

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 256 OF 2024 & IA No. 880 OF 2024 & IA No. 920 OF 2024 &
IA No. 794 OF 2025

&

APL No. 19 OF 2025 & IA No. 1907 OF 2024

Dated: 28th August, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

APL No. 256 OF 2024 & IA No. 880 OF 2024 & IA No. 920 OF 2024 &
IA No. 794 OF 2025

In the matter of:

SINGARENI COLLIERIES COMPANY LIMITED,

Through its Deputy General Manager,

Having office at:

Kothagudem, Collieries

Bhidadri Kothagudem District,

Telangana State – 507101.

... **Appellant(s)**

VERSUS

1. TELANGANA STATE ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,

Having office at:

5th Floor, Singareni Bhavan, Red Hills,

Lakdi-ka-pul,

Hyderabad 500 004

... **Respondent No.1**

2. SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED,

Through its Chairman and Managing Director,

Having office at:

Corporate office # 6-1-50,

Mint Compound,

Hyderabad, Telangana – 500 063

... **Respondent No.2**

3. NORTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED,

Through its Chairman and Managing Director,

Having office at:

H. No. 2-5-31/2, Corporate Office,
Vidyut Bhawan, Nakalgutta, Hanamkonda,
Warangal, Telangana – 506001.

... **Respondent No.3**

Counsel on record for the
Appellant(s)

: Hemant Singh
Mridul Chakravarty
Biju Mattam
Lakshyajit Singh
Bagdwal
Supriya Rastogi
Agarwal
Nehul Sharma
Chetan Kumar Garg
Robin Kumar
Harshit Singh
Lavanya Panwar
Alchi Thapliyal
Sanjeev Singh Thakur
for App. 1

Counsel on record for the
Respondent(s)

: Somanadri Goud
Katam
for Res. 1

Anand K. Ganesan
Swapna Seshadri
Kriti Soni
Aishwarya Subramani
for Res. 2

Anand K. Ganesan
Swapna Seshadri
Kriti Soni
Aishwarya Subramani
for Res. 3

APL No. 19 OF 2025 & IA No. 1907 OF 2024

1. SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED,

Through its Chief Engineer (IPC),
Corporate office # 6-1-50,
Mint Compound,
Hyderabad, Telangana – 500 063

... **Appellant No.1**

2. NORTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED,

Through its Chief Engineer (IPC),
H. No. 2-5-31/2, Corporate Office,
Vidyut Bhawan, Nakkalgutta, Hanamkonda,
Warangal, Telangana – 506 001.

... **Appellant No.2**

VERSUS

1. TELANGANA ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,
Vidyut Niyamtran bhavan, G.T.S. colony,
Kalyan Nagar,
Hyderabad 500 045

... **Respondent No.1**

2. SINGARENI COLLIERIES COMPANY LIMITED,

Through its Deputy General Manager,
Having office at:
Kothagudem, Collieries
Bhadrachalam District,
Telangana State – 507 101.

... **Respondent No.2**

Counsel on record for the
Appellant(s)

: Anand K. Ganesan
Swapna Seshadri
Harsha V Rao
Aishwarya Subramani
for App. 1

Anand K. Ganesan
Swapna Seshadri
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Counsel on record for the
Respondent(s)

: Somanadri Goud
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Hemant Singh
Mridul Chakravarty
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Supriya Rastogi
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Chetan Kumar Garg
Lakshyajit Singh
Bagdwal
Ankita Bafna
Harshit Singh
Nehul Sharma
Alchi Thapliyal
Sanjeev Singh Thakur
Lavanya Panwar
Indrayudh Chowdhury
Devansh Pundir
for Res. 2

JUDGMENT

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

1. Appeal No. 256 of 2024 has been preferred by M/s Singareni Collieries Company Limited (**"SCCL"**) assailing the order dated 01.04.2024 (hereinafter referred as **"Impugned Order 1"**) passed by the **Telangana State Electricity Regulatory Commission** in OP No. 13 of 2023 wherein premium charged by SCCL to its STPP for the coal supplied under Bridge Linkage was denied. Appeal No. 19 of 2025 has been preferred by Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited

(hereinafter referred as “**Telangana DISCOMs**”) assailing the order dated 28.06.2024 (hereinafter referred as “**Impugned Order 2**”) passed by the **Telangana State Electricity Regulatory Commission** (hereinafter referred to as “**State Commission/TSERC**”) in OP No. 4 of 2024 wherein State Commission has tried up the financials of “SCCL” for FY 2022-23 and approved MYT for control period FY 2024-25 to FY 2028-29 wherein premium charged by SCCL to its STPP for the coal supplied under Bridge Linkage was considered.

2. The issues involved in both the appeals are connected and are sort of cross appeals, they are being disposed of with this common judgment. The facts in these appeals are not in dispute. Therefore, for the sake of convenience, the description of the parties is given hereunder as per Appeal No. 19 of 2025.

3. **Appellant No.1- Southern Power Distribution Company of Telangana Limited** and **Appellant No.2-Northern Power Distribution Company of Telangana Limited** are the Distribution licensees, and are entrusted with the function of distribution of electricity in their respective areas of operation in the State of Telangana and collectively referred herein-under as Telangana Discoms.

4. **Respondent No. 1, the Telangana State Electricity Regulatory Commission** is the Electricity Regulatory Commission for the State of Telangana exercising powers and discharging functions under the provisions of the Electricity Act, 2003. **Respondent No. 2- M/s Singareni Collieries Company Limited (“SCCL”)** is a coal mining company incorporated under the Companies Act, 1956.

FACTS OF THE CASE

5. The facts that are necessary and required for disposal of these appeals are narrated below in nutshell.

The SCCL entered into the business of power generation by establishing a 2X660 MW coal based thermal plant i.e. Singareni Thermal Power Plant (“**STPP**”), in which Unit I&II achieved COD on 25.09.2016 and 02.12.2016. The entire power generated from STPP is to be sold to the Telangana DISCOMs at a tariff determined by State Commission under the Power Purchase Agreement (“**PPA**”) dated 18.01.2016. The PPA was to remain valid for a period of 25 years from the COD of the last unit i.e. Unit II.

6. In order to meet the coal requirements of STPP, SCCL was allotted NAINI coal block in the State of Odisha. Since it was anticipated that coal production from NAINI coal block would commence in December 2020, as an interim measure, until the operationalization of the coal mine by SCCL, STPP applied for and obtained Bridge Linkage, the short term linkage for a fixed period of three years, from the Standing Linkage Committee of Ministry of Coal. The initial Bridge Linkage was granted for the period between 13.08.2015 to 12.08.2018 from the SCCL and pursuant to obtaining the Bridge Linkage, SCCL executed a Memorandum of Understanding (MoU) dated 01.11.2017 with STPP setting the price structure for coal to be supplied. While the PPA dated 18.01.2016 contained Annexures III & IV which provided for computation of variable charges based on coal price to be as decided by SCCL, the State

Commission by its Orders dated 22.10.2021 in O.P. No. 08 of 2016, directed that the above clauses to be deleted and replaced as under:

“For any billing month, the variable charges shall be determined as per TGERC Regulations”.

7. An amended PPA was entered on 22.05.2024. STPP upon achieving COD of Unit I on 25.09.2016 and Unit II on 02.12.2016 started utilizing coal as per MoU dated 01.11.2017 with pricing for G5- G8 grades coal & washary grade G9 coal at notified price of power sector and for G9 to G15 grade, the notified basic price plus 20% of notified basic price of power sector and started supplying power to Telangana DISCOMs.

8. On 06.04.2018, SCCL and STPP, entered into a supplementary MoU modifying the pricing structure and created two new slabs namely, bridge linkage and non-bridge linkage for FY 2018-19 w.e.f. 01.04.2018. Under the said MoU, for coal supply up to 75% of agreed quantity, the tariff payable was notified as basic price of coal applicable for power sector with a premium of 20% and for supply of coal beyond 75% of agreed quantity the tariff payable was notified as basic price of coal applicable for non-power sector with a premium of 20%.

9. Subsequently, since the Bridge Linkage provided to STPP was stated to expire as of 13.08.2018, in the meeting of the Standing Linkage Committee held on 10.04.2018, Bridge Linkage was extended up to 2023 with tapering basis from 2021 to 2023 and further extended for the year 2023-24 in the Standing Linkage Committee meeting dated 21.02.2023.

10. SCCL raised a supplementary invoice after completion of FY 2018-19, claiming 20% additional premium on the notified prices applicable to the non-power sector for supply of coal beyond 75% of agreed quantity, which was objected by Telangana DISCOMS claiming it to be contrary to the TSERC/CERC Tariff Regulations.

11. The Telangana DISCOMs had filed OP No. 13 of 2023 before TSERC praying to direct SCCL to provide coal supply to STPP at the Notified Basic Price corresponding to the coal grade being supplied without any additional charge/ premium in terms of the MOUs signed between SCCL and STPP. When the Orders in OP No. 13 of 2023 were reserved, SCCL filed O.P. No. 04 of 2024 before TSERC seeking approval of Multi Year Tariff (MYT) for the control period FY 2024-25 to FY 2028-29 and True-up for FY 2022-23. In the said petition, SCCL had taken into consideration the premium on the coal price.

12. The State Commission, vide its order dated 01.04.2024 (**"Impugned Order 1"**), disposed of OP No. 13 of 2023, in favour of the Telangana DISCOMs, holding as under:

... the petitioners are entitled to the relief as prayed for, whereby the respondent is estopped from levying any premium on the coal price for whatever quantities agreed to be supplied in terms of the PPA. The respondent also shall continue to desist from levying any premiums henceforth until it has started production from the Naini coal block allotted to it as it is denuding the petitioners the benefit of cheaper coal availability through the variable cost paid by the petitioners, which is ultimately beneficial to the end consumers.

13. The State Commission, vide its Order dated 28.06.2024 (**"Impugned Order 2"**), disposed of O.P. No. 4 of 2024 filed by SCCL/STPP approving energy charge rate and fixed charges taking into consideration premium on coal price, which according to Telangana Discom is in contravention to TSERC Order dated 01.04.2024 in OP No. 13 of 2023 (**"Impugned Order 1"**), . The Telangana Discom also stated that R & M expenses approved under **"Impugned Order 2"** were contradictory to its earlier orders dated 28.08.2020 (MYT Order) and 23.03.2023 (mid-term review order in O. P. No. 77 of 2022).

14. The Telangana DISCOMS, filed a petition seeking review of the **"Impugned order 2"** passed in O.P. No. 4 of 2024, which was dismissed by State Commission by its Order dated 28.10.2024. Telangana DISCOMS, aggrieved by the Order dated 28.06.2024 passed in O.P. No. 4 of 2024 on the issues of fixation of energy charge rate and annual fixed charges in so far as the same runs contrary to the **"Impugned Order 1"** dated 01.04.2024, and the approval of R & M expenses contradictory to its earlier orders dated 28.08.2020 (MYT Order) and 23.03.2023 (mid-term review order in O.P. No 77 of 2022), has preferred Appeal No. 19 of 2025.

