

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

APL No. 357 OF 2024 & IA No. 1368 OF 2024

&

APL No. 369 OF 2024 & IA No. 1377 OF 2024 & IA No. 1638 OF 2024

Dated: 28.02.2025

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

In the matter of:

APL No. 357 OF 2024 & IA No. 1368 OF 2024

UTTAR PRADESH RAJYA VIDYUT UTAPADAN NIGAM LIMITED

Through its Chief Engineer (Commercial)

14th Floor, Shakti Bhawan Extension

Shakti Bhawan, 14 Ashok Marg,

Lucknow – 226001, Uttar Pradesh

... Appellant(s)

VERSUS

1. UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Through its Secretary,

Vidyut Niyamak Bhawan, Vibhuti Khand,

Gomti Nagar,

Lucknow – 226010, Uttar Pradesh

... Respondent No.1

2. OBRA-C BADAUN TRANSMISSION LIMITED

Through its Managing Director,

Adani Corporate House,

Shantigram, Near Vaishno Devi Circle,

S.G. Highway, Khodiyar

Ahmedabad – 382421, Gujarat.

... Respondent No.2

3. UTTAR PRADESH POWER CORPORATION LIMITED

Through its Managing Director,

11th Floor, Shakti Bhawan

- 14 Ashok Marg,
Lucknow – 226001, Uttar Pradesh ... Respondent No.3
- 4. PASHCHIMANCHAL VIDYUT VIRTAN NIGAM LIMITED**
Through its Managing Director,
Urja Bhawan, Victoria Park,
Meerut – 250001, Uttar Pradesh ... Respondent No.4
- 5. MADHYANCHAL VIDYUT VITRAN NIGAM LIMITED**
Through its Managing Director,
4/A Gokhale Marg,
Lucknow – 226001, Uttar Pradesh ... Respondent No.5
- 6. PURVANCHAL VIDYUT VIRAN NIGAM LIMITED**
Through its Managing Director,
Vidyut Nagar, DLW,
Bikharipur,
Varanasi – 221 010, Uttar Pradesh. ... Respondent No.6
- 7. DAKSHINANCHAL VIDYUT VITRAN LIMITED**
Through its Managing Director,
Vidyut Bhawan, NH-2 (Agra-Delhi Bypass Road),
Sikandra – 282007, Uttar Pradesh ... Respondent No.7
- 8. KANPUR ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Managing Director,
Headquarter – Kesa House, 14/71, Civil Lines,
Kanpur – 208 001, Uttar Pradesh. ... Respondent No.8
- 9. UTTAR PRADESH POWER TRANSMISSION CORPORATION LIMITED**
Through its Managing Director,
Shakti Bhawan,
14 Ashok Marg,
Lucknow – 226 001, Uttar Pradesh ... Respondent No.9

Counsel on record for the Appellant(s) : Vibhanshu Srivastava
Abiha Zaidi
Shrom Sethi for App. 1

for Res. 1
Sourav Roy
Atharva Kotwal for Res. 2

Shankh Sengupta
Abhishek Kumar
Nived Veerapaneni
Karan Arora
Shubham Mudgil for Res. 3

Shankh Sengupta
Abhishek Kumar
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Shankh Sengupta
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Nived Veerapaneni
Karan Arora
Shubham Mudgil for Res. 7

Shankh Sengupta
Abhishek Kumar
Nived Veerapaneni

Karan Arora
Shubham Mudgil for Res. 8

Altaf Mansoor
Sunil Kumar Rai for Res. 9

APL No. 369 OF 2024 & IA No. 1377 OF 2024 & IA No. 1638 OF 2024

U. P. POWER TRANSMISSION CORPORATION LIMITED (UPPTCL)

Through its Managing Director,
15th Floor, Shakti Bhawan Extension,
14, Ashok Marg, Lucknow – 226 001

... Appellant(s)

VERSUS

1. OBRA-C BADAUN TRANSMISSION LIMITED

Through its Managing Director,
Adani Corporate House, Shanti Gram,
Near Vaishno Devi Circle, S.G. Highway,
Khodiyar, Ahmedabad, Gujarat – 382421, ... Respondent No.1

2. U. P. POWER CORPORATION LIMITED (UPPCL)

Through its Managing Director,
11th Floor, Shakti Bhawan Extension,
14-Ashok Marg,
Lucknow, Uttar Pradesh – 226001 ... Respondent No.2

3. PASHCHIMANCHAL VIDYUT VIRTAN NIGAM LIMITED (PVVNL)

Through its Managing Director,
Urja Bhawan, Victoria Park,
Meerut, Uttar Pradesh–250001 ... Respondent No.3

4. MADHYANCHAL VIDYUT VITRAN NIGAM LIMITED (MVVNL)

Through its Managing Director,
4/A Gokhale Marg,
Lucknow, Uttar Pradesh – 226001, ... Respondent No.4

5. PURVANCHAL VIDYUT VIRAN NIGAM LIMITED (PUVVNL)

Through its Managing Director,
Vidyut Nagar, DLW, Bhikharipur,
Varanasi, Uttar Pradesh–221 010 ... Respondent No.5

6. DAKSHINANCHAL VIDYUT VITRAN NIGAL LIMITED (DVVNL)
Through its Managing Director,
Vidyut Bhawan, NH-2 (Agra-Delhi Bypass Road),
Sikandra, Uttar Pradesh–282007 ... Respondent No.6

