IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

APL No. 268 OF 2016
APL No. 273 OF 2016
APL No. 272 OF 2016
APL No. 275 OF 2016
APL No. 298 OF 2016
APL No. 11 OF 2017
APL No. 312 OF 2016
APL No. 135 OF 2017
APL No. 7 OF 2017
APL No. 133 OF 2017
APL No. 134 OF 2017
APL No. 324 OF 2017
APL No. 35 OF 2017
APL No. 4 OF 2017
APL No. 8 OF 2017
APL No. 10 OF 2017
APL No. 269 OF 2016
APL No. 271 OF 2016
APL No. 274 OF 2016
APL No. 299 OF 2016
APL No. 326 OF 2016
APL No. 270 OF 2016
APL No. 136 OF 2017
APL No. 181 OF 2017
APL No. 183 OF 2017

Dated: 11.09.2025

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

APPEAL NOS. 268 OF 2016, 269 OF 2016, 270 OF 2016, 271 OF 2016, 272 OF 2016, 273 OF 2016, 274 OF 2016, 275 OF 2016, 299 OF 2016, 326 OF 2016, 07 OF 2017, 08 OF 2017,10 OF 2017, 11 OF 2017, 35 OF 2017

<u>IN THE MATTER OF</u>:

Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054 **- Appellant**

Versus

1. **West Bengal State Electricity Distribution Company Limited,**
   Vidyut Bhawan, Block 'DJ'
   Sector 11, Salt Lake City, Kolkata- 700091

2. **Jharkhand State Electricity Board, Ranchi (Now Jharkhand Bijlee Vitaran Nigam Ltd)**
   Energy Building, HEC Dhurwa,
   Ranchi- 834004

3. **Central Electricity Regulatory Commission**
   3rd & 4th Floor, Chanderlok Building
   36, Janpath, New Delhi – 110 001

4. **Damodar Valley Power Consumers Association (DVPCA)**
   A-69, Lower Ground Floor,
   Nizamuddin (East), New Delhi, 110 013

- Respondents

Counsel on record for the Appellant(s) : Shri Venkatesh
Shryeshth Ramesh Sharma
Ashutosh Kumar Srivastava
Bharath Gangadharan
Abhishek Nangia
Siddharth Nigotia
Nihal Bhardwaj
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Punyam Bhutani
Harsh Vardhan

Suhael Buttan
Himangi Kapoor
Priya Dhankar
Anant Singh
Kunal Veer Chopra
Vineet Kumar
Aditya Tiwari
Nehal Jain
Nikunj Bhatnagar
Vedant Choudhary

Counsel on record for the Respondent(s) : Himanshu Shekhar
Aabhas Parimal for Res. 2

Rajiv Yadav for Res. 4

APPEAL NO. 298 OF 2016 & 312 OF 2016

IN THE MATTER OF:
Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054 **- Appellant**

Versus

1. **Delhi Transco Limited,**
   Shakti Sadan,
   Kotla Road,
   New Delhi- 110002.

2. **BSES Rajdhani Power Ltd.,**
   BSES Bhawan, Nehru Place,
   New Delhi – 110019.

3. **BSES Yamuna Power Ltd.,**
   Shakti Kiran Building,
   Karkardooma,
   Delhi-110092.

4. **North Delhi Power Ltd,**
   33 kV Sub-Station Building,
   Hudson Lane, Kingsway Camp,
   New Delhi-110009.

5. **Haryana Power Generation Corporation Ltd.,**
Shakti Bhawan, Sector – 6,
Panchkula – 134109.

6. **Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001 **- Respondent(s)**

Counsel on record for the Appellant(s) : Shri Venkatesh
Shryeshth Ramesh Sharma
Ashutosh Kumar Srivastava
Bharath Gangadharan
Abhishek Nangia
Siddharth Nigotia
Nihal Bhardwaj
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Punyam Bhutani
Harsh Vardhan
Suhael Buttan
Himangi Kapoor
Priya Dhankar
Anant Singh
Kunal Veer Chopra
Vineet Kumar
Aditya Tiwari
Nehal Jain
Nikunj Bhatnagar
Vedant Choudhary

Counsel on record for the Respondent(s) : Sangeeta Bharti
Krishanu Adhikary
Rameezuddin Raja
for Res. 1
Rajiv Yadav for Res. 4
Sethu Ramalingam for Res.5

<u>APPEAL NO. 04 OF 2017</u>

IN THE MATTER OF:
Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054 **- Appellant**

Versus

1. **Delhi Transco Limited,**
   Shakti Sadan,
   Kotla Road,
   New Delhi- 110002.

2. **BSES Rajdhani Power Ltd.,**
   BSES Bhawan, Nehru Place,
   New Delhi – 110019.

3. **BSES Yamuna Power Ltd.,**
   Shakti Kiran Building,
   Karkardooma,
   Delhi-110092.

4. **North Delhi Power Ltd.**
   33 KV Sub-Station Building,
   Hudson Lane, Kingsway Camp,
   New Delhi-110009.

5. **Haryana Power Generation Corporation Ltd.,**
   Shakti Bhawan, Sector -6,
   Panchkula – 134109

6. **Kerala State Electricity Board,**
   8th Floor, Vydyuthi Bhawan,
   Thiruvananthapuram – 695004.

7. **Bangalore Electricity Supply Company,**
   K.R. Circle,
   Bangalore – 506001.

8. **Hubli Electricity Supply Company,**
   Nava Nagar, P.B. Road,
   Hubli-580025,
   Karnataka.

9. Gulbarga Electricity Supply Corporation,
Station Road,
Gulbarga,– 585102.

10. Mangalore Electricity Supply Company,
Paradigm Plaza,
A.B. Shetty Circle,
Mangalore – 50575001.

11. Chamundeshwari Electricity Supply Corporation,
927, L.J. Avenue,
G.F., New Kantharaj Urs Road,
Saraswatipuram,
Mysore – 570009.

12. Tata Steel Ltd.
PGP Works, General Office (W-175),
Jamshedupur – 831001.

13. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001 **- Respondent(s)**

Counsel on record for the Appellant(s) : Mr. Shri Venkatesh
Mr. Shryeshth Ramesh Sharma
Mr. Ashutosh Kumar Srivastava
Mr. Bharath Gangadharan
Mr. Abhishek Nangia
Mr. Siddharth Nigotia
Mr. Nihal Bhardwaj
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Punyam Bhutani
Harsh Vardhan
Suhael Buttan

Himangi Kapoor
Priya Dhankar
Anant Singh
Kunal Veer Chopra
Vineet Kumar
Aditya Tiwari
Nehal Jain
Nikunj Bhatnagar
Vedant Choudhary

Counsel on record for the Respondent(s) : Sangeeta Bharti
krishanu Adhikary
Rameezuddin Raja
Ashish Kumar
Sushil Kumar Singh
for Res. 1
Sethu Ramalingam for Res-13

APPEAL NO. 133 OF 2017

IN THE MATTER OF:
Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054 **- Appellant**

Versus

1. **West Bengal State Electricity Distribution Company Limited,**
Vidyut Bhawan, Block 'DJ'
Sector 11, Salt Lake City, Kolkata- 700091

2. **Jharkhand State Electricity Board, Ranchi (Now Jharkhand Bijlee Vitaran Nigam Ltd)**
Energy Building, HEC Dhurwa,
Ranchi- 834004

3. **M.P. Power Management Company Ltd.,**
Through its Managing Director,
Shakti Bhawan, MPSEB Colony, Rampur,
Jabalpur,
Madhya Pradesh – 482008.

4. Central Electricity Regulatory Commission
Through its Secretary,
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001 **- Respondents**

Counsel on record for the Appellant(s) : Mr. Shri Venkatesh
Mr. Shryeshth Ramesh Sharma
Mr. Ashutosh Kumar Srivastava
Mr. Bharath Gangadharan
Mr. Abhishek Nangia
Mr. Siddharth Nigotia
Mr. Nihal Bhardwaj
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Punyam Bhutani
Harsh Vardhan
Suhael Buttan
Himangi Kapoor
Priya Dhankar
Anant Singh
Kunal Veer Chopra
Vineet Kumar
Aditya Tiwari
Nehal Jain
Nikunj Bhatnagar
Vedant Choudhary

Counsel on record for the Respondent(s) : Ravin Dubey for Res. 3

APPEAL NOS. 134 OF 2017 & 136 OF 2017

IN THE MATTER OF:
Damodar Valley Corporation
DVC Towers, VIP Road,

Kolkata-700054 **- Appellant**

Versus

1. **Delhi Transco Limited,**
Through its General Manager (Commercial)
2nd Floor, 33 KV Grid Sub-Station,
I.P. Estate, near Vikas Bhawan.
New Delhi- 110002.

2. **BSES Rajdhani Power Ltd.,**
Through its CEO,
BSES Bhawan, Nehru Place,
New Delhi – 110019.

3. **BSES Yamuna Power Ltd.,**
Through its CEO,
Shakti Kiran Building,
Karkardooma,
Delhi-110092.

4. **Tata Power Delhi Distribution Ltd.**
(Erstwhile North Delhi Power Ltd.)
Through its CEO,
Grid Substation Building,
Hudson Lane, Kingsway Camp,
New Delhi-110009.

5. **M.P. Power Management Company Ltd.,**
Through its Managing Director,
Shakti Bhawan, MPSEB Colony, Rampur,
Jabalpur,
Madhya Pradesh – 482008.

6. **Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001 **- Respondent(s)**

Counsel on record for the Appellant(s) : Shri Venkatesh
Shryeshth Ramesh Sharma

Ashutosh Kumar Srivastava
Bharath Gangadharan
Abhishek Nangia
Siddharth Nigotia
Nihal Bhardwaj
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Punyam Bhutani
Harsh Vardhan
Suhael Buttan
Himangi Kapoor
Priya Dhankar
Anant Singh
Kunal Veer Chopra
Vineet Kumar
Aditya Tiwari
Nehal Jain
Nikunj Bhatnagar
Vedant Choudhary

Counsel on record for the Respondent(s) : Sangeeta Bharti
krishanu Adhikary
Rameezuddin Raja
for Res. 1
Raj Bahadur Sharma
Mohit Mudgal
for Res. 2&3
Ravin Dubey for R-5

APPEAL NO.135 OF 2017

IN THE MATTER OF:
Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054 **- Appellant**

Versus

1. **Delhi Transco Limited,**
Through its General Manager (Commercial)

2nd Floor, 33 KV Grid Sub-station,
I.P. Estate, near Vikas Bhawan
New Delhi- 110002.

2. **BSES Rajdhani Power Ltd.,**
Through its CEO,
BSES Bhawan, Nehru Place,
New Delhi – 110019.

3. **BSES Yamuna Power Ltd.,**
Through its CEO,
Shakti Kiran Building,
Karkardooma,
Delhi-110092.

4. **Tata Power Delhi Distribution Ltd.**
(Erstwhile North Delhi Power Ltd.)
Through its CEO,
Grid Substation Building,
Hudson Lane, Kingsway Camp,
New Delhi-110009.

5. **Punjab State Power Corporation Ltd.**
Through its Chief Engineer,
Inter-state Billing, Shed No.TI-A,
Patiala-147001.

6. **M.P. Power Management Company Ltd.,**
Through its Managing Director,
Shakti Bhawan, MPSEB Colony, Rampur,
Jabalpur,
Madhya Pradesh – 482008.

7. **Tata Steel Limited**
Through is General Manager (Commercial)
PGP Works, General Office (W-175),
Jamshedpur-831001,
Jharkhand

8. **Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001 **- Respondent(s)**

Counsel on record for the Appellant(s) : Shri Venkatesh
Shryeshth Ramesh Sharma
Ashutosh Kumar Srivastava
Bharath Gangadharan
Abhishek Nangia
Siddharth Nigotia
Nihal Bhardwaj
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Punyam Bhutani
Harsh Vardhan
Suhael Buttan
Himangi Kapoor
Priya Dhankar
Anant Singh
Kunal Veer Chopra
Vineet Kumar
Aditya Tiwari
Nehal Jain
Nikunj Bhatnagar
Vedant Choudhary

Counsel on record for the Respondent(s) : Sangeeta Bharti
Krishanu Adhikary
Rameezuddin Raja
for Res. 1

Ravin Dubey for Res.6

APPEAL NO.181 OF 2017

IN THE MATTER OF:
Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054 **- Appellant**

Versus

1. **BSES Rajdhani Power Ltd.,**
Through its CEO,
BSES Bhawan, Nehru Place,
New Delhi – 110019.

