos. 148/TT/2019 and 19/TT/2022 to justify its conclusion that the Appellant is liable to pay 50% of the transmission charges; despite the relevant regulations clearly indicating the generator's liability to pay transmission charges. Learned counsel for the Appellant placed reliance on the judgement of this Tribunal dated 05.07.2024 in Appeal No. 95 of 2024

20. Learned counsel for the Appellant submitted that the entitlement of the Respondent No 2 to recover transmission charges from the beneficiaries arises only when the transmission line is put to beneficial use, as held by the Hon'ble Supreme Court judgment in "***Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited***", (2016) 4 SCC 797 [Barh Balia Case]. In the present case, the instant transmission line cannot be put to beneficial use in the absence of the generator declaring its COD, as the line is a dedicated evacuation line specifically planned and constructed for evacuating power from the Respondent No 3 generator. Under these circumstances, the CERC direction requiring the Appellant to pay 50% of the transmission charges up to 28.02.2019 is erroneous, contrary to the applicable Regulations, and liable to be set aside.

### **Respondent No.2 Submissions**

21. Learned counsel for the Respondent No. 2 submitted that the CERC order dated 04.03.2021 passed in Petition No. 148/TT/2019, approving the COD of Asset III as 01.04.2014, having not been challenged by any party, including the Appellant, has attained finality. Appellant-TANTRANSCO's attempt to reopen issues already decided in the said order, on similar grounds and issues, which has been rightly rejected by the CERC in the impugned order. The aforementioned contention of the Appellant contravenes the well-established legal principle that the truing-up process does not entail a reconsideration of the principles governing tariff determination, but it only deals with the adjustment of the estimates made at the commencement of MYT period with actual figures available at its conclusion.

22. Learned counsel for the Respondent No.2, placed reliance on the Supreme court judgement in the case **“BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission”**, (2023) 4 SCC 788, wherein the Hon’ble Supreme Court has held that the truing-up stage does not constitute an occasion for the Commission to reconsider or re-evaluate *de novo* on the basic principles, premises, or issues underpinning the initial projections of the revenue requirement of the licensee. It has been further held that the “truing up” exercise cannot be done to retrospectively modify the methodology or principles governing tariff determination and reopening the original tariff determination order thereby setting the tariff determination process to a naught at “true-up” stage.

23. Learned counsel for the Respondent No.2 contended that it is a well-settled principle of law that once issues have been adjudicated between the parties in prior proceedings, and no appeal has been preferred against the same, such decision attains finality. Consequently, the parties cannot be allowed to re-agitating the same issues in subsequent proceedings. It is also submitted that while the principal of *res judicata* may not strictly apply to tariff proceedings, however, the impugned order consistent with the established legal principle of law that courts and tribunals generally adhere to prior pronouncements of law or conclusion of fact, unless there is a new ground urged or a material change in factual change. However, in the present case, a perusal of the contentions raised by the Appellant clearly shows that the contentions raised in 19/TT/2022 were similar to the contentions raised in reply to the Petition No. 148/TT/2019, which culminated in the order dated 04.03.2021.

24. Learned counsel for the Respondent No.2 submitted that the contention of the Appellant that the impugned order contravenes the judgment of the Hon'ble Supreme Court in "***Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited***", (2016) 4 SCC 797 [Barh Balia Case], is erroneous and devoid of merit. In the aforementioned case, the Central Commission, while interpreting the Tariff Regulations, 2009, determined that the tariff for the Barh-Balia transmission line (implemented by POWERGRID) to be recovered from Punjab State Power Corporation Limited (PSPCL), a beneficiary, with effect from 01.07.2010, notwithstanding the fact that the line was not in regular use due to the Generating Plant of NTPC not being operational. This Tribunal, accepted the plea advanced by PSPCL and remanded the matter to the Central Commission for reconsideration. The Hon'ble Supreme court, while interpreting Regulation 3(12) of Tariff Regulations 2009, held that "*As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period, but beneficiaries, including Respondent 1, cannot be made liable to pay for this delay w.e.f 1-7-2010 as the energy supply line had not started on the said date*". Hon'ble Supreme Court dismissed the Civil Appeal without prejudice to the rights, if any, available to POWERGRID under the law to seek recourse against NTPC. In light of the foregoing, learned counsel submitted that reliance placed by Appellant on the Barh-Balia case is wholly misplaced, as the issue before the Supreme Court was not whether the defaulting parties can be made liable for delay in achieving regular use of the transmission line. Notably, in the present case, transmission charges have not been directed to be recovered from the beneficiaries for the period of mismatch. Learned counsel placed reliance on the judgment dated 18.01.2019, passed in

