IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

Appeal No. 200 of 2016
Appeal No. 148 of 2016
Appeal No. 201 of 2018
&
Appeal No. 339 of 2021

Dated: 03.09.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

Appeal No. 200 of 2016

In the matter of:

1. The South Indian Sugar Mills Association
rep by its Secretary Thiru S. Chellappa,
"Karumuthu Centre" No 634,
Anna Salai, Nandanam, Chennai - 600 035, Tamil Nadu

2. Ponni Sugars (Erode) Limited,
ESVIN HOUSE,
No.13, Rajiv Gandhi Sala (Old Mahabalipuram Road),
Perungudi, Chennai — 600096

3. EID Parry (India) Limited,
"Sugar Division", Dare House, No.234,
NSC Bose Road,
Parry's Corner, Chennai 600001

4. Rajshree Sugars and Chemicals Limited,
No.7, 3rd Street, Ganapathy Colony, Teynampet,
Chennai 600 018

5. Kothari Sugars & Chemicals Limited,

Kothari Buildings, No.115,
Utthamar Gandhi Salai
Nungambakkam, Chennai 600 034

6. Sakthi Sugars Limited,
180, Race Course Road, PB No.3775,
Coimbatore 641 018

7. Dharani Sugars & Chemicals Limited,
PGP House, 57, Sterling Road,
Nungambakkam,
Chennai 00 034

8. Bannari Amman Sugars Limited,
No.1212, Trichy Road, Coimbatore 641018

9. Dhanalakshmi Srinivasan Sugars Private Limited,
274-C, Thuraiyur Road,
Perambalur, 621 212

10. Madras Sugars Limited,
No.1212, Trichy Road, Coimbatore 641 018 ….**Appellant(s)**

Versus

1 Tamil Nadu Electricity Regulatory Commission,
No.19A, Rukmini Lakshmipathy Road, (Marshalls Road),
Egmore, Chennai – 600008

2 Tamil Nadu Generation & Distribution Corporation Ltd.,
NPKRR Maaligai, No.144, Anna Salai,
Chennai — 600 002

3. Tamil Nadu Transmission Corporation Ltd.,
No.144, Anna Salai,
Chennai — 600 002 **.... Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran, Sr. Adv.

Ms. Sonakshi Malhan for Appellant 1 to 6,8 & 9

Mr. Senthil Jagadeesan
Mr. Rahul Balaji for Appellant 7 &10

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for Res-1

Ms. Anusha Nagarajan for Res-2

Appeal No. 148 of 2016

In the matter of:

1. The South Indian Sugar Mills Association
rep by its Secretary Thiru S. Chellappa,
"Karumuthu Centre" No 634,
Anna Salai, Nandanam, Chennai - 600 035, Tamil Nadu

2. Ponni Sugars (Erode) Limited,
ESVIN HOUSE,
No.13, Rajiv Gandhi Sala (Old Mahabalipuram Road),
Perungudi, Chennai — 600096

3. EID Parry (India) Limited,
"Sugar Division", Dare House, No.234,
NSC Bose Road
Parry's Corner, Chennai 600001

4. Rajshree Sugars and Chemicals Limited,
No.7, 3rd Street, Ganapathy Colony, Teynampet,
Chennai 600 018

5. Kothari Sugars & Chemicals Limited,
Kothari Buildings, No.115,
Utthamar Gandhi Salai
Nungambakkam, Chennai 600 034

6. Sakthi Sugars Limited,
180, Race Course Road, PB No.3775,
Coimbatore 641 018

7. Dharani Sugars & Chemicals Limited,
PGP House, 57, Sterling Road,
Nungambakkam,
Chennai 00 034

8. Bannari Amman Sugars Limited,
No.1212, Trichy Road, Coimbatore 641018

9. Dhanalakshmi Srinivasan Sugars Private Limited,
274-C, Thuraiyur Road,
Perambalur, 621 212

10. Madras Sugars Limited,
No.1212, Trichy Road, Coimbatore 641 018

11. Shree Ambika Sugars Ltd.,
112 Uthamar Gandhi Salai, Chennai 600034

12. Terra Energy Ltd.,
112 Uthamar Gandhi Salai,
Chennai 600034 …. **Appellant(s)**

Versus

1 Tamil Nadu Electricity Regulatory Commission,
No.19A, Rukmini Lakshmipathy Road, (Marshalls Road),
Egmore, Chennai – 600008

2 Tamil Nadu Generation & Distribution Corporation Ltd.,
NPKRR Maaligai, No.144, Anna Salai,
Chennai — 600 002 **.... Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran, Sr. Adv.
Ms. Sonakshi Malhan for Appellant

1 to 6, 8 to 9

Mr. Senthil Jagadeesan
Mr. Rahul Balaji for Appellant 7, 10 to 12

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for Res-1

Ms. Anusha Nagarajan for Res-2

Appeal No.201 of 2018

In the matter of:

The South Indian Sugar Mills Association
rep by its Secretary Thiru S. Chellappa,
"Karumuthu Centre" II Floor, No 634,
Anna Salai, Nandanam, Chennai - 600 035 **…. Appellant**

Versus

1 The Secretary,
Tamil Nadu Electricity Regulatory Commission,
TIDCO Office Buidling,
No.19 A, Rukmini Lakshmipathy Salai, (Marshalls Road),
Egmore, Chennai – 600008

2 Tamil Nadu Generation & Distribution Corporation Ltd.,
Rep. by its Chairman and Managing Director,
144, Anna Salai,
Chennai — 600 002 **.... Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran, Sr. Adv.
Mr. Rahul Balaji
Ms. Sonakshi Malhan

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for Res-1

Ms. Anusha Nagarajan for Res-2

Appeal No.339 of 2021

In the matter of:

The South Indian Sugar Mills Association
rep by its Secretary General,
"Karumuthu Centre" II Floor, No 634,
Anna Salai, Nandanam, Chennai - 600 035 **…. Appellant**

Versus

1 Tamil Nadu Electricity Regulatory Commission,
Represented by its Secretary,
4th Floor, SIDCO Corporate Office Building,
Thiru. Vi.Ka. Industrial Estate,
Guindy, Chennai – 600 032, Tamil Nadu

2 Tamil Nadu Generation & Distribution Corporation Ltd.,
Rep. by its Chairman and Managing Director,
144, Anna Salai,
Chennai — 600 002 **.... Respondent(s)**

Counsel for the Appellant(s) : Mr. M. G. Ramachandran, Sr. Adv.
Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s) : Ms. Anusha Nagarajan for Res-2

JUDGEMENT

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

1. The Appellant, i.e., South Indian Sugar Mills Association and various sugar mills in the state of Tamil Nadu, has filed this batch of appeals. The Appellants are challenging the following Orders passed by Tamil Nadu Electricity Regulatory Commission (in short "State Commission" or "TNERC"):

Sl.	Appeal No.	Impugned Order in Petition No.	Dated
1.	200 of 2016	RA No. 3 of 2014	23.02.2016
2.	148 of 2016	4 of 2016	31.03.2016
3.	201 of 2018	4 of 2018	28.03.2018
4.	339 of 2021	10 of 2020	16.10.2020

Description of the Parties

2. In this batch of appeals, the 1st Appellant is an Association of private sector Sugar Mills, which has set up Bagasse-based Cogeneration Power Projects, in the State of Tamil Nadu. All the members of the Association are captive consumers of the electricity generated from their respective Bagasse-based Cogeneration Plants and have also entered into Power Purchase Agreements with the 2nd Respondent for the sale of surplus electricity.

3. The 2nd to 10th Appellants are sugar mills in Tamil Nadu who have

established cogeneration plants. The 2nd Appellant's cogeneration plant was established on 17.08.2012, i.e., after 01.08.2012.

4. The 3rd to 10th Appellants had set up their co-generation plants after 15.05.2006 but before 01.08.2012. The 3rd to 8th Appellants had also established cogeneration plants before 15.05.2006.

5. The Respondent No. 1, Tamil Nadu Electricity Regulatory Commission (TNERC), established under Section 82 of the Electricity Act, 2003, inter alia, is the appropriate Commission to adjudicate the issue.

6. The Respondent No. 2, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) is the distribution licensee for the State of Tamil Nadu and is wholly owned by the State Government and is the successor of the erstwhile Tamil Nadu Electricity Board, formed pursuant to its unbundling under a transfer scheme, in terms of Section 131 of the Electricity Act, 2003.