2. **BSES Yamuna Power Ltd.,**
Through its CEO,
Shakti Kiran Building,
Karkardooma,
Delhi-110092.

3. **Tata Power Delhi Distribution Ltd.**
(Erstwhile North Delhi Power Ltd.)
Through its CEO,
Grid Substation Building,
Hudson Lane, Kingsway Camp,
New Delhi-110009.

4. **West Bengal State Electricity Distribution Company Limited,**
Vidyut Bhawan, Block 'DJ'
Sector 11, Salt Lake City, Kolkata- 700091

5. **Jharkhand State Electricity Board, Ranchi**
(Now Jharkhand Bijlee Vitaran Nigam Ltd)
Energy Building, HEC Dhurwa,
Ranchi- 834004

6. **M.P. Power Management Company Ltd.,**
Through its Managing Director,
Shakti Bhawan, MPSEB Colony, Rampur,
Jabalpur,
Madhya Pradesh – 482008.

7. **Damodar Valley Power Consumers Association (DVPCA)**
Through its Secretary,
9, Acharya Jagdish Chandra Bose Road,
Kolkatta – 700017.

8. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001 **- Respondent(s)**

Counsel on record for the Appellant(s) : Shri Venkatesh
Shryeshth Ramesh Sharma
Ashutosh Kumar Srivastava
Bharath Gangadharan
Abhishek Nangia
Siddharth Nigotia
Nihal Bhardwaj
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Punyam Bhutani
Harsh Vardhan
Suhael Buttan
Himangi Kapoor
Priya Dhankar
Anant Singh
Kunal Veer Chopra
Vineet Kumar
Aditya Tiwari
Nehal Jain
Nikunj Bhatnagar
Vedant Choudhary

Counsel on record for the Respondent(s) : Raj Bahadur Sharma
Mohit Mudgal for Res. 1 & 2
Ravin Dubey for Res. 6
Rajiv Yadav for Res.7

APPEAL NO.183 OF 2017

IN THE MATTER OF:
Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054 **- Appellant**

Versus

1. **BSES Rajdhani Power Ltd.,**
Through its CEO,
BSES Bhawan, Nehru Place,
New Delhi – 110019.

2. **BSES Yamuna Power Ltd.,**
Through its CEO,
Shakti Kiran Building,
Karkardooma,
Delhi-110092.

3. **Tata Power Delhi Distribution Ltd.**
(Erstwhile North Delhi Power Ltd.)
Through its CEO,
Grid Substation Building,
Hudson Lane, Kingsway Camp,
New Delhi-110009.

4. **Punjab State Power Corporation Ltd.**
Through its Chief Engineer (Commercial)
Inter-state Building,
Shed No TI-A, Patiala-147001.

5. **M.P. Power Management Company Ltd.**
(Erstwhile M.P. Power Trading Company Ltd.),
Through its Chief General Manager (Commercial)
Shakti Bhawan, Vidyut Nagar,
Jabalpur,
Madhya Pradesh – 482008.

6. **Tata Steel Limited**
Through is General Manager (Commercial)
PGP Works, General Office (W-175),
Jamshedpur-482008,

7. **Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001 **- Respondent(s)**

Counsel on record for the Appellant(s)	:	Shri Venkatesh Shryeshth Ramesh Sharma Ashutosh Kumar Srivastava Bharath Gangadharan Abhishek Nangia Siddharth Nigotia Nihal Bhardwaj Shivam Kumar Kartikay Trivedi Mohit Gupta Manu Tiwari Aashwyn Singh Punyam Bhutani Harsh Vardhan Suhael Buttan Himangi Kapoor Priya Dhankar Anant Singh Kunal Veer Chopra Vineet Kumar Aditya Tiwari Nehal Jain Nikunj Bhatnagar Vedant Choudhary
Counsel on record for the Respondent(s)	:	Hasan Murtaza for Res. 1 & 2 Ashish Anand Bernard for Res.5

APPEAL NO. 324 OF 2017

IN THE MATTER OF:
Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054 **- Appellant**

Versus

1. **West Bengal State Electricity Distribution Company Limited,**
VidyutBhawan, Block 'DJ'

Sector 11, Salt Lake City, Kolkata- 700091

2. **Jharkhand State Electricity Board, Ranchi**
(Now Jharkhand Bijlee Vitaran Nigam Ltd)
Energy Building, HEC Dhurwa,
Ranchi- 834004

3. **Damodar Valley Power Consumers Association (DVPCA)**
Through its Secretary,
9 A Jagidsh Chandra Bose Raod,
4th Floor, Kolkatta-700020

4. **Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001 **- Respondents**

Counsel on record for the Appellant(s) : Mr. Shri Venkatesh
Mr. Shryeshth Ramesh Sharma
Mr. Ashutosh Kumar Srivastava
Mr. Bharath Gangadharan
Mr. Abhishek Nangia
Mr. Siddharth Nigotia
Mr. Nihal Bhardwaj
Shivam Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Aashwyn Singh
Punyam Bhutani
Harsh Vardhan
Suhael Buttan
Himangi Kapoor
Priya Dhankar
Anant Singh
Kunal Veer Chopra
Vineet Kumar
Aditya Tiwari

Nehal Jain
Nikunj Bhatnagar
Vedant Choudhary

Counsel on record for the Respondent(s) : Rajiv Yadav for Res. 3
Sethu Ramalingam for Res. 4

JUDGEMENT

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

1. The batch of appeals is filed by Damodar Valley Corporation ("DVC") challenging the following impugned orders passed by the Central Electricity Regulatory Commission ("Central Commission"):

S. No.	Appeal No.	Impugned Order in Petition No.	Dated
1.	268 of 2016	470/GT/2014	29.07.2016
2.	269 of 2016	471/GT/2014	29.07.2016
3.	270 of 2016	465/GT/2014	29.07.2016
4.	271 of 2016	466/GT/2014	29.07.2016
5.	272 of 2016	467/GT/2014	29.07.2016
6.	273 of 2016	464/GT/2014	29.07.2016
7.	274 of 2016	468/GT/2014	29.07.2016
8.	312 of 2016	206/GT/2015	14.09.2016
9.	275 of 2016	469/GT/2014	29.07.2016
10.	298 of 2016	295/GT/2015	22.08.2016
11.	299 of 2016	347/GT/2014	31.08.2016
12.	326 of 2016	353/GT/2014	20.09.2016

13.	04 of 2017	207/GT/2015	03.10.2016
14.	07 of 2017	352/GT/2014	20.09.2016
15.	08 of 2017	350/GT/2014	27.09.2016
16.	10 of 2017	349/GT/2014	23.09.2016
17.	11 of 2017	351/GT/2014	23.09.2016
18.	35 of 2017	354/GT/2014	20.09.2016
19.	133 of 2017	115/GT/2015	09.02.2017
20.	134 of 2017	181/GT/2015	09.02.2017
21.	135 of 2017	204/GT/2015	27.02.2017
22.	136 of 2017	180/GT/2015	17.02.2017
23.	181 of 2017	144/GT/2015	16.03.2017
24.	183 of 2017	205/GT/2015	17.03.2017
25.	324 of 2017	348/GT/2014	20.07.2017

Description of the Parties

Appellant

Damodar Valley Corporation (DVC)

2. The Appellant is a statutory body constituted under the Damodar Valley Corporation Act, 1948. DVC is engaged in the generation, transmission, bulk supply, and distribution of electricity in the Damodar Valley areas covering parts of West Bengal and Jharkhand. Under the Electricity Act, 2003, DVC is a generating company within the meaning of Section 2(28) and a deemed licensee under the fourth proviso to Section 14.

Respondents

State Distribution Licensees:

3. Several Respondents such as West Bengal State Electricity Distribution Company Limited, Jharkhand Bijli Vitran Nigam Limited, BSES Rajdhani Power Limited, BSES Yamuna Power Limited, Tata Power Delhi Distribution Limited, Bangalore Electricity Supply Company, Hubli Electricity Supply Company, Gulbarga Electricity Supply Company, Mangalore Electricity Supply Company, Chamundeshwari Electricity Supply Company, and Delhi Transco Limited are distribution licensees under Section 2(17) of the Electricity Act, 2003. They procure electricity from DVC and are directly impacted by tariff orders of the Central Commission.

State Generating Companies/ Power Management Companies:

4. Respondents such as Haryana Power Generation Corporation Limited, Punjab State Power Corporation Limited, and M.P. Power Management Company Limited are generating companies or designated state entities engaged in bulk power procurement and management. They fall within the definition of generating companies under Section 2(28) or state-designated entities under the Electricity Act, 2003 and are affected by tariff fixation relating to inter-State supply of power by DVC.

Industrial Consumers:

5. Certain Respondents, including Tata Steel Limited, are large industrial consumers of electricity within the meaning of Section 2(15) of the Electricity Act, 2003. Being direct consumers of DVC's power, they are interested parties in tariff determination and allied proceedings.

Consumers' Association:

6. The Damodar Valley Power Consumers Association (DVPCA) is a representative body of consumers, recognized under Section 94(3) of the Electricity Act, 2003 and is a company incorporated under Section 8 of the Companies Act, 1956 with the object *"to promote, protect and safeguard the rights, interest of electricity consumers in Eastern India by every legitimate means."* It is a collective body representing the interests of its members who are HT consumers of DVC.

State Electricity Boards (Unbundled Entities):

7. The Jharkhand State Electricity Board (since restructured as Jharkhand Bijli Vitran Nigam Limited and other successor companies) was originally constituted under the Electricity (Supply) Act, 1948 and continued under the Electricity Act, 2003 until unbundling. It is a Respondent owing to its role as a procurer of power from DVC.

Central Electricity Regulatory Commission (CERC):

8. The CERC is the statutory regulator established under Section 76 of the Electricity Act, 2003. It is empowered under Section 79 to regulate tariff of generating companies owned or controlled by the Central Government, including DVC, and to regulate inter-State transmission of electricity.

Factual Matrix of the Case(s) (As submitted by DVC)

9. The Appellant is a statutory body constituted under the provisions of the Damodar Valley Corporation Act, 1948 (in short "DVC Act"), a Central Act and a Special Legislation dealing with the Damodar Valley, a carved area in the provinces presently of West Bengal and Jharkhand.

10. DVC, amongst others, has been engaged in the generation, transmission, distribution, bulk, and retail sale of electricity to consumers in the Damodar Valley. DVC is a body controlled by the Central Government.

11. DVC has other multifarious functions in the Damodar Valley. DVC has the obligation to undertake the development of the Damodar Valley, which falls in the provinces of West Bengal and Jharkhand.

12. The electricity activities of DVC are not restricted to generation and transmission of electricity but also (a) sale of electricity to licensees; and (b) distribution and retail supply of electricity to consumers/end users in the Command Area. The other functions of DVC include promotion and operation of schemes for irrigation, flood control, water supply and drainage and improvement of flow conditions in the Hooghly River, navigation in the Damodar River and its tributaries and channels, afforestation, and control of soil erosion in the Damodar Valley and promotion of public health and agricultural, industrial, economic, and general wellbeing in the Damodar Valley under its areas of operation.

13. There are three broad divisions of DVC, namely, power, irrigation, and flood control. The other activities mentioned above are mostly socio-development activities, which do not earn any revenue for DVC. Under the provisions of the DVC Act, DVC has been authorised to undertake such

subsidiary activities, and the cost and expenses relating to such subsidiary activities are allowed to be charged to the activities of power, irrigation, and flood control. Further, out of the three activities of power, irrigation, and flood control, for the past many years, the power activities involving generation, transmission, bulk supply, distribution, and retail supply constitute the main activities for earning money and also for engaging the employees and workmen.

14. The Central Commission determines the tariff as per the provisions of the Electricity Act, 2003 for (i) the generating stations of the DVC, (ii) the transmission system of the DVC; (iii) the generating stations of other Central Sector Units such as NTPC and NHPC (power purchased by DVC), (iv) the inter-state transmission by the Power Grid Corporation (used by DVC) and other inter-state transmission licensee and (v) all other applicable charges in relation to the above which becomes an input tariff for the State Commission of West Bengal and Jharkhand to include as such while deciding the Revenue Requirements of DVC while deciding the distribution and retail tariff applicable to the DVC. This has been specifically provided in Rule 8 of the Electricity Rules, 2005.