Appeal No. 332 of 2016, "**Nuclear Power Corporation of India Limited v. CERC**", 2019 SCC Online 83. There has been a significant change in the Tariff Regulations, 2014, with respect to the declaration of deemed COD by a Transmission Licensee. This change was duly considered by this Tribunal in its judgment dated 20.09.2018, in Appeal No. 168 of 2015, wherein liberty was granted to POWERGRID to approach the Central Commission under the provisions of the Tariff Regulations, 2014.

25. Reliance placed by the Appellant on judgment of the Hon'ble Supreme Court in "**UPPCL v. NTPC**", (2009) 6 SCC 235 is misplaced. Learned counsel points out that in the said case NTPC filed revision applications claiming allowance of actual revised costs incurred by NTPC due to arrears paid in 2000-2001; CERC dismissed the petitions on the grounds that: (a) the actual data of employee cost was available to NTPC during the stage of original tariff proceedings, (b) application of Order 2 Rule 2 and (c) Commission cannot revisit the matter covered in tariff orders, which have acquired finality. This Tribunal, in appeal, had allowed the appeals filed by NTPC. However, the Hon'ble Supreme Court subsequently allowed the Civil Appeal filed by UPPCL. On the basis of the above background, the Hon'ble Supreme Court observed that the principles of res judicata are inapplicable to tariff proceedings. However, it was further observed that the same issue cannot be allowed to be re-agitated after the matter has progressed through multiple stages.

26. Learned counsel for the Respondent No.2 submitted that the reliance placed by the Appellant on Regulation 8(6) of the Sharing Regulations, 2010, and the proviso to Regulation 12(2) of the Tariff Regulations, 2014, is misplaced and inapplicable to the present case. These provisions address

situations where a Generating Company alone has delayed in fulfilling its obligations. They do not contemplate scenarios where both the Generating Company and the Transmission Licensee have delayed in meeting their respective obligations, resulting in the absence of power flow due to the concurrent delays of both entities. In such circumstances, the Central Commission has appropriately exercised its regulatory powers under Regulation 4(3)(ii) of the Tariff Regulations, 2014, while considering the approval of COD.

27. Learned counsel submitted that reliance placed by the Appellant on the this Tribunal judgment dated 05.07.2024 in Appeal No. 95 of 2023 is misplaced and inapplicable to the facts of the present case, as there has been no violation of any regulation. Likewise, the reliance on the judgment dated 01.09.2020 in Appeal No. 51 of 2018 by the Appellant is not relevant to the present case, as the dispute in that matter was solely between the Generating Company and the Transmission Licensee.

### **Analysis and Discussion**

28. Heard learned counsels for the Appellant and Respondent. The Main contention raised by the Appellant is their liability to share 50 % transmission charges for the KPFBR – Kancheepuram 230kV D/C line [referred as “**Asset III**”] of Respondent No 2, for the period from 01.04.2014 to 28.02.2019, till they commissioned their bays at Kanchipuram as affirmed in the impugned order dated 05.12.2022, is not in accordance with the 2014 Tariff Regulations, and Sharing Regulations, 2010.