7. The Respondent No. 3, Tamil Nadu Transmission Corporation Limited (TNTCL), is the transmission licensee inter alia owned by the Government of Tamil Nadu. It was established in November 2010, as a result of restructuring the Tamil Nadu Electricity Board, and is a subsidiary of TNEB Limited.

Factual Matrix of the Case(s)- Appeal No. 200 of 2016

(As submitted by the Appellants)

8. Appellant Nos. 3 to 8 established cogeneration plants in their sugar mills using bagasse as fuel and entered into Power Purchase Agreements (PPAs) with TNEB for the sale of surplus electricity. TNERC, through Tariff Order No. 3 of 2006 dated 15.05.2006, determined a levelised single-part tariff of ₹3.16/kWh for bagasse-based cogeneration plants commissioned on or after that date, with a control period of three years. It was clarified that existing PPAs signed before 15.05.2006 would remain valid.

9. Further, TNERC notified the "Power Procurement from New and Renewable Sources of Energy Regulations, 2008" on 08.02.2008, applying only to generating plants with PPAs signed after 15.05.2006. However, it permitted mutual renegotiation of pre-15.05.2006 PPAs in line with the new regulations. None of the Appellants with pre-15.05.2006 agreements chose to renegotiate their contracts.

10. TNERC issued Tariff Order No. 3 of 2009 dated 06.05.2009, even before the expiry of the control period under Order No. 3 of 2006 (which was effective from 15.05.2006). This 2009 Order introduced a two-part tariff structure (Fixed and Variable Cost) for bagasse-based cogeneration plants. The Fixed Cost was determined for 12 years for plants commissioned between 15.05.2006 and 18.09.2008, and for 20 years for plants commissioned thereafter. The control period was initially up to 31.03.2011, and was later extended up to 31.07.2012.

11. Subsequently, Tariff Order No. 7 of 2012 dated 31.07.2012 was issued. It determined fixed Cost for 20 years for plants commissioned on or after 01.08.2012, and Variable Cost for the control period FY 2012-13 and 2013-14 for

plants commissioned on or after 15.05.2006.

12. Aggrieved by this order, the Appellants filed Appeal No. 199 of 2012 before this Tribunal, challenging:

- The procedural aspects of the order's issuance;
- The determination of fixed cost for post 01.08.2012 plants, particularly with regard to parameters like capital cost, PLF, O&M, insurance, and working capital;
- The fuel and variable cost determination for plants commissioned between 15.05.2006 and 31.07.2012, as well as post 01.08.2012 plants; and
- The application of the order to plants commissioned prior to 15.05.2006, especially the applicability of Para 8.2 of the order to all bagasse-based cogeneration plants regardless of commissioning date.

13. This Tribunal, by judgment dated 04.09.2013, partly allowed the appeal and remanded specific issues back to TNERC for fresh determination.

14. Aggrieved by the judgment dated 04.09.2013 in Appeal No. 199 of 2012, the Appellants filed Review Petition No. 13 of 2013, which was partly allowed by this Tribunal through its Review Order dated 30.06.2014. Pursuant to the directions in both the original judgment and the review order, the TNERC was required to re-determine the tariff on several specific issues, including: capital cost, Apportionment of cost between the sugar and power plants, Fuel cost, Incentive for generation beyond normative PLF, O&M charges, Working capital, applying

CERC norms (two months' receivables and one-month rebate), Re-determination of fixed and variable cost components, and Carrying cost (interest on tariff differential from due date to actual payment).

15. Despite APTEL setting a 180-day timeline, the Commission failed to act within that period. Consequently, the 1st Appellant sent a letter dated 25.11.2014, urging the initiation of remand proceedings and placing their submissions on record. TNERC subsequently initiated proceedings as R.A. No. 3 of 2014.

16. TNERC then passed the impugned order on 23.02.2016, arising from the remand of Tariff Order No. 7 of 2012.

17. Thus, being aggrieved by the Impugned Order dated 23.02.2016 passed by the TNERC in the R.A No. 3 of 2014, the Appellant has preferred the present Appeal.

Our Observations and Analysis

18. Appeal No. 200 of 2016 shall be the lead Appeal in this judgment.

19. The Appellant has claimed the following relief in the Appeal No. 200 of 2016 before us:

> *"(a) Allow the Appeal in terms of the submissions in the appeal and/or the observations/directions in the Hon'ble Tribunal's*

judgment dated 04.09.2013 and Order dated 30.06.2014 and/or otherwise; and/or

(b) Determine the capital cost at Rs 6 crores/MW as sought by the Appellants; or alternatively, to determine such other capital cost for the purposes of determination of tariff as it considers fit on the basis of the observations/directions of the Hon'ble Tribunal in its judgment dated 04.09.2013 in Appeal No 199 of 2012; and

(c) Determine the fuel cost at Rs 2,273 per MT on the equivalent heat value method based on the cost of imported coal as available to the co-generating plants, or alternatively at Rs 1,600/- per MT based on the market price of bagasse as discovered by the market mechanism of The Tamil Nadu Co-operative Sugar Federation Ltd if it is higher than the fuel cost on equivalent heat value method on the basis of the cost of any other coal, with an annual escalation of 5% year-on-year; and

(d) Determine the O & M charges at 3.8% of the capital cost as determined by this Hon'ble Tribunal in this appeal with an annual escalation at 5.72% year-on-year; and

(e) Determine that the price for the energy above the threshold PLF be the same as that within the threshold PLF in accordance with the principles and methodologies of the CERC Regulation

2012; or alternatively, the Hon'ble to determine an incentive of Re 1/- per kWh or such other incentive as is significantly and meaningfully higher than those allowed to conventional power plants; and

(f) Set aside the re-determination of the station heat rate at 3240 kcaUkWhr as being beyond the scope of remand and without jurisdiction; or alternatively to determine and hold that the station heat rate for the plants established prior to 01.08.2012 would remain unchanged at 3700 kcal/kWhr and to re-determine the station heat rate only for plants established on or after 01.08.2012 at 3355 kcals/kWhr; and

(g) Consequently to re-determine, or cause to be re-determined, the fixed cost component of tariff for the plants established on or after 01.08.2012 and the variable cost component(s) of tariff for the plants established on or after 15.05.2006; and

(h) To allow carrying cost by way of interest on the differential amount between the tariff finally determined and paid and the amounts paid under the impugned tariff originally determined at the SBI Bank Rate plus 350 basis points with monthly rests; and

(i) and / or pass such other order as this Hon'ble Tribunal may deem fit and proper so that justice may be done."

20. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

Common Issues in the batch of appeals:

1. *Whether the capital cost fixed by TNERC is correct, and if it properly considers different plant configurations, site-specific costs, and whether costs for additional facilities (such as air-cooled condensers and evacuation) should be included?*
2. *Whether the fuel cost for bagasse has been justly determined using the correct method (equivalent heat value, market price, or otherwise), and whether the escalation applied is appropriate?*
3. *Whether the change/revision in Station Heat Rate (SHR) by TNERC is justified, both in scope and substance?*
4. *Whether the O&M charges (percentage and escalation) have been determined appropriately, reflecting industry norms and CERC benchmarks?*
5. *Whether the incentive provided for generation above the normative PLF is adequate and compliant with regulatory and Appellate directions?*

6. *Whether the Appellants are entitled to Carrying Cost (interest) for the delayed payment of revised tariffs?*

Specific Issues:

Appeal No. 201 of 2018:

7. *Whether the imposition and quantum of Parallel Operation Charges (POC) and the dispensation regarding Related Issues (as specified in the relevant Tariff Orders) for Bagasse-Based Co-Generation Plants are justified and lawful?*

Appeal No. 148 of 2016 and 339 of 2021:

8. *What is the appropriate effective date for the revised tariff and its components as determined by the Commission pursuant to the remand, and whether prospective or retrospective operation is warranted?*

21. Having considered the competing arguments, the earlier directions of this Tribunal (including the orders dated 04.09.2013 and 30.06.2014 in the connected remand proceedings), we now proceed to adjudicate upon each of the issues as pressed before us.