15. The SCCL, challenging the order dated 01.04.2024 passed in OP No. 13 of 2023 (Impugned Order 1) to the extent that the State Commission has overstepped its jurisdiction by deciding the cost of coal to be charged by the SCCL for coal supplied through Bridge Linkage and also recovery of the said cost from Telangana DISCOMS, when power is supplied under the PPA by STPP, has preferred Appeal No. 256 of 2024.

SUBMISSIONS OF TELANGANA DISCOMs

16. Ms Swapna Seshadri, learned counsel for Telangana Discoms submitted that Telangana Discoms have signed the Power Purchase Agreement (PPA) dated 18.01.2016 (the “**PPA**”) with the thermal generating plant of SCCL, i.e., the 2x600 MW located in Jaipur, Mancherial District, Telangana (the “**STPP**”), though without mentioning the source of coal, but with the understanding that the STPP would receive coal from the Naini Coal Block, as a captive coal block and a mine integrated with the STPP, and allocated to STPP in terms of the Allotment Agreement dated 30.03.2015. It is further submitted that SCCL is primarily a coal mining company and the STPP is housed within SCCL, with no separation in terms of accounts and personnel. Since SCCL did not develop the Naini Coal block in time, STPP applied for ‘Bridge Linkage’ to the Ministry of Coal, i.e., coal to bridge the time between the operationalization of the STPP and the captive coal mine, as per the Bridge Linkage Policy Guidelines of the Ministry of Coal dated 08.02.2016. Pursuant to grant of the bridge linkage, SCCL and STPP signed a Memorandum of Understanding dated 01.11.2017 (the “**MoU**”), which was amended from time to time and imposition of the ‘premium’ over the Notified Price is incorporated in these MoUs, to which the Telangana Discoms are not a party and there was no consultation with the Discoms, while signing these MOUs. There is no authority granted to coal companies to impose Premium on such Bridge Linkage in the Policy Guidelines.

Regarding the contention of SCCL that coal pricing falls exclusively within the domain of coal companies, as a result, Electricity Regulatory Commissions are barred from oversight on the same, learned counsel submitted that it is an unwarranted extrapolation of the effect of the deregulation of coal pricing under

the Colliery Control Order, 2000. The cost of coal along with other cost elements – like loading charges, transportation charges, washery charges, etc., constitute part of the variable charges and are determined by the State Commission under Section 86(1) (a) read with Section 62. The costs so determined, are passed on the beneficiary, i.e., the Telangana Discoms and form part of the cost of power purchase in determination of retail supply tariff under Section 86(1)(a)&(b). The Colliery Control Order, 2000 merely removed the function of price determination from the Government of India in relation to coal. There was no positive function assigned to the coal companies, nor a judicial or regulatory bar on its oversight. Coal suppliers operate akin to any other supplier to a power plant and are subject to the same regulatory framework. SCCL contention seems to read as an exclusive authority to itself to fix whatever rates it deems fit including premiums with the impression that there is no other authority which seems to have this power, however, learned counsel submitted that such an interpretation, if accepted, would amount to coal companies assuming authority not conferred upon them either under the Colliery Control Orders or the Bridge Linkage Guidelines.

17. It is further submitted that the tariff payable to the STPP Division of SCCL for power generation is determined by the State Commission under Section 62 of the Electricity Act, 2003. The PPA, forming the basis of such tariff, was approved by the State Commission vide Order dated 22.10.2021 in O.P. No. 8 of 2016, wherein the Commission directed certain revisions to the PPA, the revisions relevant to the present appeal are set out hereinbelow.

- (a) Replacement of Article 4.3 that Variable Charges shall be determined as per TSERC Regulation

(b) Deletion of Annexure III (Computation of Variable Charges) & Annexure IV (Computation of Delivered Cost of Coal – Thermal Plants)

18. Learned counsel submitted that upon execution of the 3rd Supplementary MoU, which was executed on 16.04.2021, the Telangana Discoms filed Petition O.P. No. 13 of 2023 under Section 86(1)(f) of the Act, challenging the imposition of premium by SCCL as being contrary to the PPA and the applicable Regulations, specifically invoking the jurisdiction of the State Commission contending that such imposition is contrary to Clause 21.6.1 of the TSERC (Terms and Conditions of Generation Tariff) Regulations, 2019. Further, in its reply filed in O.P. No. 13 of 2023, SCCL contended that the imposition of premium was required to be treated as a pass-through under change in law and that only the Central Electricity Regulatory Commission would have the jurisdiction to determine the input price of the Naini Coal Block and that the State Commission does not have the jurisdiction, since SCCL comes under the control of Ministry of Coal. Learned counsel further submitted that the State Commission in exercise of its powers under Section 86(1)(f), has held that the Premium could not form part of the coal cost under “**Impugned Order 1**” dated 01.04.2024 in OP No. 13 of 2023.

19. Regarding the contention of SCCL, being advanced before this Tribunal that coal companies possess an exclusive right to determine the price of coal recoverable from consumers and that the State Commission lacks jurisdiction to determine the coal cost; learned counsel submitted that it is - premised on two incorrect assumptions that State Commission has *fixed* the coal price and/or determined what elements would be included in the landed cost of coal and whether Premium form part of the coal price?

20. Learned counsel submitted that it is not disputed that SCCL, like other coal companies, determines the price at which it wishes to sell the coal to its consumers like the STPP, however, that does not take away the regulatory power of the State Commission to assess the prudence and reasonableness of cost components and pass through only such components it considers prudent. The status of coal companies is no different than any other vendor or service provider that states a price for its product/service. As part of 'regulating' electricity purchase and procurement, the State Commission has the authority to determine and conduct a prudence check on all components of price of electricity. Even in the absence of specific regulations, the State Commission retains the jurisdiction to undertake such prudence checks guided by the principles under Section 61 of the Electricity Act, 2003. In this regard, the observations of the Supreme Court in "***Municipal Corporation of Delhi v. Gagan Narang***" 2025 SCC OnLine SC 19 , are apposite. By referring to another Supreme Court judgment in "***PTC India Ltd. v. Central Electricity Regulatory Commission***" (2010) 4 SCC 603, learned counsel contended that the Supreme Court has considered the scope of the regulatory functions of the Electricity Regulatory Commissions, in the presence and de hors regulations. In either of the cases i.e., whether the State Commission undertakes the prudence check in exercise of its powers under the Regulations framed or in the absence thereof, the source of such power is under Section 62 read with Section 86 of the Electricity Act 2003 only. The power to determine tariff, which inherently includes the authority to allow or disallow specific cost components, is an integral part of the Commission's statutory regulatory functions. Furthermore, even when the State Commission exercises its powers under Section 86 (1) (f), it is not that it loses its power for tariff fixation or the principles contained under Section 61, 62 or 64 of the Electricity Act, 2003.

21. Learned counsel contended that the input price of captive coal mines allocated under the Coal Mines (Special Provisions) Act, 2015 is also being determined by the Appropriate Commission under the framework of the Electricity Act, 2003, to ensure that the transfer price of coal from mine to power plant is neither arbitrary nor inflated. This reinforces the settled legal position that the Appropriate Commission not only possesses the jurisdiction but is statutorily obligated to ensure that all components of the electricity price are reasonable, irrespective of whether coal is procured through linkage, auction, or captive sources.

22. Learned counsel submitted that SCCL has erroneously contended that the Telangana Discoms case on the State Commission's jurisdiction is based solely on Regulations 21.8 and 21.9 of the TSERC Tariff Regulations, 2019, in fact, the Telangana Discoms have consistently maintained that such jurisdiction flows directly from the Electricity Act, 2003. The Tariff Regulations framed by the State Commission are only in furtherance of the power to regulate tariff conferred on it comprehensively by the Electricity Act, 2003. It is well settled that delegated legislation cannot confer jurisdiction beyond the Parent Act. While the vires of the Regulations are immune from being challenged before this Tribunal, as held in *PTC India Ltd. v. CERC*, it itself holds that any question of interpretation of the Regulations would very much lie before this Tribunal.

23. Regarding the contention of SCCL that the scope of the State Commission's jurisdiction is limited to disallowing procurement from the concerned sources i.e. in case cost of coal is high then plant may be denied scheduling, learned counsel submitted that it is erroneous and contrary to the statutory mandate under Sections 62 and 86(1)(a) and (b)

of the Electricity Act, 2003. The Multi Year Tariff Regulations framed by the State Commission envisage a detailed scrutiny of all cost components for each control period, and empower the Commission to regulate and determine tariffs accordingly. Further, any dispute arising out of the PPA falls squarely within the adjudicatory domain of the State Commission. In exercise of its regulatory functions, the Commission is empowered to apply various methods to regulate electricity price including prescription of normative operational and financial parameters (e.g., normative interest rates without interfering with a bank's autonomy), determining price caps, monitoring market alignment, enforcing competitive bidding etc. Thus, the regulatory oversight of the State Commission encompasses all aspects of tariff determination and the manner of its exercise is a matter within its exclusive jurisdiction. As such, in the context of the present appeals, the Commission has not determined the price at which coal mining companies may charge to its consumers but has merely determined, based on prudence, what component of such cost may be passed through by STPP to the TS Discoms.

24. Learned Counsel placing reliance upon the scope of the TSERC Generation Tariff Regulations, 2019, referred to the provisions contained in Regulations 21, 21.1, 21.8 and 21.9 thereof. As per Regulation 21.8, the landed cost of fuel includes the following components; (a) the price of fuel corresponding to its grade and quality of fuel; (b) Royalty and taxes as applicable; (c) transportation costs by rail, road, or any other means, and (d) normative transit and handling losses. Furthermore, in terms of Regulation 21.9 of the said Regulations, where fuel is procured from sources other than those mutually agreed upon between the generator and the beneficiary, the State Commission is entitled to make a prudence check in approving the price of alternative fuel and if there is an increase

in price of fuel above the stated threshold then prior consultation with the beneficiary is required. It is, therefore, evident that generators do not have unchecked power to decide prices in any situation. Any 'Premium' on the coal price is not contemplated in the above cost components. It is further asserted that the TSERC 2023 Regulation (Regulation 46.4, 2nd Proviso) expanded the categories to include washery charges and sampling charges and the State Commission has not recognised "premium" as one of the components of landed cost of fuel.

25. Learned counsel submitted that SCCL has taken two conflicting stands like (a) Premium is part of the 'price' of coal; and (b) Definition of landed cost of fuel is an inclusive definition and must include the premium also.

Firstly, it is submitted that the premium does not constitute a part of the coal price. The Price Notifications issued by coal companies from time to time, pursuant to the deregulation of pricing under the Colliery Control Order, 2000 (framed under the Essential Commodities Act, 1955), clearly delineate the basic price separately for the power and non-power sectors and wherever there is a premium to be levied, that is indicated separately. Notably, there is no mention of any premium applicable to bridge linkage consumers. Additionally, other elements of the landed cost—such as loading charges, royalty, taxes, and sampling charges are individually itemized. This notified price is universally considered to be the default price of coal save any terms agreed contractually or any price discovered in the spot market.