29. Per Contra, learned counsel for Respondent No. 2 has contended that the CERC, in its order dated 04.03.2021 passed in petition No.148/TT/2019 has approved the COD of Asset III as 01.04.2014 and its transmission charges to be shared by Appellant and Respondent no 3 in equal proportion as both generator and Transmission bays have not been commissioned by Respondent No. 3 and the Appellant, respectively. The said order has not been challenged by any party, including the Appellant, and has attained finality. The Impugned order dated 05.12.2022 in Petition No. 19/TT/2022 pertains to the True Up of Tariff for the period 2014-19 and determination of Tariff for the FY 2019-24 for Asset III and reopening of the issues in True-up order is not permissible under the Law.

30. The relevant extract of Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2014 (in short referred as “**2014 Tariff Regulations**”) with regard to declaration of the commercial operation date (COD) of a transmission system, is reproduced below:

**“4. Date of commercial operation**

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

*Provided that:*

*(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission*

*licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.”*

31. We note that COD of Asset III has been approved by the CERC, in its order dated 04.03.2021 in petition No.148/TT/2019 as 01.04.2014 under proviso (ii) of Regulation 4(3) of 2014 Tariff Regulations and the COD of the Asset III is not under challenge in the present Appeal. The dispute is with regard to liability of sharing of 50 % of transmission charges of Asset III by the Appellant since 01.04.2014 till 28.02.2019, when the Appellant commissioned the associated bays at the Kanchipuram substation. We also note that Sharing of the Transmission charges for Asset III in equal proportion between the Appellant and Respondent No. 3 has been approved by the CERC in the same tariff order dated 04.03.2021 for the period FY 2014-2019, based on the observation that both the generator i.e., Respondent No. 3 and TANTRANSCO system were not ready.

32. The impugned order dated 05.12.2022 has been passed in petition No. 19/TT/2022 filed by Respondent No. 2 for Truing-up of Transmission Tariff for the FY 2014-19 tariff block and determination of Transmission tariff for the FY 2019-2024 tariff block for transmission assets under “Transmission system for Kalpakkam PFBR project”. It is surprising to note that the tariff order dated 04.03.2021, which determined the Appellant’s liability to share 50 % of the transmission charges for Asset III, has not been challenged by the Appellant till date; however in Petition No. 19/TT/2022, filed by

Respondent No.2 for the truing up of transmission tariff for FY 2014-19, the Appellant, in their written submission before the CERC as a respondent, sought reconsideration of the earlier order dated 04.03.2021, praying to be absolved from the liability to pay transmission charges for Asset III as determined under the said order; the CERC in its impugned order dated 05.12.2022 did not grant the relief as sought and made the following observations:

*“91. We do not find any sufficient reason to neither reopen nor deviate from the Commission's earlier decision in order dated 4.3.2021 in Petition No. 148/TT/2021. Accordingly, the transmission charges of Asset-3 shall be shared as per the order dated 4.3.2021. Therefore, the transmission charges of Asset-3 from COD i.e. 1.4.2014 shall be shared by TANTRANSCO and BHAVINI in equal proportion. Kanchipuram Sub- station was put into commercial operation by TANTRANSCO on 28.2.2019. Hence, the Petitioner has to recover charges from 1.4.2014 till 28.2.2019 in equal proportion from both TANTRANSCO and BHAVINI and, thereafter, tariff from 1.3.2019 shall be recovered from BHAVINI till commissioning of its first unit of generation.”*

33. The contentions urged by the Appellant in the present appeal, challenging the impugned order dated 05.12.2022 is many fold i) in the absence of commissioning of generator, non-commissioning of bays at Kanchipuram is of no consequence because Asset III cannot be put to regular use even if bays were commissioned in the absence of generator ii) in view of earlier order of the CERC dated 29.04.2015 in fixing the liability of payment of transmission charges for Asset I and Asset II on the generator considering existence of indemnification agreement between Respondent

No 2 and the Respondent No 3, i.e. generator, liability to pay 100 % transmission charges for Asset III should also be on Respondent No 3 i.e., Generator iii) the original tariff order dated 04.03.2021 passed by CERC is not in line with tariff Regulation 2014 and sharing regulation 2010 as relevant regulations puts the liability on generator to pay transmission charges and in view of judgement dated 05.07.2024 of this Tribunal, the original tariff of the CERC can be revisited in True up petition.