Issue No. 1: *Whether the capital cost fixed by TNERC is correct, and if it properly considers different plant configurations, site-specific costs, and whether costs for additional facilities (such as air-cooled condensers and evacuation) should be included?*

22. The Appellants have contended that the capital cost fixed by TNERC at Rs. 5.10 crores per MW is neither comprehensive nor reflective of the ground realities prevailing in Tamil Nadu. It is submitted that TNERC adopted a uniform or generic capital cost figure, disregarding the diversity in plant configurations and sizes, which govern the capital expenditure required. According to the Appellants, the Indian Renewable Energy Development Agency (IREDA) has evaluated the normative capital costs for different bagasse mill capacities, for instance, Rs. 5.53 crores/MW for 2500 TCD plants and Rs. 5.22 crores/MW for 3500 TCD plants, thereby establishing that a single capital cost norm is inadequate.

23. Further, submitted that nearly all bagasse-based cogeneration plants commissioned after 2009 in Tamil Nadu employ high-pressure boilers operating at around 110 ata and 540°C, which inherently entails higher capital investment compared to lower-pressure units.

24. Regarding site-specific installations, the Appellants emphasize that due to water scarcity prevalent in Tamil Nadu, installation of air-cooled condensers is often mandatory. This additional requirement is known to add approximately 4 to 5% to the capital cost, as recognized in IREDA's guidelines and the Statement of Reasons (SOR) of the Central Electricity Regulatory Commission (CERC).

25. However, TNERC failed to account for this extra expenditure in the fixed capital cost. Moreover, the Appellants assert that evacuation infrastructure costs beyond the line isolator on the outgoing feeder, when borne by the generators/sugar mills, must also be included as part of the admissible capital cost for tariff determination, consistent with the directions of this Tribunal.

26. The Appellants support their submissions with factual data, notably a certificate from a Chartered Accountant for Ponni Sugars (Erode) Limited, showing an actual capital cost of Rs. 5.96 crores/MW (excluding land) for a 110 ata/540°C configuration plant, which is higher than TNERC's determined value.

27. Further submitted that various other State Electricity Regulatory Commissions, including CERC, Maharashtra, and Karnataka, have recognized higher capital costs for plants with such high-pressure configurations, reinforcing their position.

28. The relief sought is that TNERC reconsider and revise upwards its capital cost norm, reflecting the plant-specific technical variations and site-related mandatory infrastructure, such as air-cooled condensers and evacuation costs.

29. Further, the Appellants refer to the directions issued by the Tribunal dated 04.09.2013 in Appeal No. 199 of 2012 and the subsequent Review Order dated 30.06.2014, which mandate that if a generator is called upon to bear evacuation costs or incur expenditures on air-cooled condensers, the same must be reflected

in the capital cost for the purpose of tariff. They also stress that TNERC must consider state local conditions, along with all documentary evidence submitted by the generators during remand proceedings, since merely adopting CERC's normative figures without contextual variation would be inappropriate.

30. The Appellants therefore urged the Tribunal to direct TNERC to fix capital cost at a higher rate, inclusive of the additional costs for air-cooled condensers and evacuation lines, and to adopt a mechanism allowing for case-specific cost approvals.

31. TNERC submitted that the capital cost figure of Rs. 5.10 crores per MW fixed in its Order No. 4 of 2016 and subsequent orders is justifiable, reasonable, and in conformity with law. The Commission contended that a single normative capital cost for all bagasse cogeneration plants in Tamil Nadu is appropriate and necessary for regulatory clarity and administrative simplicity. TNERC states that most plants in the State conform broadly to the 110 ata/540°C high-pressure boiler configuration, which it appropriately considered in its determination.

32. On the issue of varying plant capacities and configurations, TNERC acknowledged the submissions of IREDA but emphasized that the Commission examined the data on local plant capacities and configurations and decided that a generic capital cost norm best serves the purpose under the present circumstances. It argued that the capital cost figure fixed aligns with or is even on the higher side compared to the capital costs adopted by other State Electricity Regulatory Commissions and is thus conservative.

33. Regarding the costs for air-cooled condensers and evacuation lines, TNERC submitted that, except for Ponni Sugars, the Appellants failed to provide complete and comprehensive plant-wise data to demonstrate the actual cost or necessity of air-cooled condensers or extended evacuation infrastructure.

34. Without cogent evidence of the mandatory nature and universal applicability of such costs across all plants in Tamil Nadu, TNERC maintained that it could not incorporate an across-the-board escalation in the capital cost for these components. The Commission stated that it duly considered the directions of the Tribunal but pointed out that in the remand proceedings, no conclusive details or aggregated data supported the inclusion of these additional costs normatively for all plants. As such, the normative capital cost fixed does not violate the Tribunal's directions.

35. TNERC emphasized that it took into account the Statement of Reasons of the CERC regulations, the suggestions of IREDA, and the actual plant configuration prevailing in the State while determining the capital cost. It underlined that the Commission's tariff order is grounded in the principles of commercial prudence, balancing the interests of generators and consumers in Tamil Nadu. TNERC further submitted that the Tribunal's directives require a reasoned and evidentiary approach, not an automatic escalation based on isolated instances. The Commission also contended that other State Commissions' capital cost norms are not binding and merely serve as references.

36. TANGEDCO highlighted that a uniform capital cost for all plants, especially given the predominant high-pressure boiler technology operational in the State post-2009, is appropriate for ensuring tariff transparency and administrative efficiency. The Respondent utility asserted that it aligns with the Central Electricity Regulatory Commission's approach and sound tariff principles.

37. On the matter of actual costs for air-cooled condensers and evacuation lines, TANGEDCO argued that the Appellants have not presented sufficient evidence establishing the general necessity or installation of these costly components in all relevant plants. Except for a specific example of Ponni Sugars submitting a CA certificate that evidences such costs, TANGEDCO contended that multiple plants have not demonstrated such expenditures, thereby precluding normative escalation. TANGEDCO also stressed that including these additional costs on a blanket basis without detailed proof would unfairly burden electricity consumers.

38. Regarding adherence to Tribunal's directions, TANGEDCO submitted that TNERC's approach is compliant insofar as it considers the SOR of the CERC, local circumstances, and IREDA recommendations, applying them in an evidence-based manner as opposed to speculative or uniform augmentations. It further submitted that other State Commissions' practices are only guiding, not binding on TNERC, and differences in local conditions justify variations in normative capital cost fixation.

39. It is undisputed that the State Commission is obliged to fix capital costs reflecting the technical configurations and site conditions of the bagasse

cogeneration plants.

40. The Appellants have demonstrated that most plants commissioned after 2009 employ a high-pressure boiler configuration of 110 ata and 540°C, which commands a higher capital cost than older, lower-pressure plants. IREDA's normative cost segregated by mill capacities further substantiates the existence of variability in capital cost.

41. **TNERC's adoption of a uniform capital cost of Rs. 5.10 crores/MW for all such plants, therefore, while administratively convenient, appears to fall short of fully incorporating this nuance.**

42. On the contentious issue of additional costs for air-cooled condensers and evacuation facilities, we note the specific directions by this Tribunal that such demonstrable costs borne by a generator must be treated as part of the admitted capital cost for tariff fixation. The relevant extract of the decision of this Tribunal vide judgment dated 04.09.2013 in Appeal No. 199 of 2012 and the subsequent Review Order dated 30.06.2014, is as under:

> ***"5.*** *The following grounds have been urged by the learned Counsel for the Appellants in this Appeal:*
>
> *(a) The Public Notice which was issued in the present case was vague and non- specific. Admittedly, the consultative papers containing the specific proposal and particulars to be decided in these proceedings to enable the public to*

respond, were not issued. Due to this, the Appellants were gravely prejudiced and thereby the proceedings were vitiated by procedural irregularity and violation of the principles of natural justice.

(b) The State Commission had not given appropriate consideration to the 'Promotional aspects as mandated by law'.

(c) The State Commission erroneously determined the lower normative capital cost at Rs.4.20 Crores/MW by ignoring the boiler configuration and use of air cooled condensers.

(d) The State Commission ought to have determined the Capital Cost of Rs.5.53 Crores/MW + 5% incre ase for use of air cooled condensers.

(e) The suggestions of the Appellants to fix the Capital cost of Rs.5.53 Crores/MW plus 5% considering that the Air cooled condensers are being used, was not given due consideration.