15. DVC, as a statutory body, is required to maintain an appropriate scheme for meeting the Terminal Benefits. The Terminal Benefits of employees are the Pension (wherever the appointment of employees is on a pension basis), gratuity, Contributory Provident Fund, i.e., CPF (wherever the employment of the employees is on Provident Fund contribution basis instead of pension). In addition to the above, the General Provident Fund (GPF) scheme is applicable to all who are under the pension scheme. Thus, Provident Fund is of two types, namely, the CPF and the GPF. The CPF scheme is for those who have not

opted or are otherwise not eligible for the pension scheme, it being an alternative to the pension scheme. DVC contributes to the CPF. The GPF is for all employees, where the subscription to the fund is only by the employees of the DVC, and DVC does not make any contribution.

16. DVC files petitions before the Central Commission for its generating stations for the determination of tariff in terms of the Tariff Regulations issued by the Central Commission from time to time and for the relevant control period.

17. However, vide the above tabled Impugned Orders, the Central Commission has disallowed the following claims of the Appellant's generating stations, the Appellant, being aggrieved by such disallowances, filed the captioned appeals:

A. Disallowance of contribution to pension and gratuity fund for the control period 01.04.2014 to 31.03.2019 [FY 2014-19].

B. Disallowance of additional O&M expenses claimed by DVC, over and above normative O&M on account of:
   - Ash Evacuation,
   - Mega Insurance,
   - CISF security, and
   - Share of subsidiary activities.

18. It is relevant to note that the Appellant and the Respondents in this batch of appeals have filed common written submissions, and thus, the batch is adjudicated issue-wise.

<u>Written Submissions of the Appellant, DVC</u>

A. Disallowance of Pension and Gratuity Liability

19. CERC in the Impugned Orders in the 2009-14 Batch has held as follows:

"82. It is observed that the petitioner has claimed P&G liability as on 31.3.2006 and 31.3.2009 in line with the methodology adopted by the Commission in order dated 7.8.2013 in Petition No. 275/GT/2012. The petitioner has also claimed the P&G liability as valued on 31.3.2011, 31.3.2012, 31.3.2013 and 31.3.2014 during the period 2009-14. The Commission vide its order dated 6.8.2009 in Petition No. 66/2005 had allowed 60% of the P&G liability as on 31.3.2006 to be recovered during the period 2006-09 and balance 40% of the liability during the period 2009-14 in five equal yearly installments. The relevant portion of the order dated 6.8.2009 in Petition No. 66/2005 is as observed as under:-

…

84. Thus, the Commission in its order dated 7.8.2013 in Petition No. 275/GT/2012, had allowed balance 40% of the liability as on 31.3.2006 to be recovered during the period 2009-14 in terms of the judgment of the Tribunal dated 10.5.2010 in Appeal No. 146/2009. In addition to the above, 40% of difference in P&G liability as on 31.3.2009 and 31.3.2006 was also allowed to be recovered in five equal installments during the period 2009-14. The yearly P&G amount allowed for the period 2009-14 was allocated *to different generating stations and T&D system of the petitioner on the basis of the capital cost as on 31.3.2009.*

85. As the petitioner has submitted the Certificate from the Actuary as per the Accounting Standard -15 (AS-15) the Commission directed the petitioner to furnish the detailed actuarial valuation report submitted by the Actuary to the petitioner. In response the petitioner vide affidavit dated 10.6.2016 has submitted the Certificate received from the Actuary has been furnished to the Commission and no separate report has been received from the Actuary to the petitioner.

86. The petitioner was further directed to furnish the complete details of all the elements with assumptions considered by the Actuary for arriving at the Pension & Gratuity fund requirement on year to year basis. The petitioner was also directed to submit the details of year wise (for each year from 2009-10 to 2013-14) amount deposited in the trust towards P&G fund along with reconciliation of P&G fund booked in annual accounts for the respective year. In response, the petitioner vide affidavit dated 23.6.2016 has submitted the details assumptions considered i.e. mortality, attrition, discount rate, normal age retirement, salary escalation (basis salary and Basic + DA) and the method used for computation of P&G liability.

87. As stated, the Commission in order dated 7.8.2013 in Petition No. 275/GT/2012 had allowed the recovery of 40% of the difference in liability as per Actuarial valuation 31.3.2009 and 31.3.2006 in five equal installments. The Commission in the said order had allocated the same on its generating stations except Mejia Unit 5 & 6. The Commission has revised the allocation and has also allocated *share of P&G liability to Mejia Unit 5 and 6 on the basis of capital cost of ₹205946.66 lakh admitted by it as on 31.3.2009. It is observed that the O&M expenses norms specified by the Commission under the 2009 Tariff Regulations applicable for the period 2009-14 had taken into consideration the P&G liability as part of O&M expenses. The statement of reason of the 2009 Tariff Regulations, at para 20.3 clearly states that O&M cost for purpose of tariff covers expenditure incurred on the employees including gratuity, CPF, medical, education allowances etc. The expenses on account of CPF considered in Public Sector Undertakings take care of pension liability applicable in Government Undertaking.*

88. In this background, the additional claim of the petitioner towards P&G liability for the period 2009-14 based on Actuarial valuation cannot be allowed. However, the allocation of P&G liability pertaining to period 2004-09 has been revised by re-allocating the total P&G liability approved in order dated 7.8.2013 taking into consideration Mejia Unit 5 & 6. …"

20. Notably, similar reasoning has been followed by the CERC in the Batch of Appeals pertaining to Impugned Orders passed for the revision of tariff of the 2009-14 Tariff Period.

21. Further, with respect to the 2014-19 period, CERC had held as follows:

"Pension & Gratuity Contribution

67. The petitioner has claimed pension and gratuity contribution for the period 2014-19 and has submitted that it has considered the actuarial valuation as on 31.3.2014, for liability towards pension *and gratuity fund and projected P&G liability for the tariff period 2014-19. It is observed that the liability claimed by the petitioner pertains to the period 2009-14 and does not pertain to the tariff period 2014-19. In this regard it is observed that the Commission in its order dated 29.7.2016 in Petition No. 465/GT/2014, Para No. 107, has disallowed the claim of the petitioner and has observed as under:*

> *…*
>
> *68. Since the claim of the petitioner relates to the tariff period 2009-14 which had not been allowed, the claim of the petitioner has not been considered in this order."*

22. The Counsel submitted that the said findings of the CERC are erroneous for the reasons stated hereinafter.

23. The Appellant, Damodar Valley Corporation (DVC), a statutory body under the DVC Act, 1948, provides terminal benefits to its employees, governed by the Damodar Valley Corporation Service Regulations, 1957. These benefits include the Contributory Provident Fund (CPF), the Pension Scheme, and Gratuity.

24. Under the CPF, both employer and employee contribute a specified amount, and the employer's liability ceases upon retirement, with the employee receiving the accumulated sum. Conversely, the Pension Scheme imposes a continuing liability on the employer post-retirement, extending even after the employee's demise in the form of a family pension. To manage this, DVC maintains a corpus fund, regularly topped up based on actuarial valuation.

25. Gratuity, governed by the Payment of Gratuity Act, 1972, is a lump-sum benefit available alongside CPF or Pension. The gratuity entitlement remains consistent across CPF, GPF, and NPS schemes, provided the service period is the same. The Service Regulations prescribe that all employees, except deputed government servants, must subscribe to either CPF, EPF, or GPF. Employees earning up to ₹1,000 per month are entitled to gratuity under the Act. The Pension-cum-Gratuity Scheme applies to permanent employees from August 15, 1959, and those subscribing to the Provident Fund as of January 18, 1964, had to choose between the two schemes.

26. Temporary or contractual service followed by permanent employment is deemed pensionable from inception. Employees failing to opt for the Pension-cum-Gratuity Scheme within the stipulated time were automatically included but granted another opportunity to opt later. If an employee transitions to the Pension Scheme, DVC retains the employer's provident fund contributions, while the employee's share is transferred to GPF.

27. Family pension and gratuity benefits are available in cases of employee death or injury, with extraordinary pension benefits provided for service-related casualties under Regulation 108B, aligning with the Central Civil Service (Extraordinary Pension) Rules. Temporary employees with over a year of continuous service may also be eligible for the Family Pension Scheme under Regulation 108C.

28. The primary distinction between the Contributory Provident Fund (CPF) Scheme and the Pension Scheme lies in the timing and extent of the government's financial obligations. Under the CPF Scheme, the government's liability arises during the employee's service period, beginning with the opening

of the CPF account and continuing through regular contributions until the employee's retirement, at which point the employer's statutory obligation ceases. The CPF Scheme is thus limited to pre-retirement contributions, with no further liability post-retirement.

29. Conversely, the Pension Scheme imposes no financial obligation on the government during the employee's service period but commences upon retirement, establishing a continuing liability for the duration of the employee's lifetime and, where applicable, extending to family pension benefits after the employee's death. The CPF Scheme is designed for pre-retirement financial planning, whereas the Pension Scheme ensures sustained post-retirement financial security. Both schemes operate under distinct legal frameworks with separate timelines and obligations.

Re. Establishment of the P&G Fund by DVC

30. Under Section 40 of the Damodar Valley Corporation Act, 1948, DVC is statutorily required to allocate funds for depreciation, reserves, and other financial provisions at rates determined by the Comptroller and Auditor-General of India (C&AG) in consultation with the Central Government. Additionally, Section 48 mandates that DVC must adhere to policy directives issued by the Central Government in the discharge of its functions.

31. Consequently, DVC is obligated to establish a pension fund in compliance with AS-15 and as directed by the C&AG and the Central Government. Previously, no dedicated fund existed for Pension and Gratuity (P&G) liabilities, which were managed on a "pay-as-you-go" basis, similar to other government departments. However, following directives from the C&AG

and the Central Government, DVC is now required to maintain a dedicated P&G Fund, covering both current employee contributions and liabilities for prior years of service, excluding already retired employees.

32. Accordingly, the CERC in its Order dated 03.10.2006 in Petition No. 66 of 2005, approved the proposal of DVC for the creation of the P&G fund. The said fund has been established under Section 40 of the DVC Act. While CERC acknowledged that this liability is to be recovered through tariff, it directed that the liability in this regard shall be shared between DVC and the consumers in the ratio of 40:60. The relevant extract is as follows:

> *"Pension and gratuity fund*
> *73. As mentioned above, the petitioner Corporation had contended that it is required to create a pension and gratuity fund as per the instructions of C&AG. This proposal has been strongly objected to by the objector-intervenor, M/s Bhaskar Shrachi Alloys Ltd and others. The averments of the objector-intervenor in this regard are that AS 15 is applicable only to companies registered under the Companies Act, 1956 and since the petitioner Corporation is not a company registered under the Companies Act, the said Accounting Standard was not mandatory for the petitioner Corporation. It has been stated that Sections 46 and 47 of the DVC Act provide that the accounts should be prepared in such form and in such manner as may be prescribed by the rules made by the Central Government. However, by the rules made by the Central Government, AS-15 has not been extended to the petitioner Corporation. It is further contended that Section 59 of the DVC Act empowers the Central Government by notification in the Official*

Gazette to make Rules, inter alia, providing for the forms of Budget and the manner in which the Accounts of DVC shall be maintained. According to the objector-intervenor, unless prescribed by Rules framed by Central Government under section 59 of the DVC Act and duly published in the official Gazette, the petitioner Corporation cannot introduce AS-15 or any Accounting Standard and cannot change its accounting method.

74. The petitioner has, however, contended that it is bound by the instructions of the C&AG and there is a mandatory requirement for creating the pension fund in terms of the requirement of AS-15. We address this issue presently.

75. We observe that Section 59(5) of the DVC Act confers a power on the Central Government to make rules. DVC Rules 1948 framed in exercise of the powers conferred by Section 59 of the DVC Act 1948, prescribe the manner in which the accounts are to be prepared (Rules 19 to 17). Further, Rules 28-33 of the above Rules lay down the procedure relating to Audit. Rule 28 of the Damodar Valley Corporation Rules 1948 places the petitioner Corporation under the jurisdiction of the C&AG for the purpose of audit of the accounts of the petitioner Corporation. A perusal of the Rules indicates that the same only lay down broad guidelines and do not deal with the details of the manner in which the accounts are to be maintained i.e. whether terminal benefits are to be provided on payment basis or actuarial valuation basis. The objector-intervenor has not established that switch over from the present mode of payment basis to actuarial valuation basis will be in violation of the Rules prescribed.