7. KANPUR ELECTRICITY SUPPLY COMPANY LIMITED
Through its Managing Director,
Headquarter – KESA House, 14/71, Civil Lines, Kanpur,
Uttar Pradesh – 208 001. ... Respondent No.7

8. UTTAR PRADESH RAJYA VIDYUT UTAPADAN NIGAM LIMITED
Through its Managing Director,
Shakti Bhawan, 14, Ashok Marg,
Lucknow, Uttar Pradesh – 226001 ... Respondent No.8

9. UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
Through its Secretary,
Vidyut Niyamak Bhawan, Vibhuti Khand,
Gomti Nagar,
Lucknow – 226010, ... Respondent No.9

Counsel on record for the Appellant(s) : Altaf Mansoor
Sunil Kumar Rai for App. 1

Counsel on record for the Respondent(s) : Sourav Roy
Atharva Kotwal
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Karan Arora
Shubham Mudgil for Res. 5

Shankh Sengupta
Abhishek Kumar
Nived Veerapaneni
Karan Arora
Shubham Mudgil for Res. 6

Shankh Sengupta
Abhishek Kumar
Nived Veerapaneni
Karan Arora
Shubham Mudgil for Res. 7

Vibhanshu Srivastava
Abiha Zaidi
Shrom Sethi for Res. 8

JUDGMENT

PER HON'BLE SMT. SEEMA GUPTA, TECHNICAL MEMBER

1. The Appellants, Uttar Pradesh Rajya Vidyut Utapadan Nigam Limited (“**Appellant - UPRVUNL in Appeal No. 357 of 2024**”) and U.P. Power Transmission Corporation Limited (“**Appellant - UPPTCL in Appeal No. 369 of 2024**”) have filed the respective Appeals challenging the legality, validity

and propriety of the Order dated 24.06.2024 (“**Impugned Order**”) passed by the Uttar Pradesh Electricity Regulatory Commission (“**State Commission / UPERC/Respondent No 1**”) in Petition No. 1920 of 2022, filed by Obra-C Badaun Transmission Limited (“**OCBTL**”), whereby the State Commission has held that the both Appellant-UPRVUNL, and Appellant-UPPTCL as defaulting entity and directed UPRVUNL to pay the transmission charges qua Element 1 of LOT I from 30.04.2021 till the date of connection of Element 1 to their Obra C TPS switchyard and its operationalisation and the UPPTCL was held liable for payment of transmission charges along with late payment surcharge from of date commissioning of Element 9 of LOT II till the date of commissioning of downstream terminal bays at 400 kV Jaunpur Substation by UPPTCL.

2. Since the issue involved is similar in both the Appeals and the order impugned is common, shall be dealt with, in this common order. Since the relief sought in the IA in both the appeals, if granted, would amount to disposal of the respective main appeals in as much as the relief sought in the IAs and the Appeals are same, with the consent of learned counsel for all the parties, the main Appeals itself are being disposed of with this common judgment.

For the sake of convenience, the facts in both the Appeals are described in short.

FACTS IN APPEAL NO. 357 OF 2019 and 369 of 2024

3. The **Uttar Pradesh Rajya Vidyut Utapadan Nigam Limited (“UPRVUNL”)**, the Appellant in Appeal No 357 OF 2019 is wholly owned

State thermal power utility in the State of Uttar Pradesh and upon promulgation of Uttar Pradesh Electricity Reforms Act, 1999 and the statutory transfer scheme notified thereunder, the Appellant- UPRVUNL was vested with the task of generation and sale of electricity from thermal generation assets from the State of Uttar Pradesh, and the electricity generated therefrom is sold to Uttar Pradesh Power Corporation Limited ("**Respondent - UPPCL**"), which is vested with the responsibility of transmission and distribution of electricity in the State of Uttar Pradesh.

4. The **Uttar Pradesh Power Transmission Corporation Limited** ("UPPTCL") the Appellant in Appeal No 369 of 2024 is a Transmission Licensee under Section 2(72) of the Electricity Act, 2003 and has been notified by the Government of U.P. as a State Transmission Utility ("**STU**") under Section 39(1) of the Electricity Act, 2003 and is also a nodal agency for the grant of connectivity.

5. The Respondent - **OBRA-C Badaun Transmission Limited** ("**OCBTL**") is Transmission Licensee as per Section 2(73) of the Electricity Act. The Respondent, **Uttar Pradesh Power Corporation Limited** ("**UPPCL**"), is a company which is vested with the work of transmission and distribution of electricity in Uttar Pradesh. The Respondents, Pashchimanchal Vidyut Vitran Nigam Limited, Madhyanchal Vidyut Vitran Nigam Limited, Madhyanchal Vidyut Vitran Nigam Limited, Purvanchal Vidyut Vitran Nigam Limited, and Dakshinanchal Vidyut Vitran Limited (hereafter referred as ("**UP DISCOMs**"), are the distribution licensee authorised to undertake distribution and retail supply of electricity in the State of Uttar Pradesh, and are the subsidiaries of the UPPCL. UPPCL is

authorised to procure power from the generators on behalf of UP DISCOMs and sign necessary agreement.