Secondly, the definition of "landed cost" as employed in the relevant Regulation is not inclusive in nature; rather, the use of the expression "shall include" in this context must be read exhaustively in so far as the

categories mentioned therein. Whether a statutory list is to be interpreted as exhaustive or inclusive depends on the context of the list. In this regard, learned counsel placed reliance on the judgment of the Supreme Court in **“South Gujarat Roofing Tiles Manufacturers Association v. State of Gujarat” (1976) 4 SCC 601.**

However, on SCCL’s contention that the definition of “landed cost” is inclusive and may extend to include premium, it is submitted that, in the absence of a specific provision in the Regulations, the State Commission is entitled to adjudicate, applying Section 61 of the Electricity Act, 2003, what cost components to be included in the landed cost of coal. This principle has recently been reiterated and expanded by the Supreme Court in **“Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Transmission Co. Ltd. & Ors.” 2025 SCC OnLine SC 1128.**

Regarding the contention of SCCL that accepting this would amount to fixing prices for services provided by other entities, such as the Railways, learned counsel submitted that while railways can determine the cost of providing the transportation, however, if it seeks to levy arbitrary and unjustified levy of over the top costs, it cannot be the case that the State Commissions are restrained from evaluating what is or what is not a reasonable cost for a particular service and deny pass through of the same. The affected party which is the generator would be free to avail of any remedy available in law to address the costs. The State Commission, under Section 61 of the Electricity Act, 2003, does not fix prices of third-party services like those of railways. Instead, it conducts a prudence check on the cost components claimed by generators as part of the landed coal cost, to ensure only reasonable and justifiable expenses are passed on to consumers, an action well within its regulatory mandate.

Further, it is submitted that the State Commission is empowered to examine each cost component such as water cess, GCV-related charges, or any other levy to determine its admissibility in tariff. The same principle applies to the premium, which is a separate component levied over and above the basic coal price and does not form part of the coal mining cost. Therefore, regulatory scrutiny of such components does not equate to price fixation for external service providers but is a necessary function of tariff determination under the regulatory framework.

26. Learned counsel for the SCCL has relied on certain MoUs entered into with other generators to justify the imposition of premium; however, such MoUs pertain to projects not located in Telangana and whose beneficiaries are unidentified. Further, SCCL has been supplying coal to the STPP to meet 100% of its availability requirement, even though it was required to supply only on best efforts basis and that too to the extent of 75% of the Agreed Requirement which is 90% of normative requirement of the plant operating at 85% PLF (with 80% being the Target PLF in the PPA between STPP & TS Discoms). As a result, STPP by consistently declaring full availability, recovered its entire fixed costs, and earned substantial incentives, while simultaneously recovering premiums over and above the notified price of coal at its discretion.

27. Regarding the contention of SCCL that increase in cost of coal was marginal or lower than other sources, learned counsel submitted that the legality of the cost sought to be imposed on Telangana Discoms must be assessed on individual basis under the applicable Regulations and the PPA. The parties under the PPA had agreed to reduce coal costs using a captive coal block, and in its absence, the Bridge Linkage was provided by the Government. The key issue is whether SCCL acted as per the

applicable policy. It is not relevant to compare from spot market prices or the conduct of other coal companies and it is an admitted fact that SCCL supplied coal to STPP to comply with its 10% statutory mandate, which allowed STPP to declare higher-than-normative availability and claim incentives, fixed, and variable charges—all sourced from SCCL's own operations. SCCL must follow the Government Policy and cannot arbitrarily choose its coal recipients.

28. Learned counsel also submitted that SCCL, being a government company, is required to maintain transparency in its pricing, which must be available in the public domain. The end beneficiaries cannot be left without recourse to challenge the pricing imposed by coal companies. While a price notification published publicly may be challenged before the appropriate forum, a pricing term within a private contractual arrangement cannot be questioned by third parties. Therefore, it is impermissible to include a cost component in the landed price of coal that is beyond regulatory oversight. The learned counsel submitted that it is only the State Commission that exercises regulatory oversight herein as it is within the domain of the State commission to determine what would and would not constitute landed cost of coal for the purposes of computation of ECR.

SUBMISSION OF SCCL

29. Mr Sanjay Sen, learned senior counsel representing SCCL submitted that main issue in the present case is regarding the jurisdiction of State Commission to, inter alia, hold that State commission, while exercising powers under Section 86 (1)(b) of the Electricity Act 2003 to regulate Power Purchase Agreements executed by generating company with the State Discom, can also regulate the price of coal and /or issue

directions to the supplier of coal in the matter of coal pricing. Learned senior counsel pointed out that specifically following findings and conclusions made by State Commission in the **Impugned Order 1** dated 01.04.2024 are wrong and deserves to be set aside; there is no factual or legal basis to come to these findings like.

- (a) It is not clear from record as to whether SCCL was authorized to notify the tariff, even for Bridge Linkage coal supplied to end use plants;
- (b) SCCL appears to have overstepped its authority in determination of tariff of coal and not only fixed the tariff for coal supplied but also added the premium to be paid for coal;
- (c) The action of the SCCL in determining not only the coal price but also including premium to the said price is beyond the agreement
- (d) STPP did not pay any interest in establishing the captive coal mine expeditiously and went before SLC seeking extension of time repeatedly. Such attitude of STPP shows ulterior intention to continue the bridge linkage of coal obtained pending establishment of the captive coal mine.
- (e) TSDISCOMs are entitled to relief as prayed for, whereby SCCL is estopped from levying any premiums henceforth until it has started production from the Naini coal block allotted to it as it is denuding the Telangana DISCOMs the benefit of cheaper coal availability through the variable cost paid by the Telangana DISCOMs, which is ultimately beneficial to the end consumers

30. Learned senior counsel submitted that it is an admitted position that the SCCL supplied coal from its own coal mines, which are not captive to its thermal power plant, namely the Singareni Thermal Power Plant

(“STPP”/“the Power Project”). The SCCL operates primarily as a coal company, akin to Coal India Ltd. Coal, being a scarce natural resource, was nationalized, and its distribution is regulated by the Central Government and accordingly, the SCCL supplies coal in accordance with prevailing central policies in which price of coal is determined by the Coal companies, which are government companies.

31. The Consumers of coal obtain coal linkage through the Ministry of Coal, based on decisions of the Standing Linkage Committee, which are binding on coal companies. The SCCL supplies coal under the Bridge Linkage route to other similar consumers at the same price at which coal is supplied to its own generating station. The extant coal policy does not authorize any person or authority, apart from the coal company, to determine or regulate coal prices. Consequently, the electricity regulator, being a tribunal (statutory body) with limited jurisdiction, could not have exercised jurisdiction on matter concerning the price of coal. The impugned order does not refer to any provision of the statute or regulation in relation to its jurisdiction to determine / regulate the price of coal. It does not have the powers of judicial review.

32. As per the extant policy relating to Bridge Linkage, the Ministry of Coal, by letter dated 30.08.2016, confirmed that the Standing Linkage Committee (“**SLC**”), in its meeting dated 18.03.2016, granted Bridge Linkage for operating SCCL’s 2 x 600 MW Thermal Generating Station. This Bridge Linkage, initially granted as an interim measure, has been extended from time to time and is expected to continue until coal becomes available from the allocated Naini Coal Block in Odisha. The linkage was specifically granted to meet the coal requirements of the SCCL plant during the period when the Naini Coal Block was not operational. The

Naini Coal block faced delays due to forest clearance and other regulatory issues. Since the power plant was ready for commissioning, the Ministry of Coal/SLC recommended allocation of coal from the SCCL's own mines under Bridge Linkage to ensure fuel supply continuity. Further, extensions were granted by the SLC in meetings dated 10.04.2018, 21.02.2023, and 13.02.2024, after the SCCL explained the delay in operationalising the Naini Coal Block. Once the Ministry of Coal/ SLC accepted such reasons and extended the linkage, the State Regulatory Commission cannot, thereafter, sit on judgment over the decision of Ministry of coal and / or find fault with the Appellant for not operationalizing the coal block, including the continuation of Bridge Linkage beyond the initial 3 years or its pricing. The State Commission's contrary findings deserve to be set aside. Pursuant to the Bridge Linkage grant, the Appellant executed multiple MoUs dated 01.11.2017, 06.04.2018, 30.03.2020, 12.11.2020, 16.04.2021, 28.03.2022, and 29.03.2023.

33. Learned senior counsel placing reliance on the provision of the Electricity Act, 2003 and the TSERC (Terms and Conditions of Generation Tariff) Regulations, 2019 submitted that there are no provisions that permits / allows the electricity regulator to exercise jurisdiction on matters of coal pricing; specific reliance was placed on Regulation 21.6, which governs computation of the Energy Charge Rate (ECR) and is based on the weighted average "landed price" of primary fuel for computation of the ECR. Regulation 21.8, clarifies that the landed cost of fuel for the month to include the price of fuel corresponding to the grade and the quality of fuel inclusive of royalty, taxes and duties as applicable, transportation, cost by rail/ road or any other bills and provides that for the purpose of computation of energy charge, the cost shall be arrived at after considering the normative transit and handling losses as a percentage of

the quantity of coal dispatched by the coal supply company during the month as notified by the Central Commission. Regulation 21.9 deals with the use of alternate source of fuel supply, other than as agreed by the Generating Entity and beneficiaries in their PPA and on account of shortage of fuel or optimization of economical operation through blending, and certain restrictions are thereafter imposed; however, the said provision has neither been relied upon in the Impugned Order 1 nor is it applicable in the present case. As such, the PPA does not specify any particular source of coal, including the Naini Coal Block. Further, the coal supplied under Bridge Linkage cannot be construed as an 'alternate source' within the meaning of the said Regulation, as its supply is not occasioned by shortage or blending requirements, rather, Bridge Linkage constitutes the primary and approved source of coal supply to the Appellant's generating station, in accordance with the prevailing coal distribution policy.

34. Learned senior counsel submitted that the Impugned Order 1 does not at all refer to or rely upon any provision of the TSERC Tariff Regulations, 2019 or the PPA dated 18.01.2016 and its amendment dated 22.05.2024. Notably, neither the original nor the amended PPA defines any specific coal source. The PPA provides that the variable charge is computed on the basis of the landed cost of coal. Although the amended PPA was executed after the Impugned Order 1, it also does not confer any jurisdiction upon TSERC to regulate coal pricing. The amendment to the variable charge clause in the original PPA merely aligns it with Regulation 21.6 of the 2019 Regulations. The reliance on CERC Regulations is misplaced, as the transfer pricing principles therein pertain to captive coal blocks and are inapplicable to the present case.

35. Learned senior counsel submitted that the National Coal Distribution Policy 2007 and as amended in the year 2016, is limited only to the manner in which coal can be distributed amongst various users. In addition to the National Coal Distribution Policy, the Ministry of Coal has issued a policy guideline through Office Memorandum dated 08.02.2016, providing for the grant of Bridge Linkage to certain end-use power plants that have been allocated coal blocks ; thus neither the said policy nor the Office Memorandum provides for any authority to regulate or control the price of coal, whether by the Central Government or by any agency or authority appointed by the Central Government.