**The Applicability of supreme Court Judgement in “*Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited*”, (2016) 4 SCC 797 [Barh Balia Case].**

34. COD of the Asset III of Kalpakkam PFBR transmission system of Respondent No. 2, as 01.04.2014 is not under challenge, and it is therefore, settled law that Respondent No. 2 is entitled to recover its yearly transmission Charges; the present dispute is with regard to liability of payment of 50 % of its transmission charges by the Appellant. Learned counsel for the Appellant placing reliance on the sharing Regulations 2010, contended that generator cannot bill its beneficiaries prior to achieving COD and that transmission charges in respect of the evacuation line becomes payable only when the power from the generator starts flowing and it is drawn by the beneficiaries under the PPA with the generator. We are in agreement with this submission of the Appellant as it has already been held by Hon’ble Supreme court in “*Power Grid Corporation of India Limited Vs Punjab State Power Corporation limited*”, (2016) 4 SCC 797 [“Barh Balia case”] that beneficiaries cannot be made liable to pay for the transmission charges in case generator is delayed, and the energy supply line had not started. On the same principle, in the case of Asset I & Asset II of the Kalpakkam PFBR

transmission system, no liability on the beneficiaries/ TANTRANCO has been affixed by the CERC in its order dated 29.04.2015 and upheld by this Tribunal in its judgement dated 04.10.2018 as the Asset I & Asset II could not be put to use on account of non-commissioning of Generator and liability of payment of transmission charges for Asset I and Asset II has been affixed on Generator BHAVINI.

35. For Asset III, the liability to pay its transmission charges has not been affixed on the beneficiaries but the liability to pay 50 % of the transmission charges has been affixed on Appellant i.e. TANTRASCO, due to its default in non-commissioning the bays required for termination of the Kalpakkam–Kanchipuram 230 kV line of Respondent No.2. Therefore, the Appellant's reliance on judgment in "***Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited***", (2016) 4 SCC 797 [Barh Balia Case], is erroneous and devoid of merit concerning the CERC's direction for sharing of transmission charges of Asset III by the Appellant in equal proportion with the generator on account of delay in commissioning of bays at the Kanchipuram substation

36. We also do not find merit in the submissions of the Appellant that non-commissioning of bays at Kanchipuram is immaterial, in the absence of the generator, as such Asset III line cannot be put to regular use. We find both logic and equities in order dated 04.03.2021 and reiterated in the impugned order dated 05.12.2022 that when both the generator and the Appellant is at fault as far as regular use of Asset III is concerned, the liability to pay its transmission charges after approval of its COD w.e.f. 01.04.2014, should also be on both the generator and the Appellant to be shared equally between the two. As such liability to pay 50 % of the transmission charges

is only up to 28.02.2019, when the Kanchipuram substation and associated bays are commissioned by the Appellant. Subsequent to commissioning of Kanchipuram substation along with bays for termination of Asset III on 28.02.2019, the Appellant has not been made liable to share the charges and entire liability of payment of its transmission charges is upon the Respondent No. 3 till their generation project is commissioned.