76. In addition to the above, Section 40 of the DVC Act provides as under:

(1) The Corporation shall make provision for depreciation and for reserve and other funds at such rates and on such terms as may be specified by the Auditor General of India in consultation with the Central Government.

(2) The net profit for the purposes of section 37 shall be determined after such provision has been made.

77. It is evident form the above provision that the petitioner Corporation is under a statutory duty to make provisions for the funds as directed by the Auditor General of India. Since the present case involves making provision for a terminal benefits fund, the Corporation is bound to act under the directions of the C&AG.

78. It is also observed from various provisions of the Act that the petitioner Corporation is under the overall control and superintendence of the Central Government. Section 48 specifically provides that "1) in discharge of its functions the Corporation shall be guided by such instructions on questions of policy as may be given to it by the Central Government." Section 48 (2) further provides that "If any dispute arises between the Central Government and Corporation as to whether a question is or is not a question of policy, the decision of the Central Government shall be final". As the petitioner Corporation is under a statutory duty to abide by the instructions of the Central Government on questions of policy, in the instant case it has no option but to provide for the terminal benefits in the manner instructed by the Central Government.

79. The following provisions of the DVC Act 1948 also establish that the petitioner Corporation is functioning under the overall superintendence of the Central Government:

(a) The date on which the Corporation was established is based on the gazette notification of the Central Government [Section 3(1)]

(b) The Chairman and the two other members of the Corporation are appointed by the Central Government [Section 4(1)]

(c) Secretary and the financial adviser of the Corporation are appointed by the Central Government [Section 6(1)]

(d) The limits of the Damodar Valley are notified by the Central Government [Section 11(1)]

(e) Central Government has powers to direct the manner in which the funds of the Corporation shall be deposited [Section 29(2)]

(f) Section 51 of the Act empowers the Central Government to remove any member from the Corporation

(g) If the Corporation fails to carry out its functions or follow the directions issued by the Central Government under this Act, the Central Government shall have power to remove the Chairman and the members of the Corporation and appoint a Chairman and members in their places [Section51(6)]

(h) Central Government has the powers to make rules on several matters in relation to the Corporation [Section 59]

80. We, therefore, hold that in view of the overwhelming powers of the Central Government to issue instructions on the manner in which retirement funds are to be maintained cannot be questioned unless the instructions are shown to be violative of any statutory provision.

81. Accordingly, we approve the proposal of the petitioner Corporation for creation of the fund. However, entire burden should not be passed on to the consumers. We direct that the liability in this regard shall be shared between the petitioner Corporation and the consumers in the ratio of 40:60. The share of the consumers shall be recovered in three annual equal installments starting from 2006-07.

82. Out of the projected liability of Rs.1709 crore, as recommended by the actuary for DVC as a whole, Rs.1690.15 crore has been allocated to power business. Of this amount, Rs.6.13 crore pertains to Distribution business and Rs.149.52 crore pertains to Unit-4 of the MTPS (4 unit). Since the tariff for distribution will be determined by the concerned SERCs, pension liability allocated to Distribution system will be dealt with by them. So far unit-4 of Mejia TPS is concerned, the tariff for the same is yet to be decided and liability towards pension and gratuity allocated to the said unit will be considered while approving the tariff. Accordingly, the calculation of pension fund to be charged to the consumers is given as under:

…

83. However, as a corollary to the creation of the Pension and Gratuity fund, there is a need to take out all pension, gratuity and leave encashment liabilities on cash basis from the normalized O&M. A provision of 30.41% of basic pay plus DA merged plus DA as contribution to the fund for the existing employees shall be provided in normalized O&M. Further, proportionate apportionment of depreciation on capital investment on central offices, director's offices and other offices and subsidiary activities amongst various

> *generating stations and transmission system has been considered to be allowed additionally in O&M.*
>
> *…"*

33. In Appeal No. 271 of 2006 and related cases, DVC challenged the liability for its Pension and Gratuity (P&G) Fund. The Tribunal, in its judgment dated 23.11.2007, first examined whether Section 40 of the Damodar Valley Corporation Act, 1948, was inconsistent with the Electricity Act, 2003. It reaffirmed the legal principle that inconsistency between statutes exists only when provisions are in direct conflict and cannot be harmonized.

34. The Tribunal held that only those provisions of the DVC Act that are explicitly inconsistent with the Electricity Act would cease to apply. It clarified that inconsistency must be between the DVC Act and the Electricity Act itself, not between the DVC Act and regulations framed under the Electricity Act.

35. Furthermore, the Central Electricity Regulatory Commission (CERC) could not formulate tariff regulations for DVC in contradiction to provisions of the DVC Act that do not conflict with the Electricity Act. Sections 37 to 42 and 44 of the DVC Act were recognized as plenary provisions unaffected by subordinate regulations under the Electricity Act.

36. On the specific issue of P&G liability, the Tribunal concluded that the substantial liability arose because DVC previously followed a "pay-as-you-go" policy, with a significant portion pertaining to past years. Since CERC, after conducting a prudence check, approved the necessity of funding the P&G Contribution Fund, DVC should have been permitted to recover the entire amount from consumers through tariffs. The Tribunal held that the full

expenditure, as determined after CERC's prudence check, was to be borne by consumers. The relevant extract of the Judgment dated 23.11.2007, with respect to the findings of this Tribunal on the P&G issue, is as follows:

> *"D.1 DVC has submitted that based on the actuarial valuation, entire funds need to create the Pension and Gratuity Contribution Fund should be allowed to be recovered through the process of determination of tariff. The Central Commission in its Order has worked out that a sum of Rs. 1534.49 crore is required to create such a fund. The Commission has held that entire burden for creation of the fund should not be passed on to the consumers and accordingly directed that 60% be recovered through the tariff from the consumers and 40% be contributed by the DVC. We find that this decision is not backed by any justification given in the order. We feel the claim of the Appellant to recover the entire cost for creation of the fund through tariff is justified provided the recovery is staggered in a manner that it does not create tariff-shock to consumers.*
>
> *D.2 The huge liability for the fund has arisen as earlier DVC was adopting the policy of "pay as you go". A major part of the liability pertains to previous years.*
>
> *D.3 As a general rule, once the Commission, after prudence check, has agreed with the need for funding the Pension and Gratuity Contribution funds, DVC should have been allowed to recover entire amount from the consumers through the tariff. Asking DVC to contribute out of its own resources would tantamount to denying it the return on equity as assured in terms of Tariff Regulations. However, if we look at it from the point of view of the consumers,*

the consumers, particularly the industrial and commercial ones, have now no option to adjust their sale price to take into consideration the need for meeting the accumulated liability. It is, therefore, an accepted fact that due to postponing of the creation of such fund, the consumers were enjoying lesser tariff than the legitimate tariff otherwise applicable to them.

D.4 Some of the Respondents have contended that Accounting Standard AS –15 is not applicable to the Appellant. As a prudent accounting practice, whether AS-15 is applicable to DVC or not, an adequate provision is required to be made for employees related liabilities by DVC. Postponing creation of such funds would again lead to non-determination of appropriate cost of supply of electricity.

D.5 In view of the above we find it unreasonable to allocate 40% of the burden on DVC. We are of the opinion that entire expenditure, as determined after prudence check by the Commission, is to be borne by the consumers.

D.6 Some of the Respondents in the matter have questioned the very basis of working out the quantum of funds of Rs. 1534.49 crores.

D.7 The Respondent No. 4, the State of West Bengal has, in the context of Central Commission's directive that 60% of the unfunded liability relating to generation and transmission functions are to be paid by the consumers, contended that Central Commission has no jurisdiction to determine tariff of the distribution segment and has averred that such directions of payment by the consumers is encroachment in the jurisdiction of the State Electricity Regulatory Commission and is illegal.

D.8 In our opinion recovery of costs incurred by DVC in respect of generation and transmission functions falls squarely in the jurisdiction of the Central Commission. Tariff so determined by the CERC shall form the basis for determining the tariff at the retail end of the distribution segment.

D.9 Government of West Bengal has drawn our attention to Annual Report of DVC for 2002-03 where "an amount of Rs. 66 crore have been charged towards Pension and Gratuity Fund and a further amount of Rs. 23 crore have been charged as relief paid to the pensioners. …………………It is not uncommon for Government organizations to divert its funds created for staff welfare to meet other nonplanned expenditure. It appears in the present case also that DVC had diverted its funds earmarked for pension fund for which an enquiry was required to be made by CERC, unfortunately the same was not done."

D.10 It is possible, if the amount charged to the profit and loss account of a particular year is revenue in nature, the same would not be reflected in the balance sheet. The allegations levelled by the Government of West Bengal are serious in nature and if true, would reflect very poorly on the Appellant. The Central Commission is directed to satisfy itself about provisions already made towards Pension and Gratuity Fund and the amount already collected by DVC be adjusted in this regard. We are of the firm view that the Government of West Bengal being a part owner of DVC and represented on the Board for managing the affairs of DVC, ought to have taken appropriate steps to rectify the matter when the matter came to its knowledge."

37. Following the Tribunal's findings and directions, the matter was remanded to CERC, which issued an order on 06.08.2009 in Petition No. 66 of 2005. CERC affirmed that, as per the Tribunal's judgment dated 23.11.2007, DVC was entitled to recover the entire Pension and Gratuity (P&G) fund from consumers, provided that the recovery was staggered to prevent tariff shocks. Accordingly, CERC decided to spread the remaining 40% of the P&G fund over five years during the 2009-14 tariff period, while maintaining the pension fund allocation from the 2006-09 tariff period without any revision. The relevant extracts of the Remand Order dated 06.08.2009 are as follows:

> *"Pension and Gratuity Contribution*
>
> *69. The Commission in its order dated 3.10.2006 had worked out an amount of Rs. 153449 lakh towards pension and gratuity fund and directed that 60% of the aforesaid amount be recovered from the consumers over a period of three years starting from the year 2006-07 to 2008-09. The balance 40% of the gratuity fund was to be borne by the petitioner as it was allowed a transition period for two years i.e. 2004-05 and 2005-06 and the petitioner was allowed to retain the surplus fund during the years. Though tariff was allowed to the petitioner from 1.4.2004 due to the transition period, the petitioner was allowed to recover tariff at the rates fixed by it for the period from 1.4.2004 to 31.3.2006 and thereafter at the rates allowed by the Commission by its order dated 3.10.2006. Since the petitioner was allowed to recover tariff at the rates determined by it for 40% of the tariff period and retain the surplus so generated, the Commission took a conscious view that the petitioner should contribute to the extent of 40% of the pension and gratuity fund out of the surplus generated during the years 2004-05 and 2005-06.*

…

70. The Appellate Tribunal in its judgment dated 23.11.2007, observed as under:

…

71. It is noticed that the Appellate Tribunal while agreeing with the order of the Commission allowing transition period for two years to the petitioner, has, however rejected the non-allowance of 40% of the pension contribution and observed that the petitioner is entitled to recover the entire amount of pension fund from its consumers, provided that such recovery was staggered and do not create tariff shock to the consumers.

72. It could be observed from the books of accounts of the petitioner that the petitioner had generated a surplus amount of Rs 79487 lakh during the year 2004-05 and Rs. 188634 lakh during the year 2005-06. After adjustments on account of taxes and prior period, the surplus amount was Rs. 69044 lakh for year 2004-05 and Rs.108282 lakh for the year 2005-06. Considering the equity worked out in terms of the direction of the Appellate Tribunal and the additional capitalization allowed, the Return on equity at the rate of interest @ 14% works out to Rs.17700 lakh for 2004-05 and Rs.18000 lakh for 2005-06.