36. Learned senior counsel submitted that the relevant statutory / policy framework entitles SCCL and other coal companies i.e. Coal India Limited and its subsidiaries, to determine the price of coal. Initially, clause 4 of the Colliery Control Order, 1945 empowered the Central Government to fix the sale price, or the maximum or minimum sale price, or both, subject to which coal may be sold by colliery owners and any such notification may fix different prices for different classes, grades and sizes of coal; and different collieries. However, this was subsequently replaced by the Colliery Control Order, 2000 ("CCO, 2000"), under which the role of Central Government was only to prescribe, by notification, the classes, grades and sizes into which coal may be categorized and the specifications for each such class, grade or size of coal. As such, with effect from 01.01.2000, the Central Government did not play any role in fixation of price of coal. Similarly, earlier section 3(2)(c) of the Essential Commodities Act, 1955 also empowered the Central Government to control / regulate price of coal as an essential commodity, as specified in the Schedule. Through the amendment dated 24.12.2006 to the Essential Commodities Act, 1955, 'coal' was deleted from the list of essential

commodities with effect from 12.02.2007. The said deletion was also recognized by MoC in Clause 9 of the New Coal Distribution Policy, 2007 dated 18.10.2007. Consequently, the said Policy only provides for the manner in which the coal is to be distributed but does not provide for the pricing of coal. The Bridge Linkage Policy Guidelines issued vide O.M dated 08.02.2016, clarifies that the role of Coal Controller was only limited to quantification and regularization. Therefore, it is upto CIL/ SCCL to determine the price of Bridge Linkage coal, and since the coal was to be supplied on “*best efforts basis*” it was upto the seller to levy premium on the same. It is further pointed out that in the SLC meeting dated 21.02.2023 regarding extension of bridge linkage to the Appellant, it was recommended that “*The rate for coal supplies against extended Bridge Linkages would be decided by CIL/ SCCL*”. Therefore, it is evident that the pricing of coal, including under Bridge Linkage arrangements, or otherwise is to be decided by CIL/SCCL.

37. Learned senior counsel placing reliance on the judgment of the Supreme Court in “***Pallavi Refractories v. Singareni Collieries Company Limited & Ors.***”, ((2005) 2 SCC 227) submitted that the decision relating to fixing the price of coal is taken by the Coal company in terms of the extant law and policy and the reasons for differential pricing. In addition, reliance was placed on the judgment of the Supreme Court in “***Ashoka Smokeless Coal India (P) Ltd. v. Union of India & Ors.***”, ((2007) 2 SCC 640) , and submitted that the judgement provides a historical overview of the coal sector in India and it enumerates the manner in which the price of coal was de-controlled over the years.

With reference to Impugned Order 2 dated 28.06.2024 State Commission, while truing up the financials of SCCL for FY 2022-23 and approving the Multi Year Tariff for the control period of FY 2024-25 to FY

2028-29, has allowed the Energy Charge Rate (ECR) by taking into consideration Bridge Linkage coal price along with premium. However, as regards the issue of computation of 'K-factor' for the purpose of approval of R&M expenses, this issue may be remanded to the State Commission for fresh consideration.

38. Learned senior counsel concluded that in view of above submissions and also a reading of the Colliery Control order 1945 and the Colliery Control order 2000 (*Ann.-J to IA for Addl. Docs. @ Pg. 278, V-I*), it is clear that the coal company has been vested with the power to determine the price of coal. A statutory body created under the provisions of the Electricity Act, 2003 cannot regulate the price of coal and/or issue directions to a coal company as to what it should charge for supply of coal under Bridge Linkage or otherwise and requested Tribunal to set aside the Impugned Order 1.

Analysis and Deliberation

39. Heard Mr. Sanjay Sen, learned Senior Counsel appearing on behalf of SCCL and Ms. Swapna Seshadri, learned Counsel appearing on behalf of Telangana Discoms. The main issue, which emerges for deliberation is, whether premium charged on coal price by SCCL for coal supplied to its thermal plant under Bridge coal linkage can be denied by State Commission as pass through in Energy Charge Rate (ECR) under **Impugned Order 1** dated 01.04.2024 or the same is to be allowed as pass through in ECR as per **Impugned Order 2** dated 28.06.2024. As regards the issue of computation of 'K-factor' for the purpose of approval of R&M expenses in the **Impugned Order 2** dated 28.06.2024, raised by learned counsel for Telangana Discoms, the learned Senior Counsel for

SCCL has consented that this issue may be remanded back to the State Commission for fresh consideration. Elaborate submissions have been made by learned Counsel on behalf of Telangana Discoms and learned Senior Counsel on behalf of SCCL regarding the jurisdiction of State Commission over denial of premium paid on coal price under Bridge coal linkage by Singareni STPP to SCCL.

40. It is a fact that SCCL was allotted NAINI coal blocks located in the State of Odisha to meet coal requirement of its 2 X600 MW Thermal Power project (STPP) vide allotment letter dated 13.08.2015. The power purchase Agreement was entered into between SCCL and Telangana Discoms on 18.01.2016 for supply of 100% power generated from the said STPP, at a tariff to be determined by State Commission and the PPA to remain valid for 25 years from COD of the plant. SCCL has submitted that it had applied for grant of bridge linkage for supply of coal for STPP, as commencement of coal production from Naini coal mines as per Allotment Agreement was scheduled for December 2020, while commissioning of generating units of STPP was expected in 2016. It is noted that Ministry of Coal, GOI vide its notification No 23021/3/2015-CPD dated 08.02.2016 issued guidelines for grant of "Bridge Linkage" to specified end use plants of Central and State Public Sector Undertaking (both in Power as well as Non-Power) which have been allotted coal mines/blocks. The Bridge linkage is to act as a short term linkage to bridge the gap between requirement of coal of a specified end use plants of Central and State PSUs and the commencement of production from the linked allotted coal mines/blocks, and this bridge linkage may be granted for a fixed period of three years from the date of allotment of coal mine/block, and the following

procedure for grant of Bridge Linkage is mentioned in the above notification:

“PROCEDURE:

- (i) *Every plant desirous of availing 'Bridge Linkage' shall be required to apply to Ministry of Coal (MoC) in the prescribed format (enclosed) along with prescribed processing fee. The prescribed application fee should be paid through a Demand Draft amounting to Rs. 2000/- (Two thousand only) per Mega Watt, subject to a maximum of Rs. 5,00,000/- (Rs. Five Lakh only), in favour of "Pay and Accounts Officer, Ministry of Coal" payable at New Delhi. The application fees/processing fees once remitted and deposited would be "Non Refundable", whether the application/request is accepted or rejected by the Competent Authority for grant of 'Bridge Linkage'. If a particular End Use Plant has already submitted an application with processing fee in the Ministry of Coal for grant of normal coal linkage in respect of that particular unit for which bridge linkage is requested then this unit would not be required to pay processing fee again. It will simply apply in the prescribed format to Ministry of Coal without payment of application fee. After receipt of application, the existing procedure of getting reports/recommendation from concerned Ministries etc. in each individual case, similar to the normal procedure for authorizing LoA, would be followed by the Ministry of Coal.*
- (ii) *After receipt of application for 'Bridge Linkage' and before sending it to the concerned Ministry, a certification shall be obtained from CA-III Section of MoC regarding allotment of coal mine/ block to the applicant and specified end use plants (EUPs) thereof.*
- (iii) *On receipt of recommendation from the concerned Ministry, the request shall be placed before the Standing Linkage Committee (Long Term) [(SLC(LT))] meeting for each individual case, The recommendation of SLC (LT) shall be submitted for approval by the Competent Authority. Thereafter, CIL/SCCL shall be intimated accordingly who shall decide the grade, source, etc. The quantification shall be done by Coal Controller Organisation (CCO) and informed to CIL/SCCL and applicant allottee company.*

(iv) *Coal Controller shall be responsible for quantification and regularization of 'Bridge Linkage' in consultation with CIL/ SCCL. Based on approval by SLC (LT), Ministry of Coal shall intimate details of the approved schedule to CIL/SCCL, which shall be duly incorporated in the MoU to be concluded between concerned coal company and allottee company “.*

41. It is noted from the letter dated 30.08.2016 of Ministry of Coal, that in terms of Ministry of Coal, GOI notification dated 08.02.2016, bridge linkage was approved for the STPP from the SCCL for three years valid from 13.08.2015 to 12.08.2018 and source of which was to be finalised by SCCL in consultation with Railways. It is an admitted position that such Bridge Linkage was extended from time to time in following manner:

Date of granting linkage	Duration	Period
10.04.2018	5 years	2018 – 2021 2021 to 2023 on tapering basis
21.02.2023	1 year	2023 – 2024 on tapering basis
13.02.2024	1 Year	On tapering basis

42. Thus, bridge linkage for the STPP has been provided in terms of Notification dated 08.02.2016 of the Ministry of Coal, from SCCL, the company which also owns the STPP, and we believe that same must have been made after considering all relevant factors which lead to delay in development of allotted capital coal mine at NAINI for the STPP and need of Bridge linkage for longer duration, which is within the purview of Ministry of Coal and beyond our jurisdiction.

43. Further, no dispute has been raised by Telangana Discoms before us regarding the allocation of Bridge Linkage by SCCL for its STPP, other than levy of Premium over cost of coal supplied under it. However, we note that

State Commission in Para 27 of **Impugned Order 1** dated 01.04.2024 has made observation about lack of interest on the part of SCCL in developing the captive coal mine and to seek Bridge linkage, which smacks of ulterior intention of SCCL to continue the bridge linkage of coal whereby it gets power to determine the coal price according to its whims and fancies and burdening the end consumer. Such remarks by State Commission, in our view, is unwarranted since grant of Bridge Linkage in the event of delay in coal supply from captive coal mines, and its source falls within the purview of Ministry of Coal.

44. Broad Policy Regime in Coal Sector with regard to fixing coal price

Highlights of Judgements, pertaining to present issue, relied on by learned Senior counsel for SCCL, are as summarised below:

Pallavi Refractories v. SCCL and Ors. reported as (2005) 2 SCC 227

The appeals by grant of special leave had been filed by the writ petitioners the appellants herein, against the common order passed by the High Court of Andhra Pradesh in a group of writ petitions. The High Court in the impugned judgment has upheld clause 10 of Price Notification No. 3/96-97 dated 14-3-1997 issued by M/s Singareni Collieries Co. Ltd., which imposed a 20% higher coal price on non-core/unlinked sector industries compared to core/linked sector industries. The appellants - coal based small industries, contended that this dual pricing was arbitrary and violated Article 14 of the Constitution. The Respondent, a government-owned company, defended the pricing policy on grounds of financial necessity and the essential national role of core industries. The Supreme Court upheld the High Court's decision, ruling that the classification between core and non-core industries was rational, based on consumption levels and national importance, and that dual

pricing did not amount to hostile discrimination. It further held that there is no such law that a particular commodity cannot have dual fixation of price. Dual fixation of price based on reasonable classification from different types of customers have met with approval of courts. The High Court rightly came to the conclusion that Clause 10 of the price notification did not violate the equality clause of Article 14 of the Constitution and also emphasized that price fixation is a policy matter, largely beyond judicial review, unless it is shown to be arbitrary or discriminatory, which was not the case here. The appeals were accordingly dismissed.