**Is liability to pay 50 % transmission charges by Appellant contrary to Sharing Regulation 2010 and 2014 Tariff Regulations**

37. Learned counsel for the Appellant has referred to Regulation 8(6) of Sharing regulation 2010, regarding the liability to pay transmission charges on generator, relevant extract is reproduced below:

*“8 (6) -- “For long-term customers availing supplies from inter-state generating stations, the charges payable by such generators for such Long-Term supply shall be billed directly to the respective Long-Term customers based on their share of capacity in such generating stations. Such mechanism shall be effective only after “commercial operation” of the generator. Till then, it shall be the responsibility of generator to pay these charges.”*

38. Scope of CERC (Sharing of inter-State Transmission Charges & Losses) Regulations 2010 (in short referred as “**Sharing Regulation 2010**”) is defined in Chapter 2 and principles of sharing ISTS charges and losses are defined in chapter III as reproduced below:

**CHAPTER 2: SCOPE OF THE REGULATIONS**

*3. “Yearly Transmission Charges, revenue requirement on account of foreign exchange rate variation, changes in interest rates etc. as*

*approved by the Commission and Losses shall be shared amongst the following categories of Designated ISTS Customers who use the ISTS:-*

*(a) Generating Stations which are regional entities as defined in the Indian Electricity Grid Code (IEGC)*

*(b) State Electricity Boards/State Transmission Utilities connected with ISTS or designated agency in the State (on behalf of distribution companies, generators and other bulk customers connected to the transmission system owned by the SEB/STU/intra-State transmission licensee)*

*(c) Any bulk consumer directly connected with the ISTS, and*

*(d) Any designated entity representing a physically connected entity as per clauses (a), (b) and (c) above”.*

### **CHAPTER 3: PRINCIPLES AND MECHANISM FOR SHARING OF ISTS CHARGES AND LOSSES**

*4. Principles for sharing ISTS charges and losses.*

*(1) Based on the Yearly Transmission Charges of ISTS Transmission Licensees and transmission losses in the ISTS network, the Implementing Agency shall compute the Point of Connection charges and Loss Allocation Factors for all DICs:-*

*(a) Using load-flow based methods; and*

*(b) based on the Point of Connection Charging method.*

39. From the bare reading of the aforementioned regulations, it is understood that based on yearly transmission charges of inter-State transmission licensee, Implementing agency is required to compute Point of

Connection charges and loss allocation for all DICs using load flow based methods and based on Point of connection charging method Regulation 8(6) contemplates a situation that long term customers (beneficiaries) availing supplies from the inter State generating station shall pay for the inter-state transmission charges only after COD of the corresponding generator project, however, till then it will be the responsibility of the Generator to pay such charges. There is no stipulation in the sharing regulation that when a transmission element's COD is approved and is eligible to receive its transmission charges, but is not put to use due to combined default of Generator and other transmission licensee, who shall bear the transmission charges as beneficiaries/long term customers can be made liable to pay only after commercial operation of generator; would it still be the liability of the generator alone or it would be combined liability of defaulting entities preventing regular use of the Transmission element. In our view, the inference cannot be drawn from above regulations, that even when besides generator, other licensee has also defaulted in fulfilling their obligation and thereby preventing the regular use of concerned transmission line, still it would be the responsibility of Generator alone to pay for the transmission tariff of the Transmission line. Thus, we do not find merit in the submission of learned counsel for the Appellant that affixing 50 % liability to pay transmission charges of Asset III on the Appellant is contrary to the Sharing Regulation, 2010.

40. Learned counsel for the Appellant, referring to Regulation 4(3) and second Proviso to Regulation 12(2) of 2014 Tariff Regulations, submitted that it fixes the liability to pay transmission charges for a dedicated evacuation line on the generator and therefore, in the present case, the



liability to pay transmission charges for Asset III should be of Generator as the Asset III is a dedicated system for the generator, even when same has been commissioned by Respondent No 2.