6. On 16.01.2013, a Power Purchase Agreement (“PPA”) was signed between UPRVUNL and -UPPCL (on behalf of UP DISCOMS) for procurement of scheduled capacity i.e. 2x660 MW from the Obra-C TPS being developed by UPRVUNL for a period of 25 years from effective date extendible/renewable by mutual consent between the parties. A supplementary Power Purchase Agreement was also entered on 27.12.2016 with UPRVUNL and UPPCL

7. The Appellant- UPPTCL, herein, vide letter dated 01.06.2018 appointed PFC Consulting Limited as Bid Process Coordinator (“BPC”) for the construction of transmission system for evacuation of power from Obra-C TPS – ‘The Project’ and BPC issued Request for Qualification Document (“RFQ”) on 22.06.2018, Request for Proposal Document (RFP) on 05.09.2018 for selection of Transmission Service Provider (TSP) through Tariff Based Competitive Bidding Process. M/s Adani Transmission Ltd. was evaluated as the successful bidder and LOI was issued on 29.11.2018, in pursuance of which the Special Purpose Vehicle i.e., Obra-C Badaun Transmission Ltd. (“**Respondent – OCBTL**”) was acquired by them.

8. On 15.10.2018, the Respondent -OCBTL entered into a Transmission Service Agreement (“**TSA**”) with Respondent - UP DISCOMs i.e., Long-Term Transmission Customers (“**LTTCs**”), for establishing transmission system for evacuation of power from Obra C Thermal Power Project (2x660 MW) & Construction of 400 kV GIS Substation at Badaun with associated

Transmission lines” (“**Project**”). Subsequently, on 15.10.2020, the OCBTL entered into a Supplementary TSA with the Respondent- UP DISCOM, in which Pashchimanchal Vidyut Vitran Nigam Ltd was authorised as Lead Long Term Transmission Customer (“Lead LTTC”) for discharging rights and obligation of all LTTCs. The supplementary TSA also included a provision to appoint and authorise the Appellant – UPPTCL as Nominee of LTTC for discharging their rights and obligations during the construction period under the TSA. The Project under the TSA is divided into two lots namely, LOT-1 comprising of Elements 1 to 8 and LOT-2 comprising of Element-9.

9. The Respondent – OCBTL undertook the construction of project, and there were certain delays in completion of the project due to alleged force majeure issues and the Respondent - OCBTL, approached State Commission vide Petition No. 1824 of 2022 to declare the delay, as a Force Majeure event, as it is on account of Covid-19 pandemic in terms of Article 11 of TSA. The State Commission, *vide* its order dated 03.10.2022 in Petition No.1824 of 2022, condoned the delay in commissioning the elements from SCOD and approved deemed commissioning of Element-1 from 30.04.2021 onwards and that of Elements 2 to 8 under LOT 1 from 16.04.2021 onwards. Subsequent thereto, the Respondent No.2-OCBTL filed Petition No. 1920 of 2022, seeking payment of Transmission charges along with LPS for Element 1 of LOT1 from deemed COD of 30.04.2021, Deemed COD of Element 9 of LOT 2 from 07.06.2022 and payment of its transmission charges along with LPS, and also prayed for certain other reliefs. The Appellant – UPRVUNL was made a proforma party for the first time to the said petition. It is the contention of the Appellant – UPRVUNL that no relief was sought against them and instead OCBTL sought a specific

direction for payment of transmission charges along with LPS for Element 1 of LOT-1 of the Project from approved deemed COD of 30.04.2021 from the LTTCs, which was contended by them stating that Element 1 of LOT-1 could not be put to use as the Appellant- UPRVUNL has delayed Obra –C generation project.

10. The Appellant – UPPTCL has contended that OCBTL before State Commission has sought payment of Transmission charges either from LTTCs or by applicability of default liability principle; however, the LTTC contended that Element 9 in LOT 2 could not be commissioned due to delay in commissioning of two 400 KV bays at Jaunpur Substation by the Appellant UPPTCL. The State Commission, *vide* its Impugned Order dated 24.06.2024, held that the Appellant – UPRVUNL, being a defaulting entity, is liable to pay transmission charges of Element-1 of LOT-1 from the date of its approved deemed COD till Element-1 is connected with OCBTL TPS Switchyard and is operationalised. Likewise, the liability to pay the transmission charges of Element-9 of LOT-2 from its deemed COD till the commissioning of downstream network was imposed upon the Appellant - UPPTCL. Aggrieved thereby, the **UPRVUNL,UPPTCL** have approached this Tribunal by filing the respective appeals.

Appellant – UPRVUNL Submissions

11. Ms Abhiha Zaidi, Learned counsel for the Appellant submitted that the Transmission System Agreement (TSA) was executed between Obra-C Badaun Transmission Limited (“OCBTL”), as the TSP, and the Long-Term Transmission Customers (“LTTCs”) for the procurement of transmission

services from OBRA-C's Transmission Project, comprising LOT I (Elements 1 to 8) and LOT II (Element 9). In the Impugned Order, State Commission has imposed liability upon UPRVUNL for the payment of transmission charges for Transmission Element No. 1 of LOT 1 from its deemed COD of 30.04.2021 until the date of connection of Transmission Element No. 1 of Respondent - OCBTL with the Switchyard of OBRA-C TPS and operationalization of the LILO (Transmission Element No 1) adopting the defaulter liability principle. Learned counsel submitted that connection offer to UPRVUNL, enabling it to become part of the transmission system, was extended only on 15.11.2019, as recorded in the Connection Agreement executed between UPPTCL and UPRVUNL on 27.12.2019.

12. Learned counsel for the Appellant further submitted that the infrastructure of UPRVUNL for Element-1 of LOT-1 was ready for power evacuation as of 20.04.2022, as evidenced from the Safety Clearance Certificate and OCBTL vide its own communication dated 16.03.2023, rectified the connection mismatch only on 13.03.2023, and accordingly, its deemed COD could not have been 30.04.2021. While the charges for rectifying the mismatch had to be shared by the parties, the liability for the faulty connection lies on OCBTL and in the absence of a working connection, deemed COD could not have been granted. Therefore, the "Defaulting Entity" principle cannot be applied to UPRVUNL, as it fulfilled its obligations well before OBRA-C Transmission project readiness.