***Ashoka Smokeless Coal India (P) Ltd. v. Union of India & Ors.,
reported as (2007) 2 SCC 640***

In this case, the validity and/or legality of a scheme framed by the Coal India Limited for sale of coal by Electronic Auction (E-Auction) was in question. The Supreme Court opined that, the coal companies evolve price fixation but, they have been doing so at the instance of the Central Government. The Central Government seeks to exercise its statutory power. However, such a power is confined to four corners of the Colliery Control Order, 2000. When there is no control over price, the Central Government is forbidden to issue any direction which will have an impact thereover. The Supreme Court further highlighted that in relation to fixation of price or other related matters, the Central Government, therefore, has no say. Under Colliery Control Order, 2000, the power of the Central Government is limited exclusively to regulating the supply of coal i.e., determining the recipient, quantity, mode, period, or source of supply. It has no authority to regulate price, as coal pricing was deregulated post-2000. Supply and/or disposal of coal which is governed by Colliery Control Order, 2000, pertains solely to matters such as: to whom the supply would be made, what would be the quantity, the mode,

period or the source of supply. Such a power to issue directions would not include fixation of price. Consequently, the Central Government lacks the power, whether directly or indirectly, to issue any directions under Clause 6 read with Clause 9 of the said order that effectively regulate or influence pricing under the guise of regulating disposal of coal, such as through e-auctions. Therefore, the Central Government cannot issue any direction which would have direct or indirect impact on price of coal.

45. It is understood, from the submissions made, that India's coal pricing policy has undergone a significant transformation—from rigid government control to a more market-responsive framework. Until 1990s, coal prices were regulated under the provisions of the Colliery Control Order, 1945 and the Essential Commodities Act, 1955. In the year 1996, the Government of India began deregulating coal prices, which ultimately culminated in the Colliery Control Order, 2000. This Order redefined coal governance by emphasizing quality assurance, ensuring transparency, and enhancing regulatory accountability, while paving the way for price deregulation and market-based coal allocation in subsequent reforms.

46. It is noted that the Coal was originally classified as an “essential commodity” under the Essential Commodities Act, 1955; however, pursuant to an amendment dated 24.12.2006, coal was omitted from the list of essential commodities with effect from 12.02.2007. Post Colliery Control Order 2000, coal prices were no longer fixed by the Government but were instead notified by coal companies and were influenced by cost of production, transportation charges, quality parameters, and prevailing market demand. While the Government of India does not exercise control over price fixation, it retains powers to regulate supply and quality through the Coal Controller. The Coal Controller ensures correct grade declarations, quality surveillance, and adjudication of disputes between

consumers and collieries. Learned counsel for the Telangana Discoms have also admitted that Colliery Control Order, 2000 did remove the pricing function from Government of India with regard to coal but there is no bar of judicial /regulatory oversight. Learned Senior counsel for SCCL also submitted that post Colliery Control Order 2000, Central Government did not play any role in fixation of coal price; deletion of coal from the list of essential commodities stands duly recognized by the Ministry of Coal under the New Coal Distribution Policy, 2007 dated 18.10.2007 and the said policy only specifies the manner in which coal is to be allocated and distributed among various categories of consumers/users.

47. Thus, from the above, it is clear that the post Colliery Order 2000 era, it is the coal companies which can fix the price of coal and same position has been affirmed by the Supreme Court in its judgements “**Pallavi Refractories v. Singareni Collieries Company Limited & Ors.**”, (2005) 2 SCC 227) and “**Ashoka Smokeless Coal India (P) Ltd. v. Union of India & Ors.**”, ((2007) 2 SCC 640). The coal prices are no longer fixed by the Government, however they are subjected to regulatory oversight and Government retains powers to regulate supply and quality through the Coal Controller. The question in the present case is whether such regulatory oversight/control can be extended to the price of coal charged by coal companies on the end consumer under Bridge Linkage Arrangement, which in the present case is by SCCL to STPP, and whether the premium charged by coal companies can be regulated by the Electricity Regulator i.e. State Commission, which is deliberated in subsequent paragraphs.

MOUs entered into between SCCL and the STPP and provisions of TSERC Regulation 2019

48. Learned counsel for the Telangana Discoms have submitted that pursuant to getting Bridge Linkage, SCCL and STPP signed Memorandum of Understanding (“**MoU**”) dated 01.11.2017, which was amended from time to time and imposition of premium over the Notified price of coal is incorporated in these MoUs to which Telangana Discom is neither a party nor was consulted when these MoUs were signed.

49. It is noted from point (iv) of the Procedure under Ministry of Coal Notification dated 08.02.2016, that based on approval by SLC, Ministry of Coal shall intimate details of approved schedule to SCCL/CIL, which shall have to be duly incorporated in the MoU to be concluded between the concerned coal company and allottee company. Signing of MoU between the concerned coal company and allottee company has been contemplated under the Ministry of Coal, GoI Notification dated 08.02.2016. Thus, even hypothetically, if it is considered that bridge linkage was assigned to STPP from CIL instead of SCCL, then also STPP and CIL would be required to enter into the MoU for such Bridge linkage.

50. Regarding the contention of Telangana Discoms that, in terms of Regulation 21.9 of the TSERC Regulations 2019, when fuel is procured from sources other than those mutually agreed upon between the generator and the beneficiary, and there is an increase in price of fuel above the stated threshold then prior consultation with the beneficiary is required. Regulation 21.9, as reproduced below:

“ 21.9. In case of part or full use of alternative source of fuel supply by coal based Thermal Generating Stations other than as agreed by the Generating Entity and Beneficiaries in their power purchase agreement for supply of contracted power on account of shortage of

fuel or optimization of economical operation through blending, the use of alternative source of fuel supply shall be permitted to Generating Station.

Provided that in such case, prior permission from Beneficiaries shall not be a precondition, unless otherwise agreed specifically in the power purchase agreement:

*Provided further that the weighted average price of use of alternative source of fuel shall not exceed 30% of base price of fuel, however the Commission will make a prudent check in approving the price of alternative fuel, considering the improved GCV and impact of energy rate on account of increased price of alternative source of fuel
Provided also that where the energy charge rate based on weighted average price of use of fuel including alternative source of fuel exceeds 30% of base energy charge rate as approved by the Commission for that year or energy charge rate based on weighted average price of use of fuel including alternative sources of fuel exceeds 20% of energy charge rate based on weighted average fuel price for the previous month, whichever is lower shall be considered and in that event, prior consultation with Beneficiary shall be made not later than three Days in advance.”*

51. Regulation 21.9 deals with the use of alternate source of fuel supply on account of shortage of fuel or optimization of economical operation through blending and prior consultation has been mandated under some conditions. However we note that prior permission from beneficiaries is not a precondition unless otherwise agreed specifically in the power purchase agreement. No provision of PPA was referred to by learned counsel for Telangana Discoms, which mandates such prior consultation with them. In our view, the coal supplied under Bridge Linkage cannot be, as such, construed as alternate source of fuel for blending purposes, and therefore shall be construed as primary and approved source of coal supply, and Regulation 21.9 is inapplicable; and accordingly we do not find merit in this submission of Telangana Discoms.

52. Our attention is drawn to the fact that though the NAINI coal block was allotted to STPP in 2015, the PPA was signed on 18.01.2016 between the Telangana Discom and SCCL/STPP for supply of 100% power from the STPP to Telangana Discom, which makes no mention of source of coal under Annexure IV of the said PPA, and it was agreed that cost of coal shall be as per SCCL coal marketing department. In our considered view, even if Telangana Discoms have signed the PPA with the understanding that allotted coal mine was NAINI, they had accepted while signing the PPA on 18.01.2016, that the cost of coal, which shall be used for computation of variable energy charge shall be as per SCCL and they shall be liable for payment of variable energy charge based on the cost of coal worked out by SCCL itself. The said PPA dated 18.01.2016, was amended only on 22.05.2024 as per State Commission order dated 22.10.2021, which included that *“For any billing month, the variable charges shall be determined as per TSERC Regulations”*. In the amended PPA also, source of coal has not been mentioned. On this count also we do not find merit in the submissions of Telangana Discoms that prior consultation from Telangana Discom was required by STPP for entering into the MoU with the SCCL for Bridge Linkage.

53. Regarding the provision of variable charge to be as per TSERC Regulations as per amended PPA dated 22.05.2024, we note that in the TSERC (terms and conditions of Generation Tariff) Regulations, dated 04.01.2019, (**“TSERC Regulations 2019”**), under Regulation 21.6, in the formula for calculation of Energy Charge Rate (ECR), LPPF has been considered, which is defined as under :

LPPF = Weighted average landed price of primary fuel in Rupees per kg, per litre or per standard cubic meter, as applicable during the month (in case of blending of fuel from different sources, the weighted average landed price of primary fuel shall be arrived in proportion to blending ratio.

54. Regulation 21.8 of TSERC Regulations 2019, defines landed price of coal as below:

“21.8 The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means (all these parameters to be shown separately), and, for the purpose of computation of energy charge, and in case of coal shall be arrived at after considering normative transit and handling losses as percentage of quantity of coal dispatched by the coal supply company during the month as notified by the Central Electricity Regulatory Commission, for respective Year unless specifically approved by the Commission;

Provided that any refund of taxed and duties along with any amount received on account of penalties from fuel supplier shall be adjusted in the fuel cost.”

55. It has been contended by learned Counsel for Telangana Discoms that definition of landed cost of coal is not inclusive; the words “shall include” should be read exhaustively and does not include premium. In support of this contention, learned Counsel relied on the Supreme Court judgement in “**South Gujarat Roofing Tiles Manufacturers Association v. State of Gujarat**” ((1976) 4 SCC 601). Learned counsel for Telangana Discoms, referring to sample price notification of SCCL dated 10.06.2023, also contended that though said price reveal the basic Price separately for power and non-power sector and wherever there is a premium to be levied, that is indicated separately, however, there is no mention of any premium for bridge linkage

consumers, in addition all other components of the landed cost – loading charges, royalties, taxes, sampling charges, etc. are indicated separately and thus premium does not form part of basic price itself.

56. Per contra, learned Senior counsel for SCCL argued that Bridge linkage is the primary source of coal available till operationalization of Naini coal block as per prevailing coal distribution policy notification dated 08.02.2016 and the landed cost of such fuel is the delivered price of coal at the generation plant and shall include premium and other charges, if any, in the cost of coal as per TSERC Regulations 2019.