73. Accordingly, in compliance with the directions contained in the judgment of the Appellate Tribunal, it has been decided to stagger the balance 40% of the pension fund over a period of five years during the tariff period 2009-14, without any revision in the pension fund allocated in tariff for the period 2006-09. Based on the above, calculations have been made and the amount to be recovered in *five installments during the tariff period 2009-14 is Rs. 61379.60 lakh, with an annual installment of Rs. 12275.92 lakh."*

38. The Tribunal's judgment dated 23.11.2007 was challenged by DVC consumers before the Hon'ble Supreme Court. In Bhaskar Shrachi Alloys Limited & Ors. v. DVC & Ors., (2018) 8 SCC 281, the Hon'ble Supreme Court upheld the Tribunal's ruling, affirming that:

a) The fourth proviso to Section 14 of the Electricity Act (EA) is a substantive legislative provision. Since Part IV of the DVC Act is not inconsistent with the EA, it must be considered in tariff determination and holds precedence over conflicting provisions in the Tariff Regulations.
b) Regarding the P&G fund, the Tribunal's reasoning was found to be legally sound, with no apparent errors justifying Hon'ble Supreme Court interference under Section 125 of the EA. The relevant extracts of the findings of the Hon'ble Supreme Court are as follows:

"54. After considering the respective stands taken, the Parliamentary Standing Committee had recommended that the Corporation should be exempted from the operation of the provisions of the proposed 2003 Act in view of the special status and responsibilities of the Corporation as envisaged under the Parliamentary enactment constituting it (i.e. the 1948 Act). However, it appears that Parliament was not inclined to provide a blanket/total exemption in favour of the Corporation and the 2003 Act did not include the Corporation as one of the entities in Section 173 of the 2003 Act which provides exemption insofar as the provisions of the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989 clearly excluding the

provisions of the 2003 Act therefrom. Instead, the fourth proviso to Section 14 of the 2003 Act was specifically incorporated, details of which have already been noted.

55. Having regard to the legislative history behind the enactment of the provisions of Section 173 and the provisions of Section 14 including the fourth proviso thereto, it may be more in consonance with the Parliamentary intention to hold that the fourth proviso to Section 14 need not be understood to be confined only to the question of licensing which is dealt with by the main part of Section 14. Rather, we are inclined to hold that Parliament had intended to provide partial exemption to the Corporation by mandating that such provisions a of the 1948 Act which are not inconsistent with the 2003 Act will continue to hold the field. Viewed thus, the fourth proviso to Section 14 of the Electricity Act, 2003 has to be understood to be a legislative exercise in the nature of a substantial provision of law. Part IV of the 1948 Act not being inconsistent with the provisions of the 2003 Act can, therefore, be taken into account for determination of tariff. Such provisions of the 1948 Act will also have an b overriding effect over the inconsistent provisions of the Tariff Regulations. Our view, as above, will also effectuate the provisions of the 1948 Act insofar as the activities of the Corporation, other than generation and transmission of electricity, is concerned. We, therefore, affirm the above view taken by the Appellate Tribunal for the reasons aforestated.

…

59. So far as the pension and gratuity fund is concerned, the only issue arising is whether the fund worked out on Actuary basis at Rs 1534.49 crores should be apportioned between the Corporation *and the consumers as held by CERC in the ratio of 40:60 or the entire fund should be allowed to be recovered by way of tariff from the consumers as held by the learned Appellate Tribunal. The reasoning of the learned Appellate Tribunal in coming to the aforesaid conclusion is as follows:*

…

60. A careful consideration of the reasoning adopted by the learned Appellate Tribunal would not disclose any such error so as to warrant interference of this Court. No error or fallacy, ex facie, is disclosed in the reasoning adopted so as to justify interference under Section 125 of the 2003 Act."

39. The Hon'ble Supreme Court's judgment in Bhaskar Shrachi Alloys Limited & Ors. v. DVC & Ors. (2018) affirmed the Tribunal's findings in its 23.11.2007 judgment, making them final and binding. Consequently, the Tribunal's decision has merged with the Hon'ble Supreme Court's ruling, and both the CERC and the respondents in the present case are legally bound by it.

40. This follows the principle of merger established in Kunhayammed v. State of Kerala (2000) 6 SCC 359, where the Hon'ble Supreme Court held that when a superior court affirms, modifies, or reverses a lower forum's decision, the latter merges into the superior court's ruling, making it the only enforceable decision in law. The relevant extract of the Judgment of the Hon'ble Supreme Court in *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359 is as follows:

"44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when a the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not substituted in place of the order under challenge. All that

it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, e this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred of a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

Re. Impugned Order is in teeth with the Hon'ble Supreme Court and this Tribunal's Judgments

41. Article 141 of the Indian Constitution mandates that the law declared by the Hon'ble Supreme Court is binding on all courts within India. With the Supreme Court affirming the Tribunal's judgment, it attains the status of stare decisis, establishing a binding precedent that must be followed in subsequent cases without deviation. Reliance in this regard is placed on the Judgment of the Hon'ble Supreme Court in *Krishena Kumar v. Union of India*, (1990) 4 SCC 207 wherein it was held that:

> *"33. Stare decisis et non quieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 14 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public*

policy demand it. But in Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] it was never required to be decided that all the retirees formed a class and no further classification was permissible."

42. Therefore, once this Tribunal has categorically held that the entire P&G liability is to be recovered in tariff, it is not open for the CERC to hold to the contrary with the subterfuge that the said expenses are relatable to O&M expenses allowed. Such a recovery, if permitted, would lead to judicial anarchy. In this regard reliance is placed on Union of India v. S.P. Sharma, (2014) 6 SCC 351, wherein it was held that:

"82. In a country governed by the rule of law, the finality of a judgment is absolutely imperative and great sanctity is attached to the finality of the judgment and it is not permissible for the parties to reopen the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far-reaching adverse effect on the administration of justice. It would also nullify the doctrine of stare decisis, a well-established valuable principle of precedent which cannot be departed from unless there are compelling circumstances to do so. The judgments of the court and particularly of the Apex Court of a country cannot and should not be unsettled lightly."

Re. Impugned Order is in teeth with Ld. CERC's own Regulations

43. Without prejudice to prior submissions, the Tribunal's Judgment dated 23.11.2007 directed CERC to frame Regulations incorporating Section 40 of

the DVC Act. In compliance, CERC introduced the CERC (Terms and Conditions of Tariff) Regulations, 2009, wherein Regulation 43(2) recognized funds established under Section 40 of the DVC Act as recoverable tariff expenditures. However, Regulation 43(3) made this provision subject to the Supreme Court's decision in Bhaskar Shrachi Alloys Limited & Ors. v. DVC & Ors., (2018) 8 SCC 281. The relevant extract of the Tariff Regulations 2009 is as follows:

> *"43. Special Provisions relating to Damodar Valley Corporation.*
>
> *(1) Subject to clause (2), these regulations shall apply to determination of tariff of the projects owned by Damodar Valley Corporation (DVC).*
>
> *(2) The following special provisions shall apply for determination of tariff of the projects owned by DVC:*
>
> > *(i) Capital Cost: The expenditure allocated to the object 'power', in terms of sections 32 and 33 of the Damodar Valley Corporation Act, 1948, to the extent of its apportionment to generation and inter-state transmission, shall form the basis of capital cost for the purpose of determination of tariff:*
> >
> > *Provided that the capital expenditure incurred on head office, regional offices, administrative and technical centers of DVC, after due prudence check, shall also form part of the capital cost.*
> >
> > *(ii) Debt Equity Ratio: The debt equity ratio of all projects of DVC commissioned prior to 01.01.1992 shall be 50:50 and that of the projects commissioned thereafter shall be 70:30.*

(iii) Depreciation: The depreciation rate stipulated by the Comptroller and Auditor General of India in terms of section 40 of the Damodar Valley Corporation Act, 1948 shall be applied for computation of depreciation of projects of DVC.

(iv) Funds under section 40 of the Damodar Valley Corporation Act, 1948: The Fund(s) established in terms of section 40 of the Damodar Valley Corporation Act, 1948 shall be considered as items of expenditure to be recovered through tariff.

(3) The provisions in clause (2) of this regulation shall be subject to the decision of the Hon'ble Supreme Court in Civil Appeal No 4289 of 2008 and other related appeals pending in the Hon'ble Court and shall stand modified to the extent they are inconsistent with the decision."

44. The basis of the said Regulation is discernible from the Statement of Objects and Reasons ("SoR") of the Tariff Regulations 2009. The relevant extract of the SoR of the Tariff Regulations 2009 is as follows:

"36. Special Provision relating to DVC (Regulation 43)

…

36.3 The Appellate Tribunal for Electricity in its judgement dated 23.11.2007 has interpreted the fourth proviso to section 14 of the Act. The said proviso reads as under :

…

36.4 The Tribunal after detailed examination of the provisions of the Electricity Act and the DVC Act has come to the conclusion that the *fourth proviso to section 14 clearly implies that only such of the provisions of the DVC Act which are inconsistent with the Electricity Act shall not apply. The Central Commission cannot frame regulations for determination of tariff of DVC which are inconsistent with the provisions of the DVC Act that do not collide with the Electricity Act. In other words, the Commission is required to frame terms and conditions of tariff regulation which will accommodate such of the provisions of the DVC Act which are not inconsistent with the Electricity Act, 2003.*

36.5 The Tribunal in para 89 of the judgement has stated that the Legislature, expected that the Central Commission while framing regulations under the Electricity Act, 2003 will take care of such provisions of the DVC Act not inconsistent with the Act. The provisions of the DVC Act which are not inconsistent with the Act shall continue to apply. In para 91 of the judgment held that the regulations under the Act are to be read in addition to and not in derogation of any other law (i.e. provisions of Part IV of DVC Act) for the time being in force that means the Regulations, 2004 formulated by the Central Commission need to be read along with the provisions of Part IV of DVC that relate to the power-object of DVC. Relevant provisions of Part IV are quoted in the following sections:

…

36.6 The Tribunal has discussed in detail the provisions of the DVC Act which are both consistent and inconsistent with the Electricity Act and has come to the conclusion that the provisions of the DVC Act that are not in conflict with the Electricity Act, 2003, particularly *sections 38, 39 and 40 of the DVC Act which have tariff implications have to be given effect.*

36.7 On specific grounds of appeal, the Tribunal has given the following directions:

> *…*
>
> *d) The Central Commission has worked out a sum of Rs.1534.49 crore to create Pension and Gratuity Contribution Fund with the stipulation that 60% thereof shall be recovered through the tariff and the remaining 40% to be contributed by the DVC. The decision of the Commission is not backed by any justification and the entire cost is allowed to be recovered through tariff. However, the recovery should be staggered in a manner that it does not create tariff-shock to consumers. [Para D-1 of the Judgement]*
>
> *…*

36.8 Keeping in view the provisions of the DVC Act and the judgement of the Appellate Tribunal for Electricity, the following special provisions have been made:

> *…*

36.9 Other directions of the Tribunal are consistent with the general provisions of the regulations and therefore no specific provision has been made in respect of DVC. The Commission has filed an appeal before the Supreme Court challenging the judgement of the Appellate Tribunal for Electricity which is still pending. Therefore, the special provision related to DVC shall be subject to the outcome of the similar appeals filed in the Supreme Court.

36.10 Accordingly, the Commission has made special provisions for DVC in Regulation 43 as under:

…"

45. The provision introduced in the Tariff Regulations, 2009 under Regulation 43(2) was contingent upon the outcome of the proceedings before the Hon'ble Supreme Court. With the Supreme Court's ruling in Bhaskar Shrachi Alloys Limited & Ors. v. DVC & Ors., (2018) 8 SCC 281, which upheld DVC's position, there remains no doubt that Regulation 43(2) is applicable for tariff determination of DVC projects. Moreover, as established in PTC India Limited v. CERC, (2010) 4 SCC 603, CERC is bound by its own regulations. The relevant extract of the Judgment is as follows:

"49. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law. (See Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] .)

…

54. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory

Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that the Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licences, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178.

55. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the

2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.

…

58. One must understand the reason why a regulation has been made in the matter of capping the trading margin under Section 178 of the Act. Instead of fixing a trading margin (including capping) on a case-to-case basis, the Central Commission thought it fit to make a regulation which has a general application to the entire trading activity which has been recognised, for the first time, under the 2003 Act. Further, it is important to bear in mind that making of a regulation under Section 178 became necessary because a regulation made under Section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation under Section 178 is in the nature of a subordinate legislation. Such subordinate legislation can even override the existing contracts including power purchase agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an order of the Central Commission under Section 79(1)(j).

…

92. (i) In the hierarchy of regulatory powers and functions under the 2003 Act, Section 178, 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).

(ii) A regulation under Section 178, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulation.

(iii) 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.

…"

46. CERC was bound by the directions of the Tribunal, as affirmed by the Supreme Court, and its own Tariff Regulations, 2009. Any deviation from these mandates was impermissible. Therefore, the impugned findings of CERC, particularly regarding the disallowance of the P&G Fund, are unsustainable and must be set aside for being contrary to the rulings of the superior judicial fora.