13. Learned counsel for the Appellant submitted that OCBTL did not seek any relief or specific prayer against UPRVUNL in Petition No. 1920 of 2022, and UPRVUNL was impleaded only as a proforma party, the relief was sought towards the LTTCs particularly in relation to the payment of

transmission charges for Transmission Element No. 1 of LOT-1. The imposition of transmission charges on UPRVUNL by State Commission in the absence of any prayer or claim in the petition, is contrary to settled principles of law, which prohibit the grant of relief beyond the scope of the pleadings and placed reliance on the judgments of the Hon'ble Supreme Court in "**Akella Lalitha v. Konda Hanumantha Rao**", reported as **2022 SCC OnLine SC 928**, and "**Rajasthan Art Emporium v. Kuwait Airways**", **2024 (2) SCC 570**.

14. Learned counsel for the Appellant also submitted that UPRVUNL is not a party to the TSA or the Supplementary TSA, which serve as the legal framework for the allocation of transmission charges among the signatories. The imposition of liability on UPRVUNL by UPERC, in the absence of any contractual obligation, is in violation of settled legal principles and in this regard placed reliance on "**PSTCL v. CERC**", reported as **2022 SCC OnLine APTEL 78**.

Appellant – UPPTCL Submissions

15. Mr Altaf Mansoor, Learned counsel for the Appellant- UPPTCL, submitted that the 400 kV Jaunpur substation was planned by the Appellant – UPPTCL way back in the year 2016, for strengthening of the transmission network in and around Jaunpur area and for its Implementation on turnkey basis; tender was floated and LOI was issued on 05.09.2016 for commissioning within 2 years from LOI or date of handover of land. The UPPTCL being a State body requested the Appellant- UPPTCL, being the State Transmission Utility to provide two numbers of 400 kV line Bays at its 400 kV Jaunpur substation for the termination of the OBRA-Jaunpur line. At

no stage, UPPCL communicated the status of the OBRA-Jaunpur line or has requested the Appellant to expedite the construction of the 400 kV Jaunpur substation.

16. Learned counsel submitted that there was delay in land allotment of Jaunpur substation and as on the date of signing of TSA between the Respondent OCBTL and UP DISCOMs on 15.10.2018, no site was allotted for the 400 kV Jaunpur substation and it was only in the year 2019 that the Appellant- UPPTCL was finally able to finalize the location of the 400 kV Jaunpur Substation at Khatahit-Khas, Machhlishahar, district Jaunpur. In fact, the TSA casts a categorical obligation on the LTTCs for arranging and making available interconnection facilities to enable TSP i.e OCBTL to connect the Project. Post initiation of the construction work for Jaunpur substation, the Covid-19 pandemic gripped the entire nation and the infrastructure projects were virtually brought to a standstill. Even Respondent – OCBTL in its petition before the UPERC has claimed force majeure for the delay in completion of its project due to covid-19 pandemic and has been granted extensions by the UPERC. Learned Counsel submitted that, as such, the completion schedule of the Jaunpur substation works out as 20.10.2021, two years from the land handover date i.e. 21.10.2019, however owing to the disruptions in the supply chain as well as the difficulties in labour etc, the construction of Jaunpur substation was delayed and work of bays were completed on 26.04.2023 after electrical safety clearance certificate and charged by 06.09.2023. Learned counsel further submitted that even initial date of completion of Jaunpur substation was after SCOD for Element 9 of LOT 2 and therefore, it cannot be construed that the Jaunpur substation was being constructed to provide

interconnection facilities to the TSP. It was only at the request of UP Discoms, who are liable to provide interconnection facilities as per article 4.2 of the TSA that the Appellant-UPPTCL agreed to provide two bays at the Jaunpur substation and therefore, it cannot be said that the Appellant is to conform to the timelines of the TSA or is liable for payment of transmission charges upon default.

17. The State Commission in the Impugned Order has incorrectly held that the Appellant is liable for construction of 2 numbers of 400 kV Line Bays at its 400kV Jaunpur Substation and fixed the liability of payment of transmission charges along with late payment surcharge for Element 9 of TOT 2 of Respondent - OCBTL.

Respondent – OCBTL submissions

18. Mr Sourav Roy, Learned counsel for the Respondent – OCBTL submitted that Element No. 1 of OCBTL's transmission project consists of LILO (*"line in line out"*) of the existing 765 kV Anpara 'D' - Unnao SC line at Obra C TPS of Appellant – UPRVUNL, for its evacuation of power. Deemed COD of the said Transmission Element No 1 has been approved as 30.04.2021 by State Commission in its order dated 03.10.2022 in petition No.1824/2022. It is an admitted position that Unit No.1 of Appellant - UPRVUNL's Obra – C TPS was originally scheduled to be commissioned on 21.12.2020, whereas Unit No. 2 was scheduled to be commissioned on 21.04.2021, however, due to considerable delays, only Unit No. 1 of UPRVUNL's Obra – C TPS was ultimately commissioned on 09.02.2024. Impugned Order has rightly held that the Appellant-UPRVUNL is liable to pay transmission charges to OCBTL in respect of Element No. 1 for the period

from 30.04.2021 till 09.02.2024 (*the date on which power flow commenced through Element No. 1*).