57. As noted hereinabove, the first few lines of Regulation 21.8 of the TSERC Regulations read as *“the landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means (all these parameters to be shown separately),”*

58. While the first limb of the afore-extracted portion of Regulation 21.8 uses the word *“include”*, the second limb uses the word *“inclusive of”* which also means *“include”*. Use of the word ‘includes’ conveys an extensive meaning. The word *“include”* is generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute and, when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. **(ESI Corpn. v. High Land Coffee Works, (1991) 3 SCC 617; Oswal Fats & Oils Ltd. v. Commr. (Admn.), (2010) 4 SCC 728; Municipal Corpn. of Greater Bombay v. Indian Oil Corpn. Ltd., 1991 Supp (2) SCC 18 : AIR**

1991 SC 686; Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd., (2007) 3 SCC 607; CTO v. Rajasthan Taxchem Ltd., (2007) 3 SCC 124; P. Kasilingam v. P.S.G. College of Technology, 1995 Supp (2) SCC 348).

59. The word “include”, a word of extension, is used in an interpretation clause when it seeks to expand and enlarge the meaning of the words or phrases occurring in the body of the statute. (**Forest Range Officer v. P. Mohammed Ali, 1993 Supp (3) SCC 627; Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299; CTO v. Rajasthan Taxchem Ltd., (2007) 3 SCC 124**). It gives extension and expansion to the meaning and import of the preceding words or expressions. When the word “include” is used, it must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. In using the word “includes”, the legislature does not intend to restrict the definition. It makes the definition enumerative, but not exhaustive. The term defined will retain its ordinary meaning, but its scope would be extended to bring within it matters which its ordinary meaning may or may not comprise. (**Mamta Surgical Cotton Industries v. Commr. (Anti-Evasion), (2014) 4 SCC 87**).

60. **Craies on Statute Law** (7th Edn., 1.214) states that an interpretation clause which extends the meaning of a word does not take away its ordinary meaning, and is *not meant to prevent* the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act to be applied to something to which it would not ordinarily be applicable. (**Black Diamond Beverages v. CTO, (1998) 1 SCC 458**).

61. Both, in “**Bharat Co-op Bank (Mumbai) Ltd vs Employee Union**” (2007) 4 SCC 685 and in “**P. Kasilingam v. P.S.G College of Technology**” 1995 Supp2 (2) SCC 348, the Supreme Court has held that, when the word “includes” is used in the definition, the legislature does not intend to restrict the definition; it makes the definition enumerative but not exhaustive; the word “include”, when used, enlarges the meaning of the expression defined, that is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise; and only if the use of word “means” is followed by the word “includes” then it is indicative of the legislative intent to make the definition exhaustive and would cover only those which fall within the purview of the definition.

62. The expression “means and includes” indicates “an exhaustive explanation of the meaning which, for the purposes of the Act/Regulations, must invariably be attached to these words or expressions”. (**Dilworth v. Commissioner of Stamps [1899 AC 99, 105-106:(1895-9) All ER Rep Ext 1576]; Mahalakshmi Oil Mills v. State of A.P. (1989) 1 SCC 164, 169**). The use of these words suggests that the provision is intended to cover only those categories specified therein. (**P. Kasilingam v. P.S.G. College of Technology, 1995 Supp (2) SCC 348**). It must be understood to be an extensive explanation of the meaning which must invariably be attached to these words or expressions.

63. It is clear, therefore, that, by use of the word “include/ inclusive of” in a statutory provision, Rule or Regulation, the legislature or the rule/regulation making authority, ordinarily, intends to make the provision enumerative and not exhaustive, and to indicate that the provision

comprises of other things not explicitly specified therein. It is only if the word “means” or “means and includes” is used therein, can the statutory provision be said to have, ordinarily, intended to exhaustively define the said provision, make the definition a hard and fast definition, and prevent any other meaning to be assigned to the said expression, than that is put down in the definition. **(P.Kasilingam & Ors. Vs. P.S.G. College of Technology (AIR 1995 SC 1395: 1995 SCC Supl. (2) page 348; Gough v. Gough: (1891) 2 QB 665; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court: (1990) 3 SCC 682)**. The provision, wherein the word “include” is used, would require it to be read as not only comprehending such things as they signify according to their natural meaning, but also those things which the provision declares that they shall include. Significantly Regulation 28.1 uses the expression “include/ inclusive of”, and not the word “means” or the expression “means and includes”.

64. Since reliance is placed on behalf of the Respondent Discoms, on **South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat, (1976) 4 SCC 601**, to contend that the word “include”, as used in Regulation 28.1, should be read as “means” or to be understood as exhaustive, we shall briefly note the facts of the said case and the law declared therein.

In this case, manufacturers of Mangalore pattern roofing tiles challenged a Gujarat Government notification under the Minimum Wages Act, 1948, which fixed minimum wages for workers in the “potteries industry” as defined in Entry 22 of the Act’s Schedule. The key issue was whether roofing tiles fell within the scope of Entry 22, which listed nine specific pottery items. The appellant, an association of tile manufacturers, challenged a subsequent Government notification dated May 12, 1975,

which revised and applied minimum wages to their industry on the basis that roofing tiles were included in Entry 22. The key legal question was the interpretation of the word “includes” in the Explanation to Entry 22, which listed nine specific pottery items (like crockery, glazed tiles, toys, etc.). The appellants contended that the Explanation was exhaustive and roofing tiles were excluded. The Gujarat High Court rejected this contention and held that roofing tiles to be covered; the Supreme Court reversed this finding, holding that the term “includes” in the given context was used in a restrictive (not expansive) sense, effectively meaning “means” and thus limiting Entry 22 only to the nine enumerated articles. Thus word includes has been used here in the sense of means. The Court found no legislative intent to cover all pottery products and held that had such intent existed, no such specific list would have been needed. The Supreme Court quashed the 1975 notification as it applied to Mangalore roofing tiles and allowed the appeal.

65. As held in **South Gujarat Roofing Tiles Manufacturers Assn**, the word “include” is susceptible of another construction which may become imperative if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions used. It may be equivalent to “mean and include” and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to those words or expressions. (**Oswal Fats & Oils Ltd. v. Commr. (Admn.)**, (2010) 4 SCC 728). The word “includes” is also used in interpretation clauses to mean “comprises” or “consists of” or “means and includes”, depending on the context. (**N.D.P. Namboodripad v. Union of India**, (2007) 4 SCC 502). While, ordinarily, the word “includes” is used in a provision to enlarge the meaning of the expression defined, on rare

occasions, the said word is used to give an exhaustive explanation, and to be understood to mean “comprise”, “consist of” or “means and includes”.

66. Relying on **South Gujarat Roofing Tiles Manufacturers Association vs State of Gujarat: (1976) 4 SCC 601**, Mrs. Swapna Seshadri, learned Counsel for the Respondent, would commend that the word “inclusive of”, as used in Regulation 21.8 of the PSERC Regulations 2018, be understood as the word “means”, giving the words used therein an exhaustive meaning.

67. In examining whether such a contention merits acceptance, it would be necessary for us to analyze what Regulation 21.8 stipulates. The first limb of Regulation 21.8 uses the word “include”, and the second limb “inclusive of”. While the word “include” in the first limb is used in the context of the landed cost of fuel and provides that the said landed cost shall include the price of fuel corresponding to the grade and quality of the fuel; the second limb qualifies the price of fuel to be inclusive of (or, in other words, include) royalty, taxes and duties as applicable, transportation cost by rail, road and by other means.

68. It is settled law that where either the legislature or the Regulation making authority use the same expression in different parts of the very same provision, or in two continuous provisions, the said expression must be understood to carry the very same meaning, for words are generally used in the same sense throughout in a statute unless there is something repugnant in the context. (**Bhogilal Chunilal Pandya v. State of Bombay: AIR 1959 SC 356**). Ordinarily the rule of construction is that the same expression where it appears more than once in the same statute,

more so in the same provision, must receive the same meaning unless the context suggests otherwise. (**Suresh Chand v. Gulam Chisti, (1990) 1 SCC 593 : 1990 SCC OnLine SC 93**). In other words, where the legislature uses the same expression in the same statute at two places or more, then the same interpretation should be given to that expression unless the context requires otherwise. (**Raghubans Narain Singh v. U.P. Government, 1966 SCC OnLine SC 37**). On the other hand, when two different words are used by the same statute, one has to construe these different words as carrying different meanings. (**Kailash Nath Agarwal v. Pradeshia Industrial & Investment Corpn. of U.P. Ltd. (2003) 4 SCC 305; Kurapati Bangaraiah vs Govt of AP: (2015) 5 ALD 622**) for, if the field of the two provisions were to be the same, the same words would have been used. (**B.R. Enterprises v. State of U.P (1999) 9 SCC 700; Kurapati Bangaraiah vs Govt of AP: (2015) 5 ALD 622**).

69. If the legislative intention was to distinguish and, while stating landed cost of fuel, it was intended to confine it only to the price of fuel, it would have sufficed to use the word “means” or “means and includes”. and there would have been no necessity of using the word “includes”, or use similar expressions, ie “includes”/“inclusive of”, in two consecutive limbs of Regulation 28(1). Consequently, the word “include”/ “inclusive of” must be given the very same meaning both in the first and second limb of Regulation 21.8.

70. Accepting the submission of Mrs. Swapna Seshadri, learned Counsel for the Telangana Discoms, would require us to hold that the landed cost of fuel would mean the price of fuel corresponding to the grade and quality of fuel and nothing else. Likewise, in the second limb, the words “price of fuel” must then be held to comprise only royalty, taxes and

duties and transportation cost, and nothing else. The emphasis placed by the learned Counsel is with respect to use of the word “inclusive of” in the second limb of Regulation 28.1. As the same meaning, for the word “include/inclusive of”, must be given both in the first and second limb, we find it difficult to agree with the submission that the Regulation making authority intended for the landed cost of fuel for that month only to mean the price of fuel and nothing more. Since there is nothing repugnant in the context, we are of the view that the words “include/inclusive of” must be given its ordinary meaning, and as only providing an enumerative list of matters which would fall within the ambit of the provision, and as to bring within its ambit even those matters which are not expressly stipulated therein.

71. Accepting the construction placed, on behalf of the Telangana - Discoms, on the second limb of Regulation 21.8, that the price of fuel is confined only to royalty, taxes and duties as applicable, and transportation cost by rail/road or any other means, alone and nothing more, would also result in exclusion of the actual consideration paid for purchase of fuel therefrom, and would result in the first and second limb of the said regulation contradicting each other.

72. On the expression “include/inclusive of” in Regulation 21.8, being construed as it ordinarily should, we must express our agreement with the submission urged by Mr. Sanjay Sen, learned Senior Counsel appearing on behalf of the Appellant, that the landed cost of fuel, as referred to in Regulation 21.8, would also bring within its ambit the premium charged by the coal company on the price of coal supplied to the generating company/station.