Re. Rejoinder Arguments to the contentions raised by the Respondents

47. The Respondents argued that the P&G Fund liability is already covered under O&M expenses in the Tariff Regulations, 2009, and allowing its recovery separately would lead to double recovery. They contended that DVC is not entitled to any special dispensation beyond what is available to other generating companies like NTPC and that the normative O&M expenses sufficiently cover all operational expenditures, including manpower costs.

48. In response, it was submitted that CPF, which is included in Regulation 19 of the Tariff Regulations, 2009, is distinct from the P&G Fund established under Section 40 of the DVC Act.

49. The Hon'ble Supreme Court in Krishena Kumar v. Union of India (1990) 4 SCC 207 distinguished between CPF, which finalizes an employee's rights upon retirement, and pension schemes, where the employer's liability arises post-retirement. This principle applies to the present matter.

50. Additionally, CERC itself had earlier held in its Order dated 03.10.2006 that pension, gratuity, and leave encashment liabilities must be removed from normalized O&M expenses due to the P&G Fund's creation. This was reiterated in its Remand Order dated 06.08.2009, where it decided to stagger the remaining 40% of the pension fund over five years (2009-14) without revising the allocation for 2006-09. Thus, the claim that P&G liability is already included in O&M expenses is without merit.

51. Unlike other state-owned entities that follow the CPF scheme, DVC maintains a dedicated P&G Fund. CERC's regulations relied on data from companies like NTPC and PGCIL, which follow CPF, making it unreasonable

to assume that O&M norms cover P&G liability. If the P&G Fund were factored into O&M norms, utilities without such a fund would benefit unfairly.

52. Further, CERC has not explicitly stated that the P&G Fund is included in O&M expenses. The Impugned Order selectively refers to the Statement of Reasons while disregarding special provisions applicable to DVC, making it legally unsustainable.

53. In response to the contentions raised by DVPCA, it is submitted that, unlike other transmission licensees and generating companies, DVC undertakes various sovereign functions in addition to its power business, as mandated by the DVC Act. The special status of DVC has been explicitly recognized in the Judgment dated 23.11.2007 by the Tribunal, which was later affirmed by the Hon'ble Supreme Court in Bhaskar Shrachi Alloys Limited & Ors. v. DVC & Ors., (2018) 8 SCC 281. The relevant extracts of the judgment dated 23.11.2007 are as follows:

> *"17. These provisions contained in Part-IV of the DVC Act can be read with the Act of 2003 as there is no conflict between the two. Therefore, the existence of these provisions and their application are not in any manner endangered or affected by the Act of 2003. Therefore, the force of these provisions cannot be curbed by any Regulations or Rules framed under the Act of 2003. In the event of any inconsistency between the Regulations and the above said provisions of the DVC Act, the latter provisions cannot said to be falling foul of the fourth proviso to Section 14 of the Act of 2003. It appears to us that the Parliament, while enacting the Act of 2003,*

was conscious of the special responsibilities of the DVC, conferred on it by the DVC Act.

…

101. The DVC Act envisions the integrated development of Damodar Valley and required the activities of significant public importance to be taken up in its implementation plan. Many of the above activities, which are in the nature of Sovereign or Welfare functions are neither commercial nor remunerative and are normally required to be performed by the State. These activities according to Section 32 of DVC Act, are required to be subsidized from the revenue mainly earned from the electricity operations of DVC as it was the main revenue earning activity. The aforesaid functionally differentiate the unique status of DVC from that of other Central Electricity Utilities."

54. The relevant extracts of the Judgment of the Hon'ble Supreme Court in *Bhaskar* Shrachi *Alloys Limited & Ors. v. DVC & Ors.*, (2018) 8 SCC 281 are reproduced below:

"51. The proceedings of the Parliamentary Standing Committee on Energy (13th Lok Sabha), insofar as the Electricity Bill of 2001 presented before the Lok Sabha on 19-12-2002 is concerned, would go to indicate that various organisations like the Ministry of Railways, the Bhakra Beas Management Board (BBMB) and also the Corporation had requested for exemption from the operation of the provisions of the 2003 Act citing the peculiar, sensitive and specialised nature of task that such bodies have been entrusted by the statutory enactments constituting and governing the said

bodies/organisations. Specifically, in this regard, the peculiar duties and responsibilities cast on the DVC by Section 12 of the 1948 Act had been highlighted before the Parliamentary Standing Committee. It had been urged before us that it was recommended by the Parliamentary Standing Committee that exemption from the provisions of the proposed 2003 Act should be granted to the Corporation in view of its special statutory status which may get eroded if the exemptions are not to be granted.

52. The provisions of Section 58 of the 1948 Act which is in the following terms were also placed before the Parliamentary Standing Committee while seeking exemption from the operation of the proposed 2003 Act:

…

53. On the other hand, it would appear from the record of the proceedings of the Parliamentary Standing Committee that the industry represented by Chhotanagpur Chamber of Commerce & Industry and the Bengal Chamber of Commerce & Industry as well as the States of Jharkhand and West Bengal had contested the claims made by the Corporation for exemption and had pleaded before the Parliamentary Standing Committee that the 1948 Act itself be repealed/amended insofar as all non-power related activities are concerned which constitute only about 10% of the total activities of the Corporation.

54. After considering the respective stands taken, the Parliamentary Standing Committee had recommended that the Corporation should be exempted from the operation of the provisions of the proposed 2003 Act in view of the special status and responsibilities of the Corporation as envisaged under the

Parliamentary enactment constituting it (i.e. the 1948 Act). However, it appears that Parliament was not inclined to provide a blanket/total exemption in favour of the Corporation and the 2003 Act did not include the Corporation as one of the entities in Section 173 of the 2003 Act which provides exemption insofar as the provisions of the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989 clearly excluding the provisions of the 2003 Act therefrom. Instead, the fourth proviso to Section 14 of the 2003 Act was specifically incorporated, details of which have already been noted.

55. Having regard to the legislative history behind the enactment of the provisions of Section 173 and the provisions of Section 14 including the fourth proviso thereto, it may be more in consonance with the Parliamentary intention to hold that the fourth proviso to Section 14 need not be understood to be confined only to the question of licensing which is dealt with by the main part of Section 14. Rather, we are inclined to hold that Parliament had intended to provide partial exemption to the Corporation by mandating that such provisions of the 1948 Act which are not inconsistent with the 2003 Act will continue to hold the field. Viewed thus, the fourth proviso to Section 14 of the Electricity Act, 2003 has to be understood to be a legislative exercise in the nature of a substantial provision of law. Part IV of the 1948 Act not being inconsistent with the provisions of the 2003 Act can, therefore, be taken into account for determination of tariff. Such provisions of the 1948 Act will also have an overriding effect over the inconsistent provisions of the Tariff Regulations. Our view, as above, will also effectuate the provisions of the 1948 Act insofar as the activities of the

Corporation, other than generation and transmission of electricity, is concerned. We, therefore, affirm the above view taken by the Appellate Tribunal for the reasons aforestated."

55. The contention of DVPCA that the Electricity Act does not grant DVC any special dispensation or additional tariff element beyond what is available to other generating companies, such as NTPC, is contrary to the settled legal position. Both the Tribunal and the Hon'ble Supreme Court have already addressed and rejected this argument, making DVPCA's repeated assertions judicially improper.

56. Regarding the 2014-19 tariff period, governed by the CERC (Determination of Tariff) Regulations, 2014, CERC failed to consider its own findings in the Remand Order dated 06.08.2009 (Petition No. 66 of 2005) and erroneously disallowed the staggered recovery, as previously directed by the Tribunal in its Judgment dated 23.11.2007. CERC had earlier permitted recovery of 40% of the P&G liability over the 2009-14 tariff period, in addition to the 60% recovered during 2006-09.

57. Furthermore, Regulation 53 of the Tariff Regulations 2014 is similar to Regulation 43 of the Tariff Regulations 2009, and CERC had adopted a comparable rationale in the Statement of Reasons (SoR) for the Tariff Regulations 2014. The relevant extracts of the Tariff Regulations 2014 are reproduced hereunder:

"53. Special Provisions relating to Damodar Valley Corporation:

(1) Subject to clause (2), this regulation shall apply to determination of tariff of the projects owned by Damodar Valley Corporation (DVC).

(2) The following special provisions shall apply for determination of tariff of the projects owned by DVC:

(i) Capital Cost: The expenditure allocated to the object „power", in terms of sections 32 and 33 of the Damodar Valley Corporation Act, 1948, to the extent of its apportionment to generation and inter-state transmission, shall form the basis of capital cost for the purpose of determination of tariff:

Provided that the capital expenditure incurred on head office, regional offices, administrative and technical centers of DVC, after due prudence check, shall also form part of the capital cost.

(ii) Debt Equity Ratio: The debt equity ratio of all projects of DVC commissioned prior to 01.01.1992 shall be 50:50 and that of the projects commissioned thereafter shall be 70:30.

(iii) Depreciation: The depreciation rate stipulated by the Comptroller and Auditor General of India in terms of section 40 of the Damodar Valley Corporation Act, 1948 shall be applied for computation of depreciation of projects of DVC.

(iv) Funds under section 40 of the Damodar Valley Corporation Act, 1948: The Fund(s) established in terms of section 40 of the Damodar Valley Corporation Act, 1948

shall be considered as items of expenditure to be recovered through tariff.

(3) The provisions in clause (2) of this regulation shall be subject to the decision of the Hon'ble Supreme Court in Civil Appeal No 4289 of 2008 and other related appeals pending in the Hon'ble Court and shall stand modified to the extent they are inconsistent with the decision."

58. The relevant extracts of the SoR of the Tariff Regulations 2014 are as follows:

"50. Special Provisions relating to Damodar Valley Corporation (Regulation 53)

50.1 In the draft Tariff Regulations, the Commission proposed to continue with the existing special provisions related to tariff determination of the projects owned by Damodar Valley Corporation (DVC). The draft Regulation provided for the following special provisions to DVC:

…

Commission's Views

50.4 Hon'ble Appellate Tribunal for Electricity (ATE) in its judgement dated 23.11.2007 in Appeal No. 273 of 2006 has interpreted the fourth proviso to section 14 of the Act. The said proviso reads as under:

…

50.5 The Tribunal after detailed examination of the provisions of the Electricity Act and the DVC Act has come to the conclusion that the fourth proviso to section 14 clearly implies that only such of the *provisions of the DVC Act which are inconsistent with the Electricity Act shall not apply. The Central Commission cannot frame regulations for determination of tariff of DVC which are inconsistent with the provisions of the DVC Act that do not collide with the Electricity Act. In other words, the Commission is required to frame terms and conditions of tariff regulation which will accommodate such of the provisions of the DVC Act which are not inconsistent with the Electricity Act, 2003.*

50.6 The Tribunal in Para 89 of the judgement has stated that the Legislature, expected that the Central Commission while framing regulations under the Electricity Act, 2003 will take care of such provisions of the DVC Act not inconsistent with the Act. The provisions of the DVC Act which are not inconsistent with the Act shall continue to apply. In Para 91 of the judgment held that the regulations under the Act are to be read in addition to and not in derogation of any other law (i.e. provisions of Part IV of DVC Act) for the time being in force that means the Regulations, 2004 formulated by the Central Commission need to be read along with the provisions of Part IV of DVC that relate to the power-object of DVC.

50.7 On specific grounds of appeal, the Tribunal has given the following directions:

…

> *d) The Central Commission has worked out a sum of `.1534.49 crore to create Pension and Gratuity Contribution Fund with the stipulation that 60% thereof shall be recovered through the tariff and the remaining 40% to be contributed by the DVC. The decision of the*

Commission is not backed by any justification and the entire cost is allowed to be recovered through tariff. However, the recovery should be staggered in a manner that it does not create tariff-shock to consumers. [Para D-1 of the Judgement]

…

50.8 In view of the above discussion, the Commission feels that the provisions in draft Regulation is appropriate and does not require any changes.

50.9 Further, the special provisions relating to DVC shall be subject to the decision of the Hon'ble Supreme Court in Civil Appeal No 4289 of 2008 and other related appeals pending in the Hon'ble Court and shall stand modified to the extent they are inconsistent with the decision."

59. Thus, the submissions made with respect to Regulation 43 of the Tariff Regulations 2009 are adopted for the 2014-19 tariff period as well.