(f) The State Commission erroneously determined the Fuel Cost at Rs.1050 per MT for the year 2011-12 by following the impermissible methodology of 50% of the cane price plus transport cost.

(g) The State Commission was not justified in declining to fix the PLF at 55% on average of five years. It ought to have fixed the PLF on average of 5 years at 55%.

(h) The State Commission was not justified in allowing the incentive for generation beyond the threshold PLF at a mere 10% of the fixed cost.

(i) The State Commission was not justified in reducing the Operation and Maintenance Charges to 3% as against 4.6% provided in the 2009 order.

(j) The State Commission was not justified in considering only 30 days' receivables for the computation of the working capital and also allowing 1% rebate if the bills were settled within one month.

(k) The State Commission ought to have considered two months receivables for computation of the working capital and only then allowed the rebate at 1% for payment within 30 days.

(l) The State Commission was not justified or correct in applying the decisions on 16 items relating to CDM benefits, reactive power charges, start-up power etc., to the cogeneration plants set-up before the impugned order including those set-up before 15.5.2006 contrary to the Regulations, 2008.

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*21. The **3rd issue** is with regard to **Capital Cost**.*

22. The State Commission has determined the normative capital cost of Rs.4.20 Crores per MW inclusive of evacuation cost for the co-generation plants established on or after 1.8.2012 by adopting

the normative capital cost as determined by the Central Commission in its 2012 Regulations.

23. *According to the Appellant, this determination is erroneous and unreasonable. It has been pointed out that in the order passed by the State Commission in the Order No.3 of 2009 dated 6.5.2009, the State Commission determined the Normative Capital Cost at Rs.4.67 Crores Per MW but the State Commission failed to consider the effect of escalation and increase in the cost during the intervening period of more than 3 years despite the fact that IREDA had suggested to the State Commission to fix the Capital Cost at Rs.5.5 Crores per MW for boiler configuration of 110 bar/540° C .*

24. *The Appellant further pointed out that the inclusion of evacuation cost in the capital cost fixed at Rs.4.20 Crores per MW, is contrary to the Central Commission's Regulations, 2012 and that therefore, it is clear that the State Commission fixed the Capital Cost without proper application of mind.*

25. *According to the Respondents, the State Commission examined the details which were available in different domain and also carefully studied the parameters considered by the Central Commission and adopted the capital cost of Rs.4.20 Crores per MW. It is further pointed out by the learned Counsel for the State Commission that Capital Cost considered by the Central Commission in the previous tariff fixation in 2009 was higher at Rs.4.45 Crores per MW but in the year 2012, the Central*

Commission fixed the Capital Cost at Rs.4.20 Crores per MW on the basis of the market price and as such, the State Commission has followed the Central Commission's Regulations and fixed the Capital Cost at Rs.4.20 Crores per MW which is higher than the rates fixed by the other State Commissions.

26. *We have carefully considered the submissions of the learned Counsel for the parties.*

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32. *It is further pointed out by the Appellants that all these Plants have air cooled condensers in order to save water and also to comply with Tamil Nadu Pollution Control Board norms. The State Commission is bound to take into consideration the actual plant configuration which is prevailing in Tamil Nadu. In the order dated 6.5.2009 passed by the State Commission it had determined the normative capital cost of Rs.4.67 Crores/MW. That was excluding evacuation cost. The State Commission in the present order did not consider the effect of inflation and increase in the costs during the intervening period of more than 3 years.*

33. *It is pointed out by the Appellants that the State Commission in the impugned order reduced the capital cost to Rs.4.20 Crores/MW from the Capital Cost of Rs.4.67 Crores/MW in the earlier order dated 6.5.2009. The State Commission has simply adopted the norm for capital cost specified by the Central Commission without considering the assumptions and the*

configuration of boiler. The State Commission has blindly gone by the CERC Regulations which were framed for a different and inapplicable configuration. The State Commission should have had due regard to the discussions of the Central Commission in the statement of objects and reasons and accordingly applied the principles and methodology therein reasonably while fixing the Capital Cost in Tamil Nadu on the basis of the salient features as relevant to Tamil Nadu.

34. *In Tamil Nadu, the interconnection point with the grid is at the line isolator on outgoing feeder on HV side of the Generator transformer at the generating plant premises. The cost of the evacuation line from there to the licensee's substation, which has been set up by the licensee is collected from the Sugar Mill. This aspect ought to have been taken into consideration by the State Commission. The State Commission cannot now justify its determination of capital cost by referring to the decisions of other State Commissions. The orders of other State Commissions are neither a binding decision nor a guiding principle for fixing the capital cost. It is the duty of the State Commission to make determination of the capital cost on its own upon the materials available before it after considering the local conditions.*

35. *As stated above, the State Commission cannot blindly follow the norms specified in the CERC Regulations without considering the assumptions behind the determination of the normative parameter. The CERC Regulations is only guiding in nature. As*

the CERC has given the Statement of Reasons, the same would form part of the guiding principles but the said principles have to be considered in the context of local /State circumstances.

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36. In view of the discussions made above, the rate of capital cost fixed by the State Commission is not correct. The State Commission has to consider the materials furnished by the Appellants as well as the suggestions made by IREDA, and the explanation given by the Central Commission in the statement of objects and reasons of the 2012 Regulations and fix the rate of capital cost on taking into consideration the local/State circumstances. The Appellants are also directed to furnish the information sought by the State Commission regarding steam used in the power generation and sugar production for deciding apportionment of cost between sugar plant and power generation.

37. Accordingly, this finding is set aside and the matter is remanded to the State Commission for fresh consideration on this issue."

43. **Undisputedly, the State Commission has failed to comply with the above decision/ direction passed by this Tribunal vide the above-said Judgment. This Tribunal has considered all the points that are also raised now by the Appellant before setting aside the Order impugned in the Appeal No. 199 of 2012.**

44. **We thus find the Impugned Order suffers from infirmities and deserves to be set aside.**

45. The State Commission is bound to consider the prudent costs based on technological advancements and their implementation as part of the projects.

46. The cost of air-cooled condensers, the evacuation infrastructure, etc., mandatory as part of the project, should have been considered by the State Commission in compliance with the observations made in the judgment dated 04.09.2013.

47. However, it is equally apparent from the submissions that evidence to prove universal or even widespread installation and cost-bearing of these facilities across Tamil Nadu's bagasse plants has not been forthcoming except in a few instances. In the absence of firm proof establishing the mandatory nature of these expenditures in the collective context of the State, the Commission's reluctance to embed such costs normatively needs further examination.

48. We also find that TNERC's reference to and reliance on the CERC's Statement of Reasons and IREDA's recommendations in the absence of project-specific data cannot be considered as a prudent regulatory exercise. While the Tribunal's prior orders mandate consideration of such materials, it also mandates that blind acceptance of such norms cannot be accepted by ignoring the actual evidence or local operational data.

49. Therefore, we are satisfied that TNERC's fixation of the normative capital cost at Rs. 5.10 crores/MW is erroneous. Further, our earlier directives state that where generators bear additional site-specific costs for air-cooled condensers or beyond-standard evacuation infrastructure, TNERC must provide a credible mechanism for such costs to be included in capital cost and hence tariff, upon production of proper evidence.

50. Accordingly, we hold that the present capital cost fixation is not sustainable, conditional on TNERC's explicit admission of actual additional costs proven by individual generators for air-cooled condensers and evacuation beyond the interconnection point. We direct TNERC to institute a transparent and time-bound process to recognize such additional claims to safeguard the interests of project developers and consumers alike.

51. **Therefore, the capital cost of Rs. 5.10 crores per MW fixed by TNERC for Bagasse-based Co-generation plants is arbitrary and without prudent norms, reflecting the prevailing high-pressure boiler configuration and regulatory benchmarks. The TNERC is directed to admit and incorporate actual, documented costs incurred for air-cooled condensers and extended evacuation facilities borne by the generators on account of site-specific necessities.**

52. **TNERC shall devise and implement a credible and efficient procedure permitting generators to submit supplementary claims for such costs, ensuring compatibility with tariff principles and natural justice. This**

mechanism shall operate in a time-bound manner post issuance of this judgment.