19. Learned counsel for the OCBTL contended that the Impugned Order records deemed Commissioning date of Transmission Element No. 9 as 10.06.2022, which is not being disputed by the Appellant- UPPTCL; the challenge is with regard to imposition of liability for payment of transmission charges for Transmission Element 9 on UPPTCL. As such, the Appellant-UPPTCL was responsible for establishing 2 (two) no. 400 kV line bays at the 400 kV Jaunpur Sub-station for the termination of the Jaunpur–Obra transmission line (Element No. 9), constructed by OCBTL. Impugned Order has correctly held that the Appellant-UPPTCL is liable for the payment of transmission charges to OCBTL in respect of Element No. 9 for the period from 10.06.2022 till 26.04.2023 (*the date on which the downstream terminal bays at the 400 kV Jaunpur Sub-station were commissioned by UPPTCL*), as power could not flow through OCBTL’s Transmission Element No. 9 due to the delay attributable to the Appellant- UPPTCL.

20. Learned counsel for the Respondent- OCBTL asserted that both the Appellant – UPRVUNL and the Appellant – UPPTCL have not denied/ disputed their obligations to construct 765 bays at UPRVUNL generation project at Obra –C TPS and 400kV terminal bays at Jaunpur substation of UPPTCL but have questioned the imposition of liability on them on the ground that they are not signatory to the TSA. Learned counsel submitted that UPRVUNL’s and UPPTCL’s obligations to construct the bays in question is unequivocally set out not only in the TSA, but in RFQ and RFP for the ‘Project’, which were issued by the bid process coordinator at the behest of UPPTCL for selection of Transmission Service Provider for evacuation of

power from UPRVUNL's Obra – C TPS_& construction of 400 kV GIS Substation Badaun with associated Transmission Lines. The Impugned Order correctly holds that the Connection Agreement dated 27.12.2019 between UPRVUNL and UPPTCL mirrors their responsibilities set out under the TSA.

21. It is settled principal of law that if power cannot flow despite the transmission system otherwise being ready, the parties responsible for no power flow (i.e. defaulters), and not the beneficiaries, ought to pay transmission charges for the period of default (***“PGCIL v. PSPCL & Ors.”, (2016) 4 SCC 797.***)

22. Learned counsel for the Respondent – OCBTL submitted that the contention of the Appellant- UPRVUNL that it was not a party to the Petition No. 1824/2022 and, therefore, the imposition of default liability upon it in the present proceedings is untenable is erroneous. The Appellant-UPRVUNL's participation in the said Petition was neither necessary nor relevant, as the said petition was solely concerned with OCBTL's prayer for quashing the Liquidated Damages claimed by the Appellant-UPPCL against OCBTL. The said petition had no bearing on UPRVUNL's infrastructure delays or the imposition of liability upon UPRVUNL.

23. Learned Counsel for the Respondent – OCBTL submitted that in fact the Appellant-UPRVUNL has accepted the date of deemed commissioning of Element 1 as 30.04.2021 as it participated in subsequent Petition (No. 1887/2022) before the UPERC, where the Appellant-UPRVUNL disputed the deemed COD of Element No. 1 as 30.04.2021 due to an alleged mismatch in the termination of OCBTL's LILO (Element No. 1); however the same was not accepted by State Commission and the said judgement has

attained finality in the absence of challenge by the Appellant-UPRVUNL. Learned Counsel for the Respondent – OCBTL submitted that reliance placed by the Appellant-UPRVUNL on the letter dated 16.03.2023, which refers to the Certificate dated 13.03.2023 issued by the Joint Director, Electrical Safety is misplaced as the said certificate merely pertains to modification work carried out in compliance with the Order passed in Petition 1887/2022, and does not in any manner affect or alter the prior finding that Element No. 1 was deemed to have been commissioned on 30.04.2021.

DISCUSSION AND ANALYSIS

24. Heard Ms. Abiha Zaidi, learned counsel for the Appellant – UPRVUNL (Appeal No 357 of 2024), Mr. Altaf Mansoor, learned counsel for the Appellant – UPPTCL, (Appeal No 369 of 2024), and Mr. Sourav Roy, learned counsel for Respondent -OCBTL, and gone through the relevant documents and written submissions filed by learned counsel for the Appellant UPRVUNL and Respondent OCBTL only.

25. The main dispute involved in these appeals is with regard to affixing the liability of payment of transmission Charges for Transmission Element No 1 in LOT 1 and Transmission Element No 9 in LOT 2, implemented by OCBTL for the period from their deemed commissioning till its utilisation, on UPRVUNL and UPPTCL respectively, for delay in commissioning of their respective elements leading to non-utilisation of these elements.