B. Disallowance of Expenditure on Subsidiary Activities

60. CERC in the Impugned Order for the 2009-14 batch of Appeals had held as under:

"65. Considering the fact that the normative O&M allowed to this generating station for period 2009-14 does not include revenue expenses on subsidiary activities, we allow the additional O&M expenses for share of subsidiary activities limited to the expenditure required for soil conservation. The petitioner has not submitted the

station-wise soil conservation cost but has only submitted the total soil conservation cost for the petitioners company as a whole for the year 2012-13 and 2013-14. Accordingly, the expenditure towards soil conservation activities has been worked out by considering the total soil conservation expenditure and the same has been allocated to each of the generating stations (including Mejia Unit 5 & 6) and T&D system of the petitioner in proportion to the admitted capital cost as on 1.4.2009. Further, the expenditure towards soil conservation activities worked out above pertaining to generating stations has been allocated to different units on the basis of installed capacity. Accordingly, the share of subsidiary activities limited to the expenditure towards soil conservation activities has been allowed as additional O&M expenses in relaxation of the provisions of the 2009 Tariff Regulations.

	2009-10	*2010-11*	*2011-12*	*2012-13*	*2013-14*
Claimed	*120.50*	*143.25*	*130.33*	*317.55*	*522.22*
Approved in this order	*120.50*	*143.25*	*130.33*	*168.06*	*174.30*

Notably, similar reasoning has been followed by the CERC in the Batch of Appeals pertaining to Impugned Orders passed for the revision of tariff of the 2009-14 Tariff Period.

61. Further, with respect to the batch of Appeals pertaining to the 2014-19 period, CERC has held that:

"44. The petitioner was directed vide ROP dated 20.5.2016 to submit the basis of claiming the additional O&M expenses. In response, the petitioner vide affidavit dated 13.6.2016 has submitted that some items of additional O&M expenses like Mega Insurance, CISF security, share of subsidiary activities was allowed in order dated 9.7.2013 in Petition No. 269/GT/2012. It has also submitted that currently, for ash evacuation and CISF, the projection is done considering yearly increase of 10% and 6.35% respectively, over and above its claim during the period 2009-14 tariff. The petitioner has also submitted that for projection of Mega Insurance an amount of ₹71.81 lakh was submitted in Petition No. 465/GT/2014 for the years 2012-13 and 2013-14 as per audited accounts and for the year 2014-15, the same amount of premium applicable for the generating station has been considered based on the actual premium already paid. The petitioner has also submitted that for the year 2015-16, the same rate of premium has been considered keeping in view that the rate of premium would be at the same under the scope of the existing contract, i.e. 2014-15. It has stated that for the rest of the years i.e. 2016-17 to 2018-19, the projection has been made by increasing 10% per annum as contingency measure to strike a balance with high claim ratio, since the premium to be quoted by the underwriter is directly proportional to the incurred claim ratio. The petitioner has further submitted that for subsidiary activities, expenditure has been projected considering yearly escalation of 6.35% per annum while the expenditure on account of soil conservation has been considered as per Soil conservation department.

> *45. We have considered the submissions of the petitioner. In the statement of reasons in support of the 2009 Tariff Regulations, it has been observed by the Commission as under:*
>
> *…*
>
> *46. In line with the above observations and in accordance with the 2014 Tariff Regulations, the additional O&M expenses claimed by the petitioner under the above head have not been allowed.”*

62. The Counsel submitted that the said findings of the CERC are erroneous for the reasons stated hereinafter.

Re. Submissions on behalf of DVC

63. CERC has wrongly disallowed expenditure on subsidiary activities such as navigation, dry farming, and socioeconomic development without providing any reasoning, violating the established legal principle that quasi-judicial authorities must issue reasoned orders, as affirmed by the Hon’ble Supreme Court in Kranti Associates Pvt. Ltd. & Anr. v. Masood Ahmed Khan & Ors., (2010) 9 SCC 496.

64. Under Section 32 of the DVC Act, DVC is authorized to incur expenditure on activities beyond irrigation, power, and flood control. Section 33 further provides that total capital expenditure must be allocated among these three primary objectives. Accordingly, expenditures on other activities should be apportioned under these categories, and the portion allocated to the power sector should be recoverable through electricity tariffs. This interpretation aligns with the Fourth Proviso to Section 14 of the Electricity Act (EA), which states that provisions of the DVC Act remain applicable unless inconsistent

with the EA. The Tribunal upheld this view in its Judgment dated 23.11.2007 (Appeal No. 271 of 2006 and related matters). The relevant extract of the Judgment dated 23.11.2007 is as follows:

> *"E. Revenues to be allowed to DVC under the DVC Act*
>
> *E.1 We have gone through the submissions made by the Appellant and the Respondent and have patiently heard the arguments presented by the learned counsel for the parties. The Appellant has sought to make a case before us that tariff and terms and conditions for generation, transmission, distribution and sale of electrical energy by DVC, unlike other electricity utilities, need to be considered in the background of the functions with which DVC is charged as per section 12 and other provisions of the DVC Act. It has been further submitted that the tariffs determined by DVC in September 2000 were not factored with any standard norms and that another distinguishing feature of DVC in contrast to the Central Power Sector Utilities is that DVC by mandate of the DVC Act, 1948 is required to carry out certain functions which are otherwise the functions of the States of Jharkhand, erstwhile Bihar, and West Bengal viz. Flood control, Irrigation, Social Integration Projects, Soil Conservation activities, Multi-purpose Dams, Afforestation, etc. without dilution in its non-power statutory functions.*
>
> *E.2 We may agree with the contention of the Appellant that earlier the tariff for electricity supply by DVC were not specifically linked to achievement of operating norms. However, after the enactment of the Act, laws relating to determination of tariff and the process to be adopted in this regards, stands changed substantially.*
>
> *E.3 Proviso 4 of section 14 of the Act reads as under:*

…

E.4 From the above provisions of section 14 of the Act, it is clear that DVC shall be deemed to be a licensee under the Act and, therefore, provisions applicable to a licensees as per the Act would become applicable to DVC due to its status as a deemed licensee. Section 62 of the Act, produced below makes it clear that tariff of a licensee should be determined by the Appropriate Commission:

…

E.5 Section 61 of the Act, under the heading 'Tariff Regulations', lays down the principles for determination of tariff, which we reproduce below for reference:

…

E.6 The Appellants have submitted that fourth proviso of Section 14 of the Act envisages exclusion of the application of the provisions of the DVC Act only if they are inconsistent with the provisions of the Act and that the said provision does not speak of inconsistency with any rule or regulations notified under the Act. DVC has submitted that section 20 of the DVC Act falls in a category wherein the provisions which are in direct conflict with the provisions of section 61, 62, 64, 79 and 86 of the Act and cannot be harmonized at all. Hence, in such cases provisions of the Act shall prevail.

E.7 Section 61 of the Act clearly recognizes the authority of the principles and methodologies specified by the Central commission for determination of tariff applicable to generating companies and transmission licensees. In our opinion, if there arises any inconsistency between the provisions of the DVC Act and the Regulations made under the Act with regard to determination of *tariff for electricity they may be harmonized in such a manner that it satisfies both the DVC Act as well as the Regulations made under the Act. This has been elaborately dealt with in our findings earlier.*

E.8 In order to have better clarity of the issues under consideration, we may also refer to the provisions of section 41 and 51 of the Act. Relevant extracts of these sections are reproduced below:

…

E.9 From the above provisions, we are of the opinion that the tariffs for supply of electricity by DVC are to be determined by the Appropriate Commission in terms of the provisions of the Act. The provisions of the Act clearly stipulate that any other business carried on by the licensee is not to be subsidized by the transmission/distribution business of the licensee. There are no such prohibition in respect of generation business carried on by a deemed licensee like DVC, which is having integrated operations.

E.11 Section 32 of the DVC Act provides that DVC can make expenditure on objects other than irrigation, power and flood control. Section 33 of the DVC Act, under the heading “Allocation of expenditure chargeable to project on main objects” provides for allocation of total capital expenditure chargeable to a project between the three main objects namely, irrigation, power and flood control.

E.12 In view of the above provisions of the DVC Act, we feel that expenditure incurred by DVC on objects other than irrigation, power and flood control be allocated to these three heads as per section 32 and 33 of DVC Act and expenditure so allocated to power object, should be allowed to be recovered through the electricity tariff. The above would be in line with Fourth Proviso of Section 14 of the Act *which provides that provisions of DVC Act to the extent not inconsistent with the Act shall remain in force."*

65. DVC is statutorily mandated to perform various functions beyond electricity generation, transmission, and supply, including irrigation, water supply, drainage, flood control, navigation, afforestation, soil erosion control, public health, agriculture, and economic and industrial development in the Damodar Valley.

66. The Hon'ble Supreme Court, in Bhaskar Shrachi Alloys Limited & Ors. v. DVC & Ors., (2018) 8 SCC 281, clarified that these activities are not discretionary under Sections 41 and 51 of the Electricity Act (EA) but are obligatory under the DVC Act. As these functions are inherently social welfare measures that do not generate direct revenue, separate accounts are not required. The recovery of associated costs through the common fund generated by electricity tariffs, as permitted under the DVC Act, does not conflict with the EA. Given this, the impugned findings of CERC are unsustainable and should be set aside by this Tribunal.

C. Disallowance of Expenditure on Ash Evacuation

67. CERC has arbitrarily disallowed a significant portion of the expenditure for Ash Evacuation, despite having allowed similar claims for the years 2009-10, 2010-11, and 2011-12. Specifically, it disallowed Rs. 575.64 lakhs (over 55%) for 2012-13 and Rs. 388.36 lakhs (over 45%) for 2013-14, without providing a justified rationale for the deviation from its previous approvals. The relevant extract of the Impugned Order is as follows:

"53. The matter has been examined. It is observed that the said expenditure has been incurred by the petitioner to meet the environment and pollution control norms and also normative O&M expenses allowed to this generating station for the period 2009-14 do not include expenditure towards ash evacuation.

54. The petitioner in its Petition No. 275/GT/2012 had claimed additional O&M expenses on account of ash evacuation for 2009-10 to 2013-14. The expenses claimed by the petitioner, that approved by the Commission and now claimed is as shown below.

	2009-10	***2010-11***	***2011-12***	***2012-13***	***2013-14***
Ash Evacuation claimed in (275/GT/2012)	*296.02*	*312.95*	*330.85*	*349.77*	*369.78*
Approved by Order dated 7.8.2013	*296.02*	*312.95*	*330.85*	*349.77*	*369.78*
Now Claimed	*296.02*	*312.95*	*330.85*	*865.55*	*1089.29*

55. It is observed that the claim of the petitioner has substantially increased in 2012-13 when compared to 2011-12. The Commission has therefore computed the compounded annual growth rate (CAGR) of 3.78% for Ash evacuation expenses considering actual for 2009-10 to 2011-12. The ash evacuation expenses for 2011-12 have then been escalated by CAGR to derive expenses for 2012-13 and 2013-14. The Commission has then considered the minimum of such derived expenses and petitioner's claim. In view of the above, we have allowed the expenditure towards additional

O&M on Ash evacuation in relaxation of the provisions of the 2009 Tariff Regulations for 2009-14.

	2009-10	*2010-11*	*2011-12*	*2012-13*	*2013-14*
Claimed	*296.02*	*312.95*	*330.85*	*865.55*	*1089.29*
Approved in this order	*296.02*	*312.95*	*330.85*	*343.35*	*356.32*

68. The Counsel submitted that in the Order dated 07.08.2013 in Petition No. 275/GT/2012, while determining the tariff for the 2009-14 tariff period, CERC had held that "*Considering the fact that Ash evacuation is still being carried out in the absence of any dry fly ash system and keeping in view that the normative O&M expenses allowed to this generating station for the period 2009-14 do not include expenditure on this count, we allow the additional O&M expenses on Ash evacuation as prayed for by the petitioner in relaxation of the provisions of the 2009 Tariff Regulations.*"

69. In the Impugned Order dated 29.07.2016 in Appeal No. 268 of 2016, CERC arbitrarily computed a compounded annual growth rate (CAGR) of 3.78% for Ash Evacuation expenses based on actual figures from 2009-10 to 2011-12. It then escalated the 2011-12 expenses using this CAGR to determine costs for 2012-13 and 2013-14. This approach directly contradicts the Hon'ble Supreme Court's ruling in BSES Rajdhani Power Limited v. DERC, (2023) 4 SCC 788, which held that an Electricity Regulatory Commission cannot alter the fundamental principles and methodology used in the initial tariff determination. Therefore, the findings of CERC are liable to be set aside. Furthermore, if Ash Evacuation expenses were considered as additional O&M

expenses based on actuals, there was no justification for arbitrarily applying an escalation rate.