41. We note from Regulation 4 (3) of the 2014 Tariff Regulations, as extracted in the previous para that it provides for an inter-State Transmission licensee to make an application for CERC for approval of the date of commercial operation of an inter-State transmission system, in case it is prevented for regular service on account of delay in commissioning of the associated generation system or upstream and downstream transmission systems. While the referred Regulation 12 addresses the controllable and non controllable factors leading to cost escalation impacting Contract prices, IDC and IEDC of the project, as set forth below :

***“12. Controllable and Uncontrollable factors: The following shall be considered as controllable and uncontrollable factors leading to cost escalation impacting Contract Prices, IDC and IEDC of the project:***

*(1) The "controllable factors" shall include but shall not be limited to the following:*

- a) Variations in capital expenditure on account of time and/or cost over- runs on account of land acquisition issues,*
- b) Efficiency in the implementation of the project not involving approved change in scope of such project, change in statutory levies or force majeure events; and*
- c) Delay in execution of the project on account of contractor, supplier or agency of the generating company or transmission licensee.*

(2) *The "uncontrollable factors" shall include but shall not be limited to the following:*

- i) Force Majeure events; and*
- ii) Change in law*

*Provided that no additional impact of time overrun or cost overrun shall be allowed on account of non-commissioning of the generating station or associated transmission system by SCOD, as the same should be recovered through Implementation Agreement between the generating company and the transmission licensee:*

*Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of these regulations till the generating station is commissioned:*

*Provided also that if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee shall arrange the evacuation from the generating station at its own arrangement and cost till the associated transmission system is commissioned."*

42. In our view, the second proviso to Regulation 12 of the 2014 Tariff Regulations provides for mismatch situation between the generator and the associated transmission system and in case of delay of generation project from SCOD, then it is liable to pay for the IDC or Transmission Charges if the transmission system is declared under commercial operation. However,

the 2014 Tariff Regulations does not deal with a situation if along with the generator, downstream or upstream system is delayed or only downstream system is delayed. Accepting the contention of the Appellant that the second proviso to Regulation 12(2) as well as Sharing Regulations 2010 mandates that only generator is liable to pay till its COD, would mean that there is no obligation on the entity providing downstream/ upstream system even if it is delayed, and they can default in their obligation without any liability whatsoever; which, in our view, is not correct.

43. The referred Regulations of 2014 Tariff Regulations also does not deal with a situation that in case both the generation and the associated dedicated transmission system are commissioned but the downstream/ upstream system is not commissioned, in such a case also the transmission system cannot be put to regular use and whose liability would it be to pay for the Transmission charges for the transmission asset; in this situation neither the generator nor the beneficiaries are at fault to be mulched with the liability of payment of transmission charges of associated transmission system, whose COD has been approved (we are refraining from making any observation with regard to payment of generation tariff, as same is not an issue in present lis). Though such a situation has not emerged in present lis, but it can be inferred that the liability for the payment of 100% transmission charges in such a situation would rest with the defaulting entity that failed to provide the downstream system, thereby preventing the regular use of the transmission system.

Thus, we are not in agreement with the submission of the Appellant, that the liability to pay 50 % of Transmission charges of Asset III on Appellant from 01.04.2014 till 28.02.2019 is contrary to 2014 Tariff Regulations and 2010

Sharing Regulations and that only generator should be liable to pay 100 % of the transmission charges of Asset III.

44. From the above deliberations, it is observed that both sharing Regulation 2010 and 2014 Sharing Regulations do not deal with a provision of fixing the liability of payment of transmission charges in case both the Generator and the licensee providing down steam system is delayed. In the absence of suitable provisions in the applicable regulations, whether there is any infirmity in the impugned order dated 05.12.2022 and CERC Tariff order dated 04.03.2021, fixing liability of sharing 50 % transmission charges on Appellant for the period under consideration , we would like to place our reliance on judgement in **“Nuclear Power Corporation of India Limited v. CERC”, 2019 SCC Online APTEL 83** dated 18.01.2019 regarding exercise of Regulatory Power by CERC as under:

*10.4 The Central Commission has submitted that the statutory basis for the decision by the Central Commission to assign liability on the Appellant for payment of transmission charges is based on the Hon'ble Supreme Court's judgement dated 15.3.2010 in SLP (C) No. 22080/2005 in case of PTC India Ltd. v. CERC, (2010) 4 SCC 603. After perusal of the said judgement we find that it has been held that the Central Commission is the decision-making Authority under Section 79(1) of the Act and such decision making or taking steps/measures under the said Section of the Act is not dependent upon making of regulations under Section 178 of the Act. It is further held in the judgement that if any regulations are framed by the Central Commission under Section 178 of the Act then the decision of the Central Commission has to be in accordance with the said regulations.*

Thus, we do not find any infirmity with the direction of the CERC in the impugned order to share the transmission charges for Asset III by the Appellant with the Generator BHAVINI in equal proportion for the period under consideration in exercise of its Regulatory Powers.

45. It is an undisputed fact that the methodology of sharing the transmission charges of Asset III by the Appellant and Respondent No. 3 i.e Generator in equal proportion since 01.04.2014 was decided in the CERC tariff order dated 04.03.2021 and same has not been challenged by the Appellant and thereby attained finality. The impugned order dated 05.12.2022 has been passed in petition No. 19/TT/2022 filed by Respondent No. 2 for True up of Transmission Tariff for the FY 2014-19 tariff block and determination of Transmission tariff for the 2019-2024 tariff block for transmission assets under the “transmission system for kalpakkam PFBR project”. The Hon’ble Supreme court in “**BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission**”, (2023) 4 SCC 788, as extracted below has held that *at the stage of “truing up”, methodology used in the initial tariff determination by changing the basic principles, premises and issues involved in the initial projection of ARR cannot be used.*

*“52. The DERC determines the tariff of the licensee under Section 62 in such a manner as determined by the 2007 MYT Regulations. This function is governed, inter alia, by safeguarding all consumers’ interest and at the same time recovering the cost of electricity in a reasonable manner, such that “distribution and supply of electricity are conducted on commercial principles” which encourage and reward competition, efficiency, economic use of resources, good performance and optimum investments.*

*53. DERC determines ARR of the licensee i.e. costs of undertaking the licensed business which are permitted in accordance with the requirement specified by DERC which is to be recovered from the tariff in the year end. ARR determined by DERC is based on projections. Since the tariff and the ARR are regulated, the Discoms cannot recover anything more than from its consumers than what is allowed by the DERC.*

*54. As noticed above, a tariff order is quasi-judicial in nature which becomes final and binding on the parties unless it is amended or revoked under Section 64(6) or set aside by the Appellate Authority. Apart from this, we are also of the view that at the stage of “trueing up”, the DERC cannot change the rules/methodology used in the initial tariff determination by changing the basic principles, premises and issues involved in the initial projection of ARR.”*

46. Thus, it is impermissible to change the methodology of sharing the Transmission charges for Asset III during the true-up stage. As already held above that sharing methodology ordered as per Tariff order dated 04.03.2021 and reiterated in impugned order is not contrary to the Sharing Regulation 2010 and/or the 2014 Tariff Regulations. The Reliance placed by the Learned counsel of Appellant on the judgement dated 05.07.2024 of this Tribunal in Appeal No. 95 of 2024 that if original order is not in accordance with the Regulations, methodology can be amended during true up since this aspect was not deliberated in the referred Supreme Court Judgement “**BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission**”, (2023) 4 SCC 788, has no relevance here in the present case.

47. In view of the above discussion and deliberation, we do not find any infirmity in the order of the CERC dated 05.12.2022, impugned in this Appeal, and the same is hereby upheld. The Appeal is, accordingly, dismissed and all associated IAs, if any, are also disposed of.

**Pronounced in open court on this 11<sup>th</sup> Day of December 2024**

**(Seema Gupta)  
Technical Member (Electricity)**

**(Justice Ramesh Ranganathan)  
Chairperson**

**REPORTABLE / NON-REPORTABLE**

*ts/ag/dk*