26. Various transmission Elements being implemented by Respondent - OCBTL, a transmission service provider, which has been selected through

tariff based competitive bidding, initiated on behalf of the Appellant - UPPTCL through Bid Process Coordinator (BPC) Ms PFC, for implementation of Transmission System associated with evacuation of power from Obra-C TPS (2x660 MW) of the Appellant UPRVUNL, and Badaun GIS substation. Broad elements of Transmission Project (hereinafter referred as ‘**Transmission Project**’) to be implemented by OCBTL are as given under:

LOT 1

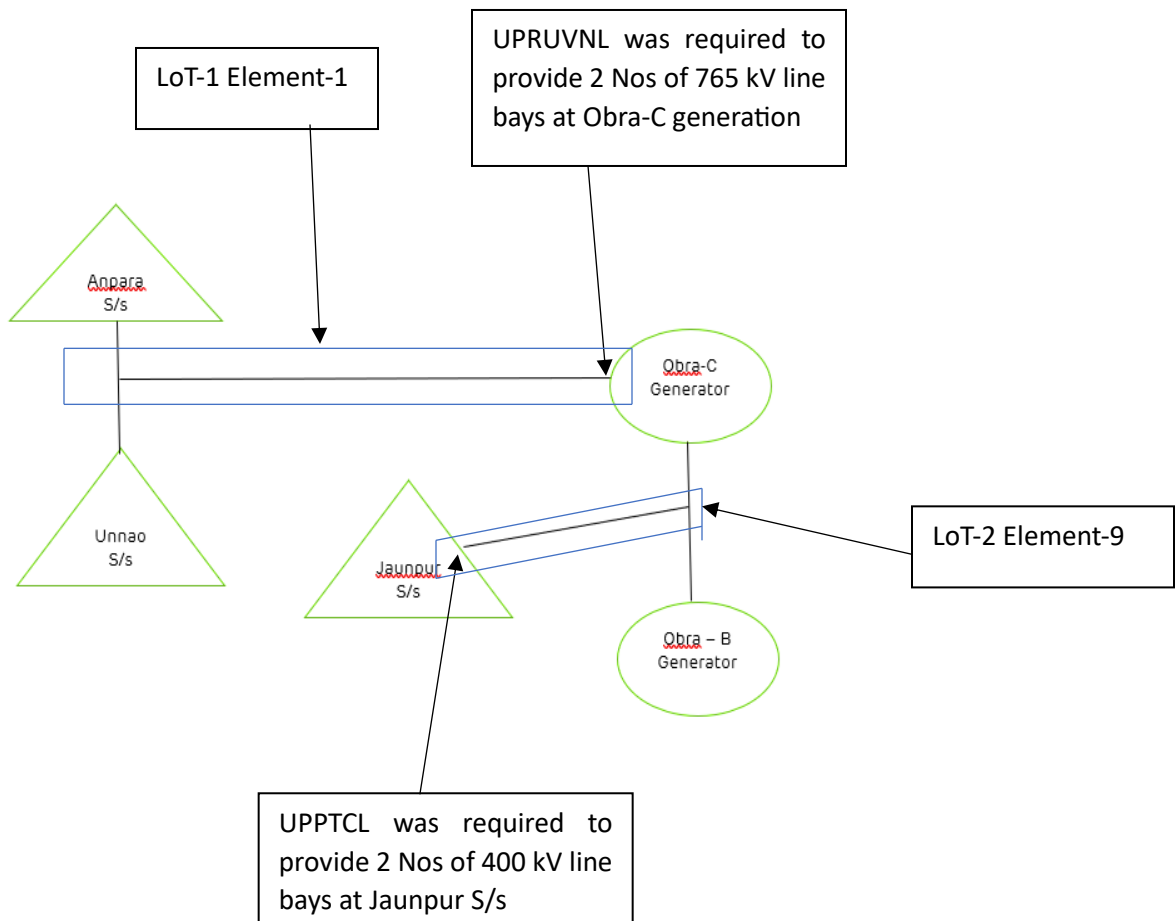
1. LILO of 765 kV Anpara ‘D’ Unnao SC line at Obra-C TPS
2. Establishment of 400/220/132 kV (GIS) substation (2x315 + 2x160) MVA, at Badaun alongwith associated bays
3. 400 kV DC Roza-Badaun line
4. LILO of 220 kV C.B. Ganj (220kV)-Badaun (220kV) SC line at 400 kV Badaun substation
5. LILO of 220 kV Chandausi (220kV)-Badaun (220kV) SC line at 400 kV Badaun substation.
6. 132kV Badaun Ujhani-Badaun (400kV) SC line & 132kV Bilsa-Badaun (400kV) SC line (some portion on same tower)
7. 2 Nos. 132 kV bays (one each at 132 kV substation Ujhani and Bilsa substations)
8. 2 Nos. 400 kV bays at Badaun for 13th plan substations

LOT 2

400kV Double Circuit Jaunpur-Obra line (upto LILO point of Obra ‘B’ – Obra ‘C’ Line). The dispute is with regard to payment of transmission charges for

the period under consideration for Element 1 and Element 9 by UPRVNL and UPPTCL respectively; these elements are depicted in single line diagram for ease of understanding:

SINGLE LINE DIAGRAM



Payment liability for Transmission Element No. 9 on Appellant- UPPTCL

27. Main contentions put forth by the Appellant – UPPTCL, is that the Jaunpur substation was planned by them long back in 2016 for meeting overall requirement of State of Uttar Pradesh and it is only on the oral request

of UPPCL, they agreed to provide two bays at Jaunpur Substation and they are not the signatories in the TSA signed between LTTCs and OCBTL, and therefore, they should not be mulched with the liability of payment of Transmission charges for Element 9 from 10.06.2022 (Deemed COD) till 26.04.2023 (*the date on which the downstream terminal bays at the 400 kV Jaunpur Sub-station were commissioned by UPPTCL*), as Jaunpur substation could not be commissioned on time due to delay in getting land for the substation as well as Covid 19 Pandemic and other issues.