Issue No. 2: *Whether the fuel cost for bagasse has been justly determined using the correct method (equivalent heat value, market price, or otherwise), and whether the escalation applied is appropriate?*

53. The Appellants, primarily the South Indian Sugar Mills Association (SISMA) and other associated cogeneration plants, have challenged the methodology adopted by the Tamil Nadu Commission in determining the fuel cost for bagasse used in cogeneration plants. They contend that the Commission's fixation of the bagasse price at Rs. 1,408 per metric tonne (MT), derived from the cost of coal based on the avoidance principle, is neither appropriate nor consistent with the factual realities in Tamil Nadu.

54. The Appellants urge that the Commission should have applied either the market price or the equivalent heat value method as laid down by the Tribunal in its earlier judgments. They point out that the market price of bagasse in Tamil Nadu, as evidenced by sales to paper mills (notably Tamil Nadu Newsprint and Papers Limited) and open market transactions, is significantly higher in the range of Rs. 1,600 to Rs. 2,700 per MT during relevant periods. Hence, merely benchmarking the price to coal consumed at thermal power plants within the State grossly undervalues the bagasse, which is a commercially valuable fuel and raw material whose opportunity cost must be reflected in the fuel cost.

55. Further, the Appellants submit that some of the member mills, such as Ponni Sugars, have resorted to purchasing domestic coal commercially (even imported coal) at prices far exceeding the normative costs fixed by TNERC. They contend that applying the equivalent heat value of such coal after accounting for calorific value and boiler efficiency yields a higher fuel cost figure (around Rs. 2,273 per MT or upwards) that properly reflects the economic cost borne by the generators.

56. The Appellants also emphasize the escalation factor applied to the fuel cost and suggest it should be commensurate with rising costs of alternative fuels and market-driven price adjustments, rather than a simplistic fixed percentage which may fail to capture real cost dynamics.

57. The Appellants rely heavily on the observations of this Tribunal in its judgments and remand directions whereby the Commission was directed to reconsider the fuel cost fixation incorporating these principles, especially recognizing the market value of bagasse where available, and the fact that sugar mills incur real costs by forgoing revenue from alternate sales of bagasse.

58. TNERC, while acknowledging the Appellant's submissions on fuel cost, firmly defends its methodology and determination. It submits that the fixation of bagasse price at Rs. 1,408 per MT was done based on the Central Electricity Regulatory Commission's principles and applicable regulations, where the equivalent heat value method considers the avoided cost of coal that the State Distribution Licensee would otherwise have burned.

59. TNERC relies on the fact that bagasse, being a by-product of sugar manufacturing, does not have an inherently fixed market price and is typically consumed internally. Therefore, consistent principles must apply throughout the State tariff determination for uniformity and predictability.

60. With respect to escalation, TNERC has applied a normative escalation rate of 5% aligned with industry practice and consistent with regulatory prudence.

61. TANGEDCO supports the Commission's stance on fuel cost. Further submitted that the Commission's reliance on the CERC's applicable normative rates and the equivalent heat value method is well-founded and legally sustainable.

62. The principle that the fuel cost in the cogeneration tariff must reflect the economic cost borne by the generating entity is settled. This cost encompasses not merely nominal procurement cost but also the opportunity cost arising from alternate uses or sales of fuel.

63. This Tribunal vide judgment dated 04.09.2013 has directed the State Commission to fix the correct Fuel Cost based on the materials available on record and the observations made therein. It also held that the Tribunal is not inclined to fix the Fuel Cost in this Appeal/Proceedings, though declaring that the Fuel Cost fixed in this impugned order is not correct. The relevant extract is quoted as under:

*" 41. The **4th issue** is relating to the **Fuel Cost**.*

42. According to the Appellants, the State Commission in the impugned order has fixed the Fuel Cost in a cryptic and arbitrary manner without giving any reasons. The prayer of the Appellant is that the Fuel Cost may be fixed at the rate of ***Rs.****2,085 per MT having regard to the cost of coal or in the alternative to fix the Fuel Cost not below Rs.1408 per MT with an annual escalation of 5%.*

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50. The CERC has adopted the equivalent heat value approach and determined the Fuel price for Tamil Nadu at Rs.1408/- per MT based upon the landed cost of coal for thermal stations in Tamil Nadu.

51. It is important to notice that the Central Commission had specifically observed in the Statement of Reasons that the respective State Commissions may consider the prevalent price of Bagasse if the same is higher than the price on equivalent heat value basis.

52. In this context, we shall now refer to Clause 4 (2) of the TNERC Regulations which provides as follows:

> *"While deciding the tariff for power purchase by distribution licensee from new and renewable sources based generators, the Commission shall as far as possible be guided by the principles and methodologies specified by"*
>
> *(a) Central Electricity Regulatory Commission*
>
> *(b) National Electricity Policy*
>
> *(c) Tariff Policy issued by the Government of India*
>
> *(d) Rural Electrification Policy*
>
> *(e) Forum of Regulators (FOR)*

(f) Central and State Governments".

53. The State Commission is bound to be guided by the Central Commissions principles and methodology having regard to the local conditions in the State. Accordingly, the State Commission ought to have considered the equivalent heat value method and the market price of bagasse before deciding the price of bagasse.

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55. It cannot be disputed that the State Commission ought to have determined the Fuel Price on the basis of equivalent heat value method with coal as available to the generating plants or on the basis of market price of Bagasse.

56. It is well known that Bagasse has several uses and that it is saleable in the open market. Even the CERC explanatory memorandum for the 2012 Regulations explicitly states so. If the Bagasse is not used by the Sugar Mills in the power generation, it would be sold and it will fetch revenue at the market price. That revenue which is foregone when the Bagasse is used for power generation is cost to the sugar mill and consequently it is the cost of the input for power generation.

57. In view of the above discussions, the Fuel Price fixed is not in accordance with the principles as referred to in the State Commission's Regulations as well as Central Commission's Regulations. In this Appeal, the Appellants have prayed for fixing the Fuel Cost at Rs.2085 / MT on the basis of the Fuel equivalent cost of the coal or in the alternative, fix the Bagasse price on the equivalent heat value

methodology taking an appropriate cost of imported coal and in any case the Fuel Cost should not be below Rs.1408/ MT with an annual escalation of 5%.

58. *We are not inclined to fix the Fuel Cost in this Appeal/Proceedings, though we hold the Fuel Cost fixed in this impugned order is not correct. Therefore, we remand the matter to the State Commission to fix the correct Fuel Cost on the basis of the materials available on record after giving the light of the observations made above.*

59. Thus, this issue is decided accordingly."

64. It cannot be denied that the Appellant has raised similar contentions which have been ignored by the State Commission, thus clearly non-complying with the directions rendered in the above-mentioned judgment.

65. We wish to reiterate the earlier pronouncement that TNERC must consider both the market price of bagasse, where such data is reliable and representative, and the equivalent heat value approach calibrated to the cost of fuel avoided (primarily coal) by the Distribution Licensee. Either method, or a hybrid of both, may be appropriate depending on State-specific market and operational conditions, but the chosen methodology must be transparently justified.

66. As also observed in the above-mentioned judgment, the available data indicate that bagasse fetches a significant market price within Tamil Nadu, notably from Tamil Nadu Newsprint and Papers Ltd., and others, reflecting a genuine

economic value which cannot be disregarded lightly. The equivalent heat value method based on imported coal price, as applied by the Appellants for Ponni Sugars and others, provides a realistic measure of fuel cost and must be legitimately weighed as an alternate benchmark.

67. While the Commission's fixation at Rs. 1,408 per MT is consistent with CERC benchmarks and conservative for consumer protection, it certainly ignored the SOR of the CERC norms, which provides that the respective State Commissions may consider the prevalent price of Bagasse if the same is higher than the price on an equivalent heat value basis. The same is noted in the judgment dated 04.09.2013 as under:

> *"51. It is important to notice that the Central Commission had specifically observed in the Statement of Reasons that the respective State Commissions may consider the prevalent price of Bagasse if the same is higher than the price on equivalent heat value basis."*

68. The State Commission's decision arguably undervalues the true fuel cost relevant in Tamil Nadu's context, particularly for newer high-efficiency units.

69. Regarding escalation, a normative 5% annual increase is reasonable as a regulatory norm to accommodate an increase in fuel prices, as also decided by the above-mentioned judgment. However, any significant divergence of fuel cost from real market costs over the tariff control period demands timely revision mechanisms to ensure the financial viability of generators and continuity of supply.