73. The words “landed cost” of fuel would be the landed cost which the generating company would have incurred in procuring fuel till its door-step, and as the price at which coal was procured by the generating station includes the premium charged by the coal company also, we find it difficult to hold that Regulation 21.8 intended to exclude such premium from the price of coal. Further, as the price of coal charged by the coal company on the generating station includes the premium, such premium would also form part of the price of fuel which the generating station is obligated to pay to procure coal from the coal company, and would undoubtedly form part of the landed cost.

74. Viewed from any angle, we must express our inability to agree with the submission, urged on behalf of the Telangana Discoms, that the first limb of Regulation 21.8 implicitly excludes the premium, charged by the coal company for bridge linkage coal, from the ambit of landed cost of fuel or that the second limb confines price of fuel only to royalty, taxes and duties as applicable, transportation cost by rail/road or any other means, and nothing more.

75. Learned senior Counsel for SCCL contended that pricing of coal supplied under Bridge linkage at a premium is a general practice and in that regard cited notifications of coal price of MCL/CIL, which were also submitted by them to State Commission and were referred to in the **Impugned Order 1** dated 01.04.2024.

MCL/CIL Prices Notification dated 31.05.2023

Grade of Coal (a)	MCL/CIL Notified Basic Price for Power Sector (Regulated Sector) Rs. per Ton (b)	Premium levied by MCL/CIL @ 40% flat (c) = (b) x 40%	Total Price of Coal Applicable to Bridge Linkage Customers of
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			Power Sector (d) = (b) + (c)
G-9	1240.00	496.00	Rs.1736.00
G-10	1120.00	448.00	Rs.1568.00
G-11	965.00	386.00	Rs.1351.00
G-12	896.00	358.00	Rs.1254.40

SCCL's Prices Notification dated 29.04.2023

Grade of Coal	SCCL Notified Basic Price for Power Sector (Regulated Factor) Rs. Per Ton	Premium levied by SCCL @ 20% flat	Premium levied by SCCL @ 30% flat	Total Price of Coal Applicable to Bridge Linkage Customers of Power Sector @ 20% premium	Total Price of Coal Applicable to Bridge Linkage Customers of Power Sector @ 30% premium
G-9	3050.00	610/-	915/-	Rs.3660/-	Rs.3965/-
G-10	2910.00	582/-	873/-	Rs.3492/-	Rs.3783/-
G-11	2420.00	484/-	726/-	Rs.2904/-	Rs.3146/-
G-12	2150.00	430/-	645/-	Rs.2580/-	Rs.2795/-

76. We take note that SCCL is a Government coal mining company jointly owned by the Government of Telangana and Government of India and MOUs signed by SCCL with the STPP are on the same terms and conditions, which it is imposing on other beneficiaries under Bridge Linkage, such as Mahengenco (a Maharashtra Government owned generating Company) and NTPC. The Respondent SCCL has placed on record the MOU dated 13.04.2022 signed with NTPC for the supply of coal for the period 01.04.2022 to 31.03.2023 (i.e. FY 2022-23) under Bridge Linkage, which also included the premium over notified basic price of coal; the basis price of coal shall be as per SCCL price notification. Respondent -SCCL has also placed on the record its internal note dated 11.04.2022, regarding signing of MOU quantities and pricing for FY 2022-23 for sector wise coal allocation, wherein 20% price over and above notified base price has been approved to be charged for Bridge Linkage.

77. The fact that Respondent -SCCL is charging same premium to all the customers under Bridge Coal linkage has not been refuted by the Telangana Discom except for the submissions that MoU with other generators depends upon their respective contracting terms and concerned Regulations and regulatory treatment of other MOU is within the scope and functions of the Appropriate Commission.

78. From the Minutes of Meeting of Standing Linkage Committee dated 10.04.2023 held for power sector on 21.02.2023, which recommended further extension of Bridge Linkage for the STPP of SCCL for one year, it is noted that rate for the coal supplies against extended Bridge Linkage is to be decided by CIL/SCCL and recorded as under :

“Additional Agenda Item No. 8: Bridge Linkage extension for Singareni Thermal Power Plant 2 x 600 MW of SCCL:

Record of Discussions: Project Proponent informed that the delay in the operationalization of Naini coal block is not on the account of SCCL and Stage-II Forest Clearance is pending with MoEF&CC. It was also stated that Singareni Thermal Power Plant (2 x 600 MW) (Stage-1) is running at a very high PLF and therefore, to meet the requirement of the plant, extension of Bridge Linkage is required.

Representative of Nominated Authority informed that the issue of Forest Clearance is being taken up with MoEF&CC and issue would be resolved in a month's time. Representative of Nominated Authority also recommended for extension of Bridge Linkage on tapering basis. Ministry of Power / CEA also recommended for extension of Bridge Linkage in order to avoid loss of generation from the Singareni Thermal Power Plant (2 x 600 MW) (Stage- 1) linked with Naini coal mine.

Recommendations: In view of the recommendation of Ministry of Power and the Nominated Authority, SLC (LT) recommended for extension of

Bridge Linkage to Singareni Thermal Power Plant (2 x 600 MW) of SCCL for a period of 1 year on tapering basis from SCCL. The rate for coal supplies against extended Bridge Linkages would be decided by CIL / SCCL.

79. We also take note that the Minutes of Meeting of Standing Linkage Committee dated 28.02.2024 for the SLC meeting held on 13.02.2024, which recommended further extension of Bridge Linkage for the STPP of SCCL for one year, also specifies that rate for the coal supplies against extended Bridge Linkage is to be decided by CIL/SCCL.

80. Thus, in view of above observations, we are of the view that SCCL has been authorized to fix price of coal under Bridge linkage, and since the definition of landed cost of coal is enumerative in TSERC Regulations 2019, it therefore includes the total price charged by coal company to the generator, and SCCL has not arbitrarily fixed high price for its own STPP in supplying coal under Bridge Linkage as it seems to have charged same premium over price of coal, to other generators under Bridge Linkage.

Jurisdiction of State Commission over the price of coal including the premium under Bridge Linkage for the purpose of calculation of Energy Charge for the STPP

81. Learned Counsel for the Telangana Discoms has contended that State Commission has inherent subject matter jurisdiction on all components of electricity price under Electricity Act 2003 and in the absence of any regulation, State Commission can undertake same exercise guided by Section 61 of the Electricity Act 2003 and in this regard reliance is placed upon the judgments of the Supreme Court in **“Municipal Corporation of Delhi v Gagan Narang,” (2025) SCC**

OnLine SC 19 and **“PTC India Ltd V Central Electricity Regulatory Commission” (2010)4 SCC 603** and **“Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Transmission Co. Ltd. & Ors.”, 2025 SCC OnLine SC 1128** and further submitted that when State Commission exercises power under Section 86 (1)(f) of the EA 2003, it does not lose its power for tariff fixation or the principles contained under Section 61, 62 or 64 of EA 2003. Learned Counsel for Telangana DISCOMs also submitted that input price of captive coal mines, allocated under the coal mines Special Provision Act 2015 is being determined by Appropriate Electricity Regulatory Commission under the aegis of EA 2003, which reinforces the position that Electricity Regulatory Commission has jurisdiction; and that all components of price of electricity are reasonable-regardless of whether the coal is procured through linkage, auction or captive sources.

82. Per Contra, learned Senior counsel for SCCL placing reliance on the provisions of the Electricity Act, 2003 and the TSERC Regulations, 2019 submitted that there are no provisions that permits / allows the electricity regulator to exercise jurisdiction on matters of coal pricing.

83. Since the present *lis* is not about determining the price of coal from captive mines by Electricity Regulatory Commission for which learned counsel for Telangana Discoms has submitted that Regulations have been framed under the Electricity Act 2003, and admittedly, same are not applicable to the present case, it is unnecessary for us to make any observation on the same.

84. As mentioned in previous paragraphs, as per Colliery Order 2000, it is the coal companies which can fix the price of coal and same position has been reiterated by the Supreme Court in its Judgements in “**Pallavi**

Refractories v. Singareni Collieries Company Limited & Ors., ((2005) 2 SCC 227) and ***“Ashoka Smokeless Coal India (P) Ltd. v. Union of India & Ors.”***, ((2007) 2 SCC 640).

85. Regarding the contention raised by learned counsel for Telangana Discoms that SCCL is charging premium over its basic notified price under Bridge Linkage on STPP and is unduly enriching themselves and therefore State Commission is right in denying such premium as pass through in Energy Charge rate. We do not find merit in this submission, as coal companies have been authorised to fix price of coal which they charge to the consumer and Ministry of Coal while granting Bridge Linkage from SCCL to STPP has left determination of such coal price to SCCL, and the premium charged by SCCL over the price of coal for Bridge Linkage for STPP is same, which SCCL charges to other generators for providing coal under Bridge Linkage. Further, even if it is assumed that since SCCL and STPP are one company and SCCL could have given concession, then it would lead to differential/discriminatory pricing of coal under Bridge Linkage to other generators in Power Sector, as same premium over coal price is being charged by SCCL under Bridge Linkage to other generators such as Mahengenco, NTPC etc. Hypothetically, if it is assumed that Bridge Linkage to STPP was provided by CIL and not by SCCL, who also charges premium over the Bridge Linkage, in that situation STPP would have no control over such premium. Therefore, the contention of undue enrichment by parent company i.e. SCCL supplying coal to its STPP, does not hold good. In these circumstances denial of pass through of such premium over the price of coal under Bridge Linkage shall adversely affect the Energy Charge for the STPP, which in our view, is not justified. Thus, whether Coal under Bridge linkage is sourced from CIL or SCCL, both are the Government

companies and as the same price is charged on all the generators who are assigned Bridge Linkage, the treatment of such premium as pass through in Energy Charge Rate should be same.

86. The State Commission/TSERC is a creation of the Electricity Act, and the jurisdiction which it is entitled to exercise must be confined to what is stipulated under the Electricity Act, and the Rules and Regulations made thereunder, and not beyond. The jurisdiction conferred on the Regulatory Commission, both Central and States, is by the Electricity Act, 2003, an Act of Parliament. Wherever jurisdiction is given to a court (or Tribunal) by an Act of Parliament, and such jurisdiction is only given upon certain specified terms contained in that Act, these terms must be complied with, in order to create and confer jurisdiction on it for, if they be not complied with, it would lack jurisdiction. (**Nusserwanjee Pestonjee v. Meer Mynodeen Khan** [LR (1855) 6 MIA 134 (PC); **Mohd. Hasnuddin v. State of Maharashtra, (1979) 2 SCC 572**). As it derives its powers from the express provisions of the Electricity Act, the powers, which have not been expressly given by the said Act, cannot be exercised by the State Regulatory Commission. (**Rajeev Hitendra Pathak v. Achyut Kashinath, (2011) 9 SCC 541**). An authority created by a statute must act under the Act and not outside it. As it is a creation of the statute, it can only decide the dispute in terms of the provisions of the Act. (**K.S. Venkataraman & Co. v. State of Madras, AIR 1966 SC 1089; Mysore Breweries Lt. v. Commissioner of Income-Tax, (1987) 166 ITR 723 (KAR)**). The State Regulatory Commission can exercise jurisdiction only when the subject matter of adjudication falls within its competence, and the order that may be passed is within its authority, and not otherwise. (**Dakshin Haryana Bijli Vitaran Nigam Ltd. v. Princeton Park Condominium: 2007 Aptel**

764; BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, 2009 SCC OnLine APTEL 52).