28. We note that the Appellant – UPPTCL is the State Transmission Utility (STU) for the State of Uttar Pradesh and functions of STU are as defined in Section 39 (2) of the Electricity Act 2003, as reproduced below :

“39. State Transmission Utility and functions

(2) The functions of the State Transmission Utility shall be-

(a) to undertake transmission of electricity through intra-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with-

(i) Central Transmission Utility;

(ii) State Governments;

(iii) generating companies;

(iv) Regional Power Committees;

(v) Authority;

(vi) licensees;

(vii) any other person notified by the State Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;”

29. Thus, the Appellant – UPPTCL is obligated in Law to undertake transmission of Electricity through Intra-State transmission system of Uttar Pradesh and to discharge all functions of planning and Co-ordination relating to intra-state transmission system with generating companies, licensees etc. The transmission system for evacuation of power from OBRA-C TPS has been planned by the Appellant - UPPTCL, being their function under Electricity Act 2003, and bids for implementation of the said transmission project through tariff based competitive bidding (TBCB) has been invited on the behest of the Appellant-UPPTCL. The Element 9 of the said transmission project consists of 400kV Jaunpur- Obra double circuit line (upto LILO point of Obra 'B' – Obra 'C' Line) and in the subject "Transmission Project" neither a new Substation at Jaunpur is included nor the termination bays at Jaunpur, for termination of Jaunpur- Obra double circuit line are included for implementation by the TBCB licensee. It is, therefore, not difficult to assume that subject Transmission Project, at the planning stage itself has considered termination of Jaunpur – Obra double circuit line at Jaunpur Substation (new) planned for implementation by the Appellant- UPPTCL, as the line cannot be planned to be hanging at Jaunpur substation. We, therefore, do not find merit in the submission of UPPTCL that they had agreed to provide two bays at Jaunpur substation at the behest of UPPCL orally, another State Utility and UPPTCL liability of providing two bays at Jaunpur substation to OCBTL is also not there in the RFP and construction of Jaunpur substation, by UPPTCL is not bound by Timeline in TSA. As noted by the State Commission in the Impugned Order, under schedule 3 of the TSA it is mentioned that UPPTCL shall provide two nos. of 400 kV line bays for termination of Jaunpur – Obra line. We also note that in the supplementary TSA signed on 15.10.2020 between LTTCs and OCBTL, LTTCs have

appointed UPPTCL as nominee of the LTTCs during the construction phase of the Transmission Project, a fact not disputed by the Appellant – UPPTCL, and during the entire process of co-ordination, UPPTCL must be aware about construction time line and progress of various elements, more so when UPPTCL also has to discharge their statutory function of co-ordination and being aware that non-implementation of downstream transmission system at Jaunpur substation will lead to non-utilisation of Transmission Element No 9. Being fully aware about the timelines of implementation of Jaunpur substation, which was planned way back in 2016, UPPTCL, the STU for Uttar Pradesh has planned termination of Jaunpur – Obra 400 KV line under TBCB, at Jaunpur substation; we do not find any merit in the submission of the Appellant – UPPTCL that construction of Jaunpur substation is independent of the Timeline of Transmission Project in TSA. It is a fact that deemed COD of Element 9 has been approved as 10.06.2022, which is not under dispute under present *lis*, and the Jaunpur substation has been delayed by the Appellant – UPPTCL leading to non-utilisation of Transmission Element 9 of OCBTL. We, therefore, find no infirmity in the order of the State commission with regard to affixing the liability of payment of transmission charges along with LPS from the date of deemed COD of Element 9 (10.06.2022) till commissioning of downstream bays at UPPTCL's 400 kV Jaunpur substation (26.04.2023).

Payment liability for Transmission Element No.1 on Appellant - UPRVUNL

30. The State Commission, in the Impugned Order, has affixed the liability of payment of Transmission charges for Transmission Element No 1 i.e., Loop in loop out of 765 kV Anpara D Unnao S/c line at Obra C from its

deemed COD date of 30.04.2021 till it is connected with Obra C and is operationalised (09.02.2024). Learned counsel for the Appellant – UPRVNL has contended that this liability on several counts like, Respondent OCBTL has fixed mismatch connection only on 13.03.2023 and Transmission Element No 1 was declared ready for charging only on 13.03.2023, by which time facilities at Obra C was ready, no relief has been sought by Respondent- OCBTL against UPRVUNL, and the Appellant UPRVUNL is not the party to the TSA or the supplementary PPA signed between OCBTL and UPPCL.

31. We take note that deemed COD of Transmission Element No 1 of the Respondent-OCBTL was approved as 30.04.2021 by the State Commission in its order dated 03.10.2022 in Petition No 1824/2022 of OCBTL; and it has been fairly acknowledged by Respondent–OCBTL that the Appellant UPRVUNL was not a party to the petition as the said Petition was filed by OCBTL for quashing of liquidated damages claimed by UPPCL against OCBTL. Learned counsel for the OCBTL has further submitted that the Appellant – UPRVUNL has contested the deemed COD as 30.04.2021 in respect of Transmission Element No. 1, in Petition No 1887/2022, which was on connection mismatch issue, however the same was not accepted by the State Commission in its order dated 21.11.2022, and in the absence of any challenge to the said order by UPRVUNL, it has attained finality; we find merit in the submissions of Respondent - OCBTL. We also take note that the connection mismatch issue emerged only in Feb 2022, when shutdown of Anpara D – Unnao 765 kV line was taken for shifting of reactor from Anpara D TPS to Obra C and to establish Anpara D- Obra C and Obra C- Unnao 765 kV lines through Transmission Element No 1. The State Commission in

its order dated 21.11.2022, utilising its inherent power, directed OCBTL to implement modification work as per mutually agreed feasible technical solution and cost to be shared amongst OCBTL, UPRVUNL and UPPTCL and no change in deemed COD of Transmission Element No 1 was directed. The Appellant – UPRVUNL in the present Appeal have sought only following prayer and have not disputed the deemed COD of 30.04.2021 of Transmission Element No 1:

- (a) *Allow the present Appeal and set aside the Impugned Order dated 24th June 2024 passed by the Respondent Commission in Petition No. 1920 of 2022, to the extent liability of the Appellant has been fixed in terms of direction no. 383 (d) and in terms of the submissions made in the present appeal;*
- (b) *Hold and declare that the Appellant is not a defaulting entity qua Element-1 of LOT-1 and thus not liable for payment of any transmission charges; and*

32. Thus, in our view, there is no merit in the contention of the Appellant – UPRVUNL that COD of Transmission Element No 1 to be reckoned only from the date when mismatch issue was resolved, instead of deemed COD of 30.04.2021.

33. Learned counsel for the Appellant – UPRVUNL has contended that the liability was imposed upon it for the payment of Transmission charges in the absence of any relief sought by Respondent OCBTL in the Petition No 1920 of 2022. In support of this contention, reliance has been placed on ***Akella Lalitha v. Konda Hanumantha Rao (2022 SCC Online 928)*** and ***Rajasthan Art Emporium v. Kuwait Airways (2024 (2) SCC 570)***. It is a settled principle of law that courts generally cannot grant relief beyond what has been specifically sought by the parties, except in certain exceptional

circumstances, where courts may exercise their inherent powers to render complete justice. In both the above referred judgements, same principle has been affirmed and upheld that relief beyond the scope of their prayer cannot be granted. We note from the prayer (14 a) in Petition No 1920 of 2022 filed by OCBTL, that Respondent-OCBTL have sought relief “payment of monthly Transmission Charges towards LOT -1 along with LPS”; thus, the above judgements relied upon by the Appellant – UPRVUNL are of no avail to them as Respondent- OCBTL have specifically sought payment of transmission charges for Transmission Element No 1. The State Commission having approved the deemed COD of the Transmission Element No 1 as 30.04.2021, which is not under challenge, the Respondent – OCBTL is entitled to receive its transmission charges as also prayed for in Petition – 1920 of 2022. The fact also remains that Transmission Element No 1 could not be put to use in the absence of implementation of requisite facilities at Obra-C switchyard to be implemented by the Appellant- UPRVNL. In the absence of utilisation of subject asset, for no default on the part of LTTCs, the State commission has rightly not affixed the liability of payment of transmission charges on LTTCs (***Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited***, (2016) 4 SCC 797) and the Appellant – UPRVUNL, the defaulting entity, has been mulched with Liability of payment of its transmission charges under the Impugned Order.

34. The Appellant – UPRVUNL has also contended that the liability of payment of transmission charges of Transmission Element No 1 for the period under consideration stating that UPRVUNL is not signatory to TSA or the Supplementary TSA and placed reliance on the judgement of this Tribunal in PSTCL v. CERC, (2022 SCC OnLine APTEL 78). The referred

judgement-PSTCL v. CERC (2022 SCC OnLine APTEL 78) has mainly dealt with the issue of non - fixing the liability on the beneficiary PSTCL, in the absence of utilisation of Transmission System due to delay in commissioning of Generation Project; which was upheld by the Supreme Court in "**Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited**", (2016) 4 SCC 797. The present case also involves the same issue that Respondent – OCBTL is entitled to receive tariff for Transmission Element No 1 from its deemed COD, however its utilisation is affected due to delay in the implementation of facilities by the Appellant – UPRVUNL, therefore, LTTCs cannot be mulched with liability of payment of Transmission charges (**Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited**", (2016) 4 SCC 797.). As such, the transmission system being implemented by Respondent – OCBTL is for evacuation of power from the Obra C TPS of the Appellant – UPRVUNL and as per TSA, the Appellant – UPRVUNL has to provide 2 nos 765 kV bays at its Obra C TPS (2x660 MW) for termination of Transmission Element No -1. It is not in dispute that the implementation of OBRA – C has delayed beyond their SCOD, which was 21.12.2020 for Unit 1 and 21.04.2021 for unit 2 , in which, only One unit has been commissioned on 09.02.2024, due to which the Transmission Element No. 1 could not be put to use, since its deemed COD of 30.04.2021. We are in agreement with the views of the State Commission that in terms of UPERC (Grant of connectivity to intra - State Transmission System) Regulations 2010, the Appellant – UPRVUNL was obligated to enter into connection agreement for connectivity of its switchyard including for the 765 kV bays with Respondent OCBTL; and there is link between TSA and the Connection agreement and as per the Appellant – UPRVUNL, the connection agreement has been signed on

27.12.2019, therefore, the Appellant – UPRVUNL cannot be absolved of their liability of payment of Transmission charges for Element No 1, which could not be put to use on account of their default.

35. In view of the above deliberation, we do not find any infirmity calling our interference in the Impugned Order of UPERC in fixing the liability for the payment of Transmission charges of Transmission Element No 1 of Lot 1 on the Appellant – UPRVUNL and Transmission Element No 9 of Lot 2 on the Appellant – UPPTCL for the period indicated in the Impugned Order. Accordingly, while upholding the impugned Order, we dismiss the appeals at hand as devoid of merits. All the associated IA, if any, shall also stand dismissed.

Pronounced in open court on this 28th Day of February, 2025

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE/~~NON-REPORTABLE~~

ts/ag