70. Given these considerations, we find that TNERC's approach requires modification to duly recognize the commercial market price of bagasse alongside the equivalent heat method, especially where the market price exceeds the avoided coal cost benchmark.

71. The Commission and the Distribution Licensee should establish a transparent and periodic review process that allows affected generators to submit verifiable market and cost data to revise fuel costs and escalation accordingly, preventing undue financial stress on generators or consumers.

72. Therefore, TNERC shall revisit and recompute the fuel cost for bagasse using a methodology that includes both:

a. The equivalent heat value of coal-based fuels actually avoided as per the generating plants' operational parameters; and,
b. The market value of bagasse within Tamil Nadu, based on reliable, verifiable data of actual transactions, adjusting for quality and utility differences.

73. TNERC shall apply a suitable escalation formula, at least reflecting the normative 5%, but remain open to adjustments based on real indices and market trends during the tariff control period.

74. TNERC shall establish a predefined mechanism for the timely submission and verification of data relating to bagasse price and fuel cost by generators, ensuring reasonable timelines and stakeholder consultation.

75. This revised determination shall take effect prospectively from the date of this judgment and shall apply to all affected generators under the relevant orders.

76. **To sum up, the fuel cost for bagasse as currently fixed by TNERC, solely based on the equivalent heat value approach benchmarked to avoided coal cost, is not fully just and reasonable in the light of Tamil Nadu's market and operational context. We hold that the commercial market price of bagasse within Tamil Nadu must also be duly factored in when determining fuel cost. The escalation rate must be applied flexibly in response to actual cost trends as observed above.**

77. **TNERC is directed to revisit the fuel cost fixation accordingly and institute a transparent process for data submission and review going forward.**

Issue No. 3: *Whether the change/revision in Station Heat Rate (SHR) by TNERC is justified, both in scope and substance?*

78. Before going into the merits of the issue of alteration of Station Heat Rate, it is made clear that this issue was not remanded to the Commission vide judgment dated 04.09.2013 in Appeal No. 199 of 2012 and thereafter in Review Petition No. 13 of 2013 in Appeal No. 199 of 2012, Order dated 30.06.2014. Therefore, the State Commission had no valid basis to alter the Station Heat Rate from 3700 Kcal/Kwhr to 3240 Kcal/Kwhr.

79. It is a settled principle of law that the courts are bound to act within the boundaries of the remand and cannot go beyond or extend the jurisdiction of the remand orders.

80. In Shivshankara v. H.P. Vedavyasa Char, (2023) 13 SCC 1, the Hon'ble Supreme Court vide judgment dated 29.03.2023, held that it is well-settled that the court receiving a remand must strictly comply with the remand order and any deviation is contrary to law:

> ***"13.*** *Before proceeding with the matter further, we think it appropriate to consider the impact of such an order of remand as it would certainly deconvolute consideration of this appeal.* ***There can be no doubt with respect to the settled position that the court to which the case is remanded has to comply with the order of remand and acting contrary to the order of remand is contrary to law. In other words, an order of remand has to be followed in its true spirit.*** *True that in this case the High Court, originally, as per judgment dated 29-10-2007 [Shivashankara v. H.P. Vedavyasachar, 2007 SCC OnLine Kar 795] remanded the matter to the trial court for fresh disposal and while doing so, it also directed the trial court to afford opportunity to the defendants to lead evidence. But then, the same was modified by this Court and as per the judgment in H.P. Vedavyasachar v. Shivashankara [H.P.Vedavyasachar v. Shivashan kara, (2009) 8 SCC 231 : (2009) 3 SCC (Civ) 329] the matter was remanded to the High Court for fresh disposal of RFA No. 1996 of 2007*

and the further direction to the trial court was only to record the evidence as directed by the High Court and to forward it along with report to enable the High Court to dispose of the appeal taking into account the additionally recorded evidence of the defendants as well."

81. Also, in Mohan Lal v. Anandibai, (1971) 1 SCC 813, Bombay High Court vide judgment dated 03.03.1971, held as following:

"9. Lastly, counsel urged that now that the suit has been remanded to the trial court for reconsidering the plea of res judicata, the appellant should have been given an opportunity to amend the written statement so as to include pleadings in respect of the fraudulent nature and antedating of the gift-deed Exhibit P-3. These questions having been decided by the High Court could not appropriately be made the subject-matter of a fresh trial. Further, as pointed out by the High Court, any suit on such pleas is already time-barred and it would be unfair to the plaintiff-respondents to allow these pleas to be raised by amendment of the written statement at this late stage. In the order, the High Court has stated that the judgments and decrees and findings of both the lower Courts were being set aside and the case was being remanded to the trial court for a fresh decision on merits with advertence to the remarks in the Judgment of the High Court. It was argued by learned counsel that, in making this order, the High Court has set aside all findings recorded on all issues by the trial court and the first appellate court. This is not a correct interpretation of the order.

Obviously, in directing that findings of both Courts are set aside, the High Court was referring to the points which the High Court considered and on which the High Court differed from the lower Courts. Findings on other issues, which the High Court was not called upon to consider, cannot be deemed to be set aside by this order. Similarly, in permitting amendments, the High Court has given liberty to the present appellant to amend his written statement by setting out all the requisite particulars and details of his plea of res judicata, and has added that the trial court may also consider his prayer for allowing any other amendments. On the face of it, those other amendments, which could be allowed, must relate to this very plea of res judicata. It cannot be interpreted as giving liberty to the appellant to raise new pleas altogether which were not raised at the initial stage. The other amendments have to be those which are consequential to the amendment in respect of the plea of res judicata."

82. In K.P. Dwivedi v. State of U.P., (2003) 12 SCC 572, the Hon'ble Supreme Court has held that:

"11. In our considered opinion, there is a glaring mistake in the impugned order dated 29-3-1996 of the Prescribed Authority passed after remand in treating the earlier order dated 5-8-1977 passed in appeal by the District Judge to have been totally set aside by the earlier order of the High Court dated 19-1-1979 passed in writ petition against the order of the District Judge dated 5-8-1977. From the order

of the High Court extracted, it is clear that the whole order of the District Judge was not set aside. It was set aside only with respect to categorisation of lands in the two villages and the remand was restricted to fresh determination of the same. The observations that "no other controversy shall be allowed to be raised hereafter before the Prescribed Authority or before the Appellate Authority" only meant that the remand would be restricted to redetermination of the nature of the land and all other issues decided which have not been disturbed by the order of the District Judge in appeal shall not be allowed to be reagitated.

12. From the contents of the order of the High Court, we have no manner of doubt that the writ petition of the holder of the land against the judgment of the District Judge had only succeeded with an order of the remand limited to re- examination of the nature of the lands. In all other respects, the order of the District Judge was confirmed prohibiting reopening of the same. We have already mentioned above that the order of the District Judge passed in appeal dated 5-8- 1977 was not challenged by the State of U.P. and therefore, that order to the extent it was in favour of the appellant, had attained finality and could not have been disturbed. The Prescribed Authority and the appellate court in their orders passed on 29-3-1996 and 18-3-1997 respectively, overlooked this aspect of the case of the finality of the order of the District Judge dated 5-8-1977. They misdirected themselves by assuming that the whole case was open before them

for reconsideration and redetermination of the ceiling area. In the second writ petition filed by the appellant to the High Court against the orders passed by the authorities under the Act after remand, the learned Single Judge took no care to re-examine the contents of the orders previously passed and which had attained finality to the extent indicated in those orders. The High Court by the impugned order dated 9-5- 1997 cursorily examined the case and wrongly dismissed it as being without merit."

83. This Tribunal in Damodar Valley Corporation vs. CERC, Appeal no. 146 of 2009, rendered by this Tribunal on 10.05.2010 has held that:

"40. In the cases referred to above, the following principles have been laid down:

(i) When a matter is remanded by the superior court to subordinate court for rehearing in the light of observations contained in the judgement, then the same matter is to be heard again on the materials already available on record. Its scope cannot be enlarged by the introduction of further evidence, regarding the subsequent events simply because the matter has been remanded for a rehearing or de novo hearing.

(ii) The court below to which the matter is remanded by the superior court is bound to act within the scope of remand. It is not open to the court below to do anything but to carry out the terms of the remand in letter and spirit.

(iii) When the matter comes back to the superior court again – on appeal after the final order upon remand is passed by the court below, the matter/issues finally disposed of by order of remand, cannot be reopened.