87. The State Commission, no doubt, have been empowered to regulate the price at which Discoms shall purchase the electricity but has the duty to balance the interest of Consumers on one hand and that of Generators and Discoms on other hand, and also to act as per the provisions of Electricity Act 2003. In the absence of any specific provisions in the Electricity Act 2003 to regulate the price of coal which coal companies charge under the Bridge linkage, adjudication by the State Commission under section 86 of the Electricity Act has to be in terms of the provisions of the Electricity Act and the Regulations framed under Section 181 of the Electricity Act. As deliberated in previous paragraphs, Regulations framed in the present case does not provide an exhaustive list of cost to be included in the landed cost of coal to be considered under Energy Charge Rate, and premium paid would form part of price of fuel and form part of landed cost. We find that the State Commission has erred in denying pass through of premium paid over the cost of coal under bridge linkage to STPP.

88. Judgements, relied on by learned counsel for Telangana Discoms pertaining to present issue are as summarised below:

Municipal Corporation of Delhi v. Gagan Narang & Ors., 2025 SCC OnLine SC 19

This case pertains to the Municipal Corporation of Delhi's (MCD) initiative to set up a Waste-to-Energy (WTE) project in Narela Bawana through a tariff-based bidding process, for which it sought approval from the Delhi Electricity Regulatory Commission (DERC) under Section 63 of the Electricity Act, 2003. The DERC approved the bid tariff of Rs. 7.38/KWh

and allowed the project to proceed. However, this approval was challenged by Gagan Narang before the Appellate Tribunal for Electricity (APTEL), which held that MCD, being neither a distribution licensee nor a generating company, could not seek tariff adoption under Section 63. On appeal, the Supreme Court reversed APTEL's decision and upheld DERC's orders, holding that MCD, as a statutory body mandated under the Solid Waste Management Rules, 2016, was competent to initiate the bidding process. The Court emphasized that Section 63 does not restrict who may initiate tariff adoption and it must be read harmoniously with Section 86(1)(b) of the Act which cast a duty upon State Commission to regulate electricity purchase and procurement process of Distribution licensee, and the price at which it shall be procured. In broader environmental obligations, restored approval to MCD's project in public interest.

PTC India Ltd. v. Central Electricity Regulatory Commission, (2010)
4 SCC 603

The Hon'ble Supreme Court while deciding the issue whether APTEL, constituted under the Electricity Act, 2003, has jurisdiction under Section 111 to examine the validity of Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2006 framed in exercise of powers conferred under Section 178 of the Electricity Act 2003, held that the APTEL do not have the jurisdiction under 111 and 121 to examine the validity of the regulations. The Supreme Court further held that the hierarchy of regulatory powers and functions under Section 178 of Electricity Act, 2003, which deals with making of regulations by the Central Commission, under the authority of subordinate legislation, is wider than Section 79 (1) of the 2003 Act, which enumerates the regulatory functions

of the central commission, in specified areas, to be discharged by orders (decisions). A regulation under Section 178 is made under the authority of delegated legislation and consequently its validity can be tested only in judicial review proceedings before the Courts and not by way of appeal before the Appellate Tribunal for Electricity under Section 111 of the said Act. The CERC is empowered to take measures/steps in discharge of functions enumerated under section 79 (1) but the same has to be in conformity with the regulations made under section 178. The Supreme Court also held that 'to regulate' is an exercise which is different from making of regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission before taking any steps/measures under Section 79(1). Under Section 79(1)(g), the Central Commission is required to levy fees for the purpose of the Electricity Act 2003. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178, but the same has to be guided by the factors specified in Section 61. If levy is unreasonable, it could be the subject-matter of a challenge before the appellate authority under Section 111 as levy is imposed by an order/ decision-making process. However, if there is a regulation under Section 178 in that regard, then order levying fees under Section 79(1)(g) has to be in consonance with such regulation.

Power Grid Corporation of India Limited v Madhya Pradesh Power Transmission Company Limited and Others, 2025 SCC OnLine SC 1128 dated 15.05.2025

In this case, there was a delay in the construction and commissioning of an intra-State transmission element in Madhya Pradesh, which resulted in delayed commissioning of transmission element being implemented by

inter-State transmission Licensee, which then applied for the approval of the COD under Regulation 4(3) of 2014 Tariff Regulations. The Central Electricity Regulatory Commission (CERC) permitted the inter-State transmission licensee to claim compensation for the period prior to the COD, including liquidated damages, interest during construction, and incidental expenses from Intra State Licensee. Aggrieved by this order, Intra- State transmission licensee filed a Writ Petition before the High Court, alleging that the CERC had no power under the 2014 Tariff Regulations to levy compensatory transmission charges, and it committed a jurisdictional error and claimed that the CERC's decision effectively re-wrote the terms of the agreement between the parties. Inter-State Transmission licensee before the High Court claimed that in the Writ Petition, it has not stated that CERC does not have jurisdiction but has challenged the exercise of jurisdiction by CERC, which is not permissible in terms of availability of alternate remedy under Section 111 of Electricity Act, 2003. The High court admitted the said Writ Petition, which was challenged by Inter-State Transmission Licensee before the Supreme Court.

89. The Supreme Court held that sources of power for enactment of a regulation under Section 178 and regulatory orders under 79(1) are different. The former emanates from the power of delegated legislation whereas the latter is an ad hoc power which is limited to the specific parties and the situation in context of which order is given and orders under section 79 (1) are appealable under Section 111 of Electricity Act. The Supreme Court held that CERC was empowered under Section 79 of the Electricity Act, 2003 to pass such orders in the absence of specific regulations, and that its order was regulatory, not ultra vires. Thus, CERC is empowered to order for imposition of transmission charges on the party

whom delay is attributable and leaving the issue of consideration of liability of payment of transmission charges on intra -State transmission licensee in the specific facts of the case before appropriate authority i.e. APTEL, should Intra-State Transmission licensee choose to prefer an appeal before APTEL under Section 111 of the Electricity Act 2003. The High Court should not have entertained the writ petition given the availability of an alternative statutory remedy. Accordingly, the Supreme Court allowed the appeals and set aside the High Court's decision.

90. Let's us analyse the judgements relied upon by the Learned counsel for Discoms and their applicability in present case regarding the jurisdiction of the State Commission in denying premium paid under Bridge Linkage. In "***Municipal Corporation of Delhi vs Gagan Narang***", **2025 SCC online SC 19**, the broad outcome is that bodies like the Delhi Electricity Regulatory Commission (DERC) are empowered to regulate and approve tariffs for such WTE projects—even when project proponents are non-licensee entities fulfilling statutory obligations. In the "***PTC Vs CERC***", **(2010) 4 SCC 603**, broadly it has been held that "to regulate is an exercise which is different than making Regulations, and accordingly CERC is required to levy fee for the purpose of electricity Act 2003; an order imposing regulatory fee could be passed on even in the absence of Regulations. Thus, making of Regulation under Section 178 is not a precondition before taking any steps under Section 79 (1). However if there is a Regulation under Section 178 in that regard, the order under Section 79 has to be in consonance with such Regulation. In "***Power Grid Vs Madhya Pradesh***", **2025 SCC online SC 1128**, the Supreme Court held that sources of power for enactment of a regulation under Section 178 and regulatory orders under 79(1) are different and power under 79(1) is an ad hoc power which is limited to the specific parties and

the situation in context of which order is given and orders under section 79 (1) are appealable under Section 111 of Electricity Act. The Supreme Court held that CERC was empowered under Section 79 of the Electricity Act, 2003 to pass such orders in the absence of specific regulations, and that its order was regulatory, not ultra vires.

91. We take note that Section 61 of Electricity Act, 2003 deals with the jurisdiction of Appropriate Commission to specify terms and conditions for determination of Tariff and to frame Tariff Regulation accordingly; Section 62 of the Electricity Act is with regard to determination of Tariff, while Section 86 of the Electricity Act deals with the Functions of the State Commission. Learned counsel for Telangana Discoms has not drawn our attention to any specific provision of the Electricity Act 2003, which provides for determination of cost of coal by the Electricity Regulator. The State Commission has already framed the Tariff Regulations i.e. TSERC Regulations 2019 specifying Terms and conditions of Generation Tariff, applicable in present case, under the aegis of Electricity Act 2003, as referred to in above paragraphs, which has specified that landed cost of coal is to be considered while calculating the Energy Charge Rate, and it does not mention anything about determination of such landed cost of coal by State Commission.

92. In the present case, Regulations have already been framed by State Commission specifying various parameters for tariff determination with no specific provision with regard to determination of coal price while considering landed cost of coal in Energy Charge Rate; Post Colliery 2000 order, coal companies are authorised to fix coal price and as such there is no discrimination in price of coal charged by SCCL to its STPP under bridge linkage as compared to its other customers, so as to unduly enrich

itself. State Commission cannot therefore, be considered as having jurisdiction to determine the landed cost of coal and deny premium charged by coal companies as part of landed cost of coal. From the referred judgements, nowhere it can be inferred that powers beyond the provisions of the Electricity Act can be exercised by the Central/State Commission, as their powers are confined to the provisions of the Electricity Act. Learned Counsel for Telangana Discoms has not referred to any specific provision in Electricity Act, authorising State Commission to decide coal price. Therefore under its power to regulate power purchase cost of Discoms, State Commission cannot regulate such cost on which it does not have jurisdiction and accordingly judgements referred by Telangana Discoms (“**Municipal Corporation of Delhi v Gagan Narang, (2025) SCC OnLine SC19, “PTC India Ltd V Central Electricity Regulatory Commission (2010)4 SCC 603”** and “**Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Transmission Co. Ltd. & Ors.’, 2025 SCC OnLine SC 1128)**), in our considered view, are inapplicable to the facts and circumstances of the present case.

93. As such, we find that State Commission has taken contrary stand with regard to pass through of premium over coal price under Bridge Linkage, while denying the same in **Impugned Order 1** dated 01.04.2024 and allowing the same in **Impugned Order 2** dated 28.06.2024 in True up for FY 2022-23 and MYT for FY 2024 -25 to FY 2028 -29.

94. In view of above deliberations, we set aside the **Impugned Order 1** dated 01.04.2024 which denied the Premium paid over the coal price under Bridge Linkage by STPP to SCCL as pass through in Energy Charge Rate and dispose of Appeal No. 256 of 2024 in these terms. Under

Impugned Order 2 dated 28.06.2024, the issue of computation of 'K-factor' for the purpose of approval of R&M expenses, is remanded back to State Commission and Appeal 19 of 2025 is disposed of in these terms. All associated IAs in both the Appeals are also disposed of.

Pronounced in open court on this the 28th day of August 2025.

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

Reportable / Non-Reportable

ts/ag/dk