(iv) Remand order is confined only to the extent it was remanded. Ordinarily, the superior court and set aside the entire judgement of the court below or it can remand the matter on specific issues through a "Limited Remand Order". In case of Limited Remand Order, the jurisdiction of the court below is limited to the issue remanded. It cannot sit on appeal over the Remand Order.

(v) If no appeal is preferred against the order of Remand, the issues finally decided in the order of remand by the superior court attains finality and the same can neither be subsequently re-agitated before the court below to which remanded not before the superior court where the order passed upon remand is challenged in the Appeal.

(vi) In the following cases, the finality is reached:

a) The issue being not challenged before the superior court, or

b) The issue challenged but not interfered by the superior court, or

c) The issue decided by the superior court from which no further appeal is preferred.

These issues cannot be re-agitated either before the court below or the superior court."

84. Therefore, it stands established beyond doubt that the scope of remand is confined to the specific issues remitted and all other findings which were neither disturbed nor remanded attain finality. It is also a settled principle that a subordinate forum cannot assume jurisdiction beyond the remit of the remand order nor can it reopen issues that have attained finality.

85. Applying the above legal position to the facts at hand, we are of the considered view that since the issue of Station Heat Rate was never remanded by this Tribunal in its judgment dated 04.09.2013 in Appeal No. 199 of 2012 nor in the order dated 30.06.2014 in the Review Petition thereto, the State Commission was wholly unjustified in modifying the SHR from 3700 Kcal/kWh to 3240 Kcal/kWh.

86. The said modification being clearly beyond jurisdiction is, therefore, not sustainable and is liable to be set aside. The Station Heat Rate as originally determined at 3700 Kcal/kWh shall accordingly continue to apply.

Issue No. 4: Whether the O&M charges (percentage and escalation) have been determined appropriately, reflecting industry norms and CERC benchmarks?

87. Issue No. 4 is related to the applicable O & M expenditure. This Tribunal vide

judgment dated 04.09.2013 in Appeal No. 199 of 2012 remanded the issue pertaining to O & M expenditure and decided as follows:

> *"**88.** We find that the Central Commission's Regulations of 2012 provide for O&M expenses of Rs.16 lacs per MW for FY 2012-13 to be escalated at 5.72% per annum during the subsequent years of control period. This translates into about 3.8% of the capital cost. We feel that the State Commission should have considered the Central Commission's Regulations while deciding the O&M charges.*
>
> ***89.** We, therefore, remand the matter to the State Commission to redetermine the O&M cost after considering the Central Commission's Regulations.*
>
> ***….***
>
> ***110. Summary of Our Findings***
>
> *….*
>
> ***vii) O&M charges: The finding of the State Commission is set aside and the matter is remanded to the State Commission for fresh determination in light of our observations**."*

88. It was noted that the CERC's 2012 Regulations prescribe O&M expenses of Rs. 16 lakhs per MW for FY 2012-13, with an escalation of 5.72% per annum for the subsequent years of the control period. Noting that this translated to approximately 3.8% of normative capital cost, this Tribunal had held that the State Commission ought to have considered the Central Commission's Regulations as a material benchmark while deciding O&M charges. Consequently, the issue was

expressly remanded to the State Commission for redetermination.

89. Despite the clear remand direction, the State Commission failed to properly adopt the CERC escalation factor and instead arbitrarily froze O&M expenses at a figure lower than warranted. The Commission's approach overlooked the linkage between O&M charges and capital cost and was not compliant with this Tribunal's binding directions.

90. We find that this Tribunal had unequivocally directed the Commission to reconsider O&M charges with reference to the CERC's 2012 Regulations and their prescribed escalation mechanism. The Commission, therefore, was not at liberty to freeze O&M at a generic level diverted from the CERC benchmarks. As laid down in Shivshankara v. H.P. Vedavyasachar (2023) 13 SCC 1 and reiterated in Damodar Valley Corporation v. CERC (Appeal No. 146 of 2009), once an issue is remanded, the subordinate forum must confine its jurisdiction strictly to the scope of remand and comply with its true spirit.

91. In the present case, the remand required TNERC to duly adopt the CERC's O&M norms and factor escalation at 5.72% per annum during the control period. We note with concern that this has not been effectively followed. The Commission has taken note of the CERC figure but failed to incorporate escalation comprehensively which has led to an understatement of admissible O&M costs.

92. Therefore, we are constrained to hold that the impugned determination of O&M expenditure by TNERC does not conform to the Tribunal's earlier remand.

The impugned determination is rendered invalid for failure to adhere to the binding mandate of this Tribunal.

93. Accordingly, this finding is set aside, and the matter is remanded afresh to the State Commission for reconsideration. It is also directed that till such time the Commission determines the same strictly as per our directions, the O&M costs are allowed as per CERC norms.

Issue No. 5: *Whether the incentive provided for generation above the normative PLF is adequate and compliant with regulatory and appellate directions?*

94. This Tribunal vide judgment dated 04.09.2013 in Appeal No. 199 of 2012 remanded the issue pertaining to the incentive provided for generation beyond threshold PLF and decided as follows:

*"**76.** We notice from the counter affidavit of the State Commission that the conventional plants of TANGEDCO are provided with incentive of 25 paise per Kwh besides the normative variable charges. It is well settled by the various decisions of this Tribunal that allowing a lower rate to renewable energy plants than that allowed to conventional power plants does not conform to the legislative mandate and the tariff policy. Thus, the State Commission on this issue has not followed a promotional approach as required.*

77. *All components of fixed cost would not remain unchanged for the extended period of operation. There would be higher wear and tear, higher repairs and maintenance and also higher employee cost. All these components must necessarily be considered as the necessary cost for power generation beyond the 55% normative PLF and compensated in the tariff fixation. On the other hand, the incentive for the bagasse based cogeneration plant appear to be declining with the passage of time and is less than that admissible to conventional plants.*

78. *The State Commission is directed to consider increasing the incentive adequately to incentivise the bagasse based cogeneration plants to maximise generation by procuring adequate quality of bagasse fuel and improving the availability of plants. In any case the incentive has to be better than that available to conventional power plants.*

79. *Accordingly, the issue of incentive is remanded to the Stte Commission to redetermine the same after hearing all the parties concerned.*

….

110. Summary of Our Findings

….

vi) Incentive for generation beyond threshold Plant Load Factor: The finding of the State on this issue is set aside and the issue is

remanded to the State Commission for fresh determination after hearing all concerned and in light of the observations made by us in this judgment."

95. However, in the written submissions filed before us, the Appellant has submitted as follows:

*"**INCENTIVE ISSUE***

16. In the Appeal, the Appellants have raised the issue of incentive beyond threshold PLF. It is submitted by a subsequent order dated 12.12.2023 of the State Commission, some relief has been provided by the State Commission for the future period. While the Appellant still has grievance, the Appellant desires to agitate the said issue, in regard to the subsequent period. ***Accordingly, the Appellant is not desirous of pursuing this issue in the challenge to the Impugned Order****."*

96. In light of the above, and considering the statement made in the written submissions, we note that the Appellants are not pressing their challenge to the determination of incentive beyond normative PLF in respect of the present Impugned Order.

97. Accordingly, no adjudication on merits is called for on this issue in the present appeals. However, it is clarified that the Appellants shall be at liberty to raise their grievance with respect to the incentive for the subsequent control period in appropriate proceedings in the future.

Issue No. 6: *Whether the Appellants are entitled to carrying cost (interest) for delayed payment of revised tariffs?*

98. This Tribunal vide its Order dated 30.06.2014 in RA No. 13 of 2013 in Appeal No. 199 of 2012 has held as follows:

> *"34. The next issue with reference to interim tariff adjustment after final determination of demands and allowing of interest and arrears of carrying cost.*
>
> *35. We have heard the Learned Counsel for the parties on this issue. As correctly pointed out by the Learned Counsel for the Respondent this issue has been raised on the basis of the new plea made now seeking for a new prayer for the first time in this Review Petition.*
>
> *36. These are of the matters which are to be considered only by the State Commission after finalization of all the other issues. These issues cannot be decided by this Tribunal in this Review petition. Therefore, we reject the contention of the Review Petitioner on this issue."*

99. Carrying cost typically accrues where there is a demonstrated deprivation of timely payment of lawful dues, and it is meant to ensure the regulatory objective of full pass-through and no stranded costs for the generator.

100. The norm in cost-plus tariff regimes is that the generator must recover costs in a manner that maintains financial equilibrium as if the correct amount had been paid on time.

101. In the present case, the record reflects that the remand proceedings before TNERC arose as a direct consequence of the Tribunal's earlier judgment, which itself recognized the need for reasoned and lawful redetermination of parameters affecting tariff. The Appellants, as generators, continued to supply power and incur working capital costs while awaiting final determination and release of the enhanced tariff by the Commission.

102. The Commission, after remand, fixed revised tariffs with effect from the date of its final order, and the differential arrears for the intervening period became payable to the generators. During this period, the generating companies were deprived of the sums that ought to have formed part of their regular cash flows, undermining the principle of commercial justice and regulatory certainty.

103. We note that in the Review Order dated 30.06.2014, the matter of carrying cost was expressly left open for consideration by the Commission, subject to the finalization of remand proceedings. The Commission, however, by its Impugned Orders, has denied carrying cost in a blanket manner, primarily on the ground that the claim did not arise prospectively. The Commission has not addressed the issue of financial hardship or the economic burden borne by the generators due to delayed cash flows.

104. Unless specifically excluded by the regulatory framework or the Tribunal's directions, carrying cost must be provided where the generator is found to have been deprived of timely payment of legitimate entitlements, especially when the delay is on account of regulatory proceedings, even if such delay is bona fide and not deliberate.

105. The generator is not required to absorb the risk and cost of regulatory lag, as this would defeat the purpose of a cost-plus regulatory model and lead to under-recovery of overall costs.

106. **In view of the above, the Appellants are entitled to carrying cost, i.e., interest on the differential amounts arising on account of upward revision of tariff pursuant to the Tribunal's remand directions, for the period from the original due date of each monthly bill (computed on the basis of the revised tariff) until the date of actual payment of the differential amount.**

107. **There is one more issue of Parallel Operating Charges and Related Issues in Appeal No. 201 of 2018.**

> **Issue No. 7:** *Whether the imposition and quantum of Parallel Operation Charges (POC) and the dispensation regarding Related Issues (as specified in the relevant Tariff Orders) for Bagasse-Based Co-Generation Plants are justified and lawful?*

108. The Appellant has challenged the quantum of Parallel Operation Charges (POC) levied by the Tamil Nadu Commission on bagasse-based cogeneration plants, as well as the manner in which TNERC has structured and applied related charges and conditions under the Impugned Orders. It is stated that the cogeneration plants are generally connected to the grid for the purpose of exporting surplus power, and such parallel operation does not result in any significant additional burden or cost to the distribution licensee.

109. During the hearing, the issue was not argued/ pressed by the Appellants. It is also seen that, accordingly, the Appellants have not pleaded the issue as part of their Written Submissions.

110. In light of the above, we note that the Appellants are not pressing imposition and quantum of Parallel Operation Charges (POC) in respect of the present Impugned Order.

111. Accordingly, no adjudication on merits is called for on this issue in the present appeals, and it is rejected as not pressed.

112. **There is another issue of the Effective date in Appeal No. 148 of 2016 and 339 of 2021.**

> ***Issue No. 8:*** *What is the appropriate effective date for the revised tariff and its components as determined by the Commission pursuant to the remand, and whether prospective or retrospective operation is warranted?*

113. The Appellants raised the issue of the effective date for the revised tariff, contending that the tariff order issued by the State Commission ought to have been made effective from 01.04.2014 as raised in Appeal No. 148 of 2016 and 01.04.2020 as claimed in 339 of 2021 for the respective disputed periods.

114. The submission of the Appellant is under:

1. The fixed cost component of tariff for plants established on or after 01.08.2014 up to 31.07. 2016
2. The variable cost component of tariff for plants established after 15.05.2006 for the FYs 2014-15 to 2017-18 with annual escalation of 5%.

115. The Appellants emphasize that the underlying principle of the cost-plus tariff is to achieve full recovery of capital cost within the tariff period of 20 years. They contend that failure to allow time-bound revision in fuel cost will ipso facto result in under-recovery of capital cost within the tariff period, and such failure militates against the basic tenets of the tariff principle.

116. With respect to the plants established after 15.05.2006, the Appellants submit that the variable cost component of tariff for the FYs 2014-15 to 2017-18 with annual escalation of 5% should not be denied due to administrative delays.

117. The Appellants point out that as a result of the delay in issuing the tariff order, the bagasse-based cogeneration plants have been compelled to forego whatever little increase in tariff for a period of 6 months without any reasonable justification.

While the delay in issuing the fresh tariff order is attributable to the state Commission, there is no justification in law or fact to deprive the bagasse-based co-generator of the increase in tariff payable to them for the power supplied by them for the period 01.04.2020 to 14.10.2020. Therefore, the State Commission's tariff order ought to be made effective from 01.04.2020.

118. The Appellants also refer to Section 21 of the General Clauses Act, 1897, which states *"Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."*

119. Issuance of the Impugned Order was delayed. The Impugned Order was issued on 16.10.2020, and was made effective from that date. It ought to have been issued from 01.04.2020, which is when the previous tariff order expired. The previous tariff order ought not to have been extended.

120. Per Contra, the Respondent No. 2 submitted that the extension of the previous tariff order was within the regulatory powers under Section 21 of the General Clauses Act, enabling the Commission to *"add to, amend, vary or rescind"* its previous orders, rules, or notifications to prevent any vacuum in the tariff cycle, especially while the matter was being reconsidered as directed by this Tribunal.

121. Further submitted that it is within the discretion and established practice of

the Commission to issue tariff orders with prospective effect. The Respondent underscores that retrospective application is impermissible unless expressly provided for, and that during the period in question, the previous tariff order as extended remained valid and operative.

122. If the Appellants were aggrieved with the extension of the previous order, the appropriate legal recourse would have been to challenge the extension order itself at the relevant time and not merely to seek retrospective operation of the new order.

123. It is a settled principle in law that the generator should be allowed reasonable cost as per the tariff order determined, irrespective of the date of such determination, so that the complete reasonable cost recovery is allowed to the generator during the complete control period, and so is the applicability of the tariff determined.

124. Accordingly, we find the Commission's approach to be erroneous, and the tariff order so determined shall be applicable from the start date of the control period, i.e., 01.04.2014 and 01.04.2020, corresponding to the respective control periods.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the Appeal Nos. 200 of 2016, 148 of 2016, 201 of 2018 & 339 of 2021 have merits and are allowed to the extent indicated above.

The Impugned Orders passed by the Tamil Nadu Electricity Regulatory Commission are set aside, and TNERC is directed to pass orders afresh in strict compliance with the directions/ conclusions made herein above:

a) Refix the normative capital cost for bagasse-based cogeneration plants, ensuring allowance for additional costs on account of air-cooled condensers and extended evacuation infrastructure where such costs are demonstrably incurred by generators, through a transparent, evidence-based, and time-bound procedure.
b) Redetermine the fuel cost for bagasse by considering both the equivalent heat value methodology and the documented market value of bagasse, implementing an open and periodic review mechanism for escalation to reflect prevailing market conditions.
c) Restore the Station Heat Rate (SHR) at 3700 kcal/kWh for the control period, as the issue of SHR was not remanded to TNERC and its modification was beyond jurisdiction. No change or revision is permissible in this parameter.
d) Recompute the Operation & Maintenance (O&M) charges strictly in line with the Central Electricity Regulatory Commission (CERC) Regulations, including the annual escalation factor of 5.72% during the control period, until such redetermination is carried out by TNERC.
e) Ensure generators are entitled to carrying cost (interest) on tariff differentials paid with delay, with such carrying cost calculated from the due date of monthly bills based on the revised tariff up to the actual payment date.
f) The revised tariff and its components, as determined by the Commission pursuant to this remand and in accordance with the above directions, shall be applicable with effect from the dates as concluded in the foregoing

paragraphs, and not merely prospectively from the later date of issuance of the Impugned Orders.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 3rd DAY OF SEPTEMBER, 2025.

(Virender Bhat)	**(Sandesh Kumar Sharma)**
Judicial Member	**Technical Member**

REPORTABLE/~~NOT-REPORTABLE~~

pr/mkj/kks