D. Disallowance of MEGA Insurance and CISF Security Expenses

Re. Submissions on behalf of DVC - CISF Issue

70. DVC sought additional O&M expenses for CISF Security due to its generating stations being in high-security zones, substantiating its claim with documentary evidence. In Petition No. 138/GT/2015 for FY 2009-14, CERC initially allowed these expenses as they complied with the norms under the CERC Tariff Regulations, 2009.

71. Subsequently, in the Impugned Order, CERC acknowledged that actual O&M expenditure exceeded normative limits and, considering security threats, approved the CISF Security expenses in line with its 07.08.2013 order for Durgapur TPS.

72. However, CERC arbitrarily applied a 5.72% escalation rate for FY 2013-14 without considering the actual expenditure submitted by DVC. This contradicts its approach in Koderma TPS, where it allowed additional O&M expenses for CISF Security, recognizing that such costs cannot be covered under normative O&M expenses.

73. The decision also violates established legal principles, including the requirement for reasoned orders as per Kranti Associates v. Masood Ahmed

Khan, (2010) 9 SCC 496, and the duty of quasi-judicial authorities to disclose relied-upon material, as held in T. Takano v. SEBI, (2022) 8 SCC 162.

74. Moreover, in NTPC v. CERC & Ors., Appeal No. 125 of 2017 (Judgment dated 09.05.2019), this Tribunal held that regulatory bodies should seek additional information if needed, rather than assuming incomplete data. By failing to do so and arbitrarily applying an escalation factor, CERC's findings are liable to be set aside.

Re. Submissions on behalf of DVC - MEGA Insurance Issue

75. In Petition No. 89/GT/2011 for the approval of tariff for MTPS Units 7 and 8 (FY 2009-14), DVC claimed O&M expenses in accordance with CERC Tariff Regulations, 2009. CERC, in its Order dated 23.01.2015, allowed these expenses as they conformed to the prescribed norms.

76. However, in the Impugned Order dated 14.09.2016 in Petition No. 206/GT/2015, CERC disallowed DVC's claim for additional Mega Insurance expenses, citing the non-submission of actual O&M expenditure details. DVC had, in fact, furnished the required details through its Affidavit dated 27.01.2016.

77. Furthermore, in a similar case concerning Koderma TPS (Order dated 22.08.2016 in Petition No. 295/GT/2015), CERC allowed additional O&M expenses towards Mega Insurance, acknowledging that such costs cannot be covered under normative O&M expenses.

78. This was consistent with CERC's earlier Order dated 08.05.2013 in Petition No. 272 of 2010, which permitted DVC to recover additional O&M expenses for Mega Insurance.

79. Additionally, in NTPC v. CERC & Ors. (Appeal No. 125 of 2017, Judgment dated 09.05.2019), this Tribunal held that the Commission should have sought further information rather than presuming the data was incomplete.

80. In light of these facts and precedents, the findings of CERC lack justification, and this Tribunal is requested to reject the contentions of the Respondents and grant the relief sought by DVC in the present Batch of Appeals.

Written Submissions of the Respondent No. 3, CERC (Appeal No. 268 of 2016) dated 13.12.2024

81. The Counsel submitted that the Appellant has filed multiple Appeals challenging various Tariff Orders issued by the Central Electricity Regulatory Commission (Central Commission) concerning different generating stations under the Damodar Valley Corporation (DVC) for the tariff periods 2009-14 and 2014-19.

82. The primary issue raised is the disallowance of contributions to the Pension and Gratuity Fund while computing tariffs. The arguments presented in Appeal No. 268 of 2016 apply to all Appeals in which this issue is contested.

83. In Appeal No. 268 of 2016, the Appellant challenges the Central Commission's Order dated 29.07.2016 in Petition No. 470/GT/2014, which trued up the tariff for Chandrapura Thermal Power Station Units I-III (3x130 MW) for the 2009-14 period, initially determined in the Order dated 07.08.2013 in Petition No. 275/GT/2012.

84. The Appellant's claim for Pension and Gratuity contributions in Petition No. 470/GT/2014 was considered in detail in Paras 77-88 of the impugned order. The Central Commission's reasoning for rejecting the additional claim based on actuarial valuation for the 2009-14 period is contained in these paragraphs. In this connection, the following observation of the Central Commission, in the impugned order, merits attention:

> *"87. ------- It is observed that the O&M expenses norms specified by the Commission under the 2009 Tariff Regulations applicable for the period 2009-14 had taken into consideration the P&G liability as part of O&M expenses. The statement of reason of the 2009 Tariff Regulations, at para 20.3 clearly states that O&M cost for purpose of tariff covers expenditure incurred on the employees including gratuity, CPF, medical, education allowances etc. The expenses on account of CPF considered in Public Sector Undertakings take care of pension liability applicable in Government Undertaking."*

85. For ease of reference, para 20.3 of the Statement of Reasons of the 2009 Tariff Regulations is also extracted herein:

> *"20.3 The Operation & Maintenance cost for the purpose of tariff covers expenditure incurred on the employees including gratuity, CPF medical, education allowances etc, repair and maintenance expenses including stores and consumables, consumption of capital spares not part of capital cost, security expenses, administrative expenses etc. of the generating stations, corporate expenses apportioned to each generating stations etc. but exclude the expenditure on fuel i.e. primary fuel as well as secondary and alternate fuels."*

86. Based on the foregoing, the Counsel submitted that while passing the impugned order, the Central Commission has followed the principles laid down in Section 61 of the Electricity Act, 2003, more specifically clause (d) thereof which mandates *"safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;".*

<u>Written Submissions of the Respondent No. 3, CERC (Appeal No. 299 of 2016) dated 20.01.2025</u>

87. In Appeal No. 299 of 2016, the Appellant has impugned the Central Commission's Order dated 31.08.2016 in Petition No. 347/GT/2014, whereby the tariff in respect of Mejia Thermal Power Station Unit-I to III (3 x 210 MW) for the period 2014-19 was determined by the Central Commission.

88. Appellant's claim in Petition No. 347/GT/2014 before the Central Commission, for expenditure towards Pension and Gratuity contribution was considered vide para 67 and rejected vide para 68 of the impugned order for the reason that *"Since the claim of the petitioner relates to the tariff period*

2009-14 which had not been allowed, the claim of the petitioner has not been considered in this order." Para 67 of the impugned order citing para 107 of the order dated 29.07.2016 in Petition No. 465/GT/2014 are as follows:

> *"the Commission in order dated 9.7.2013 in Petition No. 269/GT/2012 had allowed the recovery of 40% of the difference in liability as per Actuarial valuation 31.3.2009 and 31.3.2006 in five equal installments. The Commission in the said order had allocated the same on petitioner's generating stations except Mejia Unit 5 & 6. The Commission has revised the allocation and has also allocated share of P&G liability to Mejia Unit 5 and 6 on the basis of capital cost of ₹205946.66 lakh admitted by it as on 31.3.2009. It is observed that the O&M expenses norms specified by the Commission under the 2009 Tariff Regulations applicable for the period 2009-14 had taken into consideration the P&G liability as part of O&M expenses. The statement of reason of the 2009 Tariff Regulations, at para 20.3 clearly states that O&M cost for purpose of tariff covers expenditure incurred on the employees including gratuity, CPF, medical, education allowances etc. The expenses on account of CPF considered in Public Sector Undertakings take care of pension liability applicable in Government Undertaking."*

89. In this connection, kind attention is invited to the Additional Affidavit filed by the Appellant on 16.12.2024 in Appeal No. 268 of 2016 & Batch which includes the instant Appeal No. 299 of 2016. Clause (2) of Regulation 108(A) of the Damodar Valley Corporation Service Regulations provides as under:

> *"Every employee who holds a permanent post in the Corporation in a substantive capacity on 18th January, 1964 and is subscribing to the Contributory Provident Fund (DVC) or the Employees' Provident Fund (DVC), as the case may be in terms of Regulation 108, shall, within three months from the said date, be required to exercise his option in writing either to continue to so subscribe or to come under the Pension-cum-Gratuity Scheme."*

<u>Written Submissions of the Respondent No. 4, Damodar Valley Power Consumers Association (DVPCA) (Appeal No. 268 of 2016)</u>

90. The Counsel submitted that the Damodar Valley Corporation (DVC) has filed a batch of appeals challenging tariff orders issued by the Central Electricity Regulatory Commission (CERC) for the financial years 2014-15 to 2018-19 concerning various assets. The Damodar Valley Power Consumers' Association (DVPCA) has been impleaded as a Respondent in multiple appeals. The lead appeal, Appeal No. 299/2016, pertains to the tariff order dated 31.08.2016 in Petition No. 347/GT/2014, addressing the tariff for Mejia Thermal Power Station Units I-III for the period 01.04.2014 to 31.03.2019.

91. The written submissions focus on common grounds of appeal raised by DVC, using the case of Mejia TPS I-III for illustration. The key issues contested by DVC include:

a) The disallowance of contributions to the Pension and Gratuity Fund for the control period 2014-19.

b) The rejection of additional O&M expenses beyond normative limits, particularly expenses related to Ash Evacuation, Mega Insurance, CISF security, and subsidiary activities.

CONTRIBUTION TO PENSION AND GRATUITY (P&G) FUND

92. DVC's claim for contribution to the Pension and Gratuity (P&G) Fund was rightly rejected as it pertained to the previous tariff period (FY 2009-14). The CERC, in its order dated 31.08.2016 concerning Mejia TPS I-III, upheld its earlier stance that such expenditure was already covered under normative O&M expenses. Accordingly, the same approach was applied for the tariff period 2014-19, leading to the rejection of DVC's claim. The relevant part of the impugned order dated 20.9.2016 [Mejia TPS I-III] is as follows:

> *"Pension & Gratuity Contribution*
>
> *67. The petitioner has claimed pension and gratuity contribution for the period 2014-19 and has submitted that it has considered the actuarial valuation as on 31.3.2014, for liability towards pension and gratuity fund and projected P&G liability for the tariff period 2014-19. It is observed that the liability claimed by the petitioner pertains to the period 2009-14 and does not pertain to the tariff period 2014-19. In this regard it is observed that the Commission in its order dated 29.7.2016 in Petition No. 465/GT/2014, Para No. 107, has disallowed the claim of the petitioner and has observed as under:*
>
> > *"the Commission in order dated 9.7.2013 in Petition No. 269/GT/2012 had allowed the recovery of 40% of the difference in liability as per Actuarial valuation 31.3.2009*

> *and 31.3.2006 in five equal installments. The Commission in the said order had allocated the same on petitioner's generating stations except Mejia Unit 5 & 6. The Commission has revised the allocation and has also allocated share of P&G liability to Mejia Unit 5 and 6 on the basis of capital cost of ₹205946.66 lakh admitted by it as on 31.3.2009. It is observed that the O&M expenses norms specified by the Commission under the 2009 Tariff Regulations applicable for the period 2009-14 had taken into consideration the P&G liability as part of O&M expenses. The statement of reason of the 2009 Tariff Regulations, at para 20.3 clearly states that O&M cost for purpose of tariff covers expenditure incurred on the employees including gratuity, CPF, medical, education allowances etc. The expenses on account of CPF considered in Public Sector Undertakings take care of pension liability applicable in Government Undertaking."*

68. Since the claim of the petitioner relates to the tariff period 2009-14 which had not been allowed, the claim of the petitioner has not been considered in this order."

93. DVC's claim for contribution to the Pension and Gratuity (P&G) Fund for FY 2009-14 was previously disallowed by CERC in the true-up order for that period. Despite this, DVC sought to reintroduce the same claim in the tariff petition for FY 2014-19, relying on actuarial valuation as of 31.03.2014, amounting to ₹4587.44 crore. The same figure had been previously submitted in the true-up petition for FY 2009-14.

94. Since the claim had already been rejected, CERC rightfully dismissed its reconsideration for FY 2014-19, citing the doctrine of res judicata. The Commission explicitly held that, as the claim pertained to a prior tariff period and had been previously disallowed, it could not be entertained again. The submissions made in Appeal No. 268/2016 & Batch, where the disallowance is also under challenge, were requested to be considered in the present appeal.

P&G liability formed part of normative O&M expenses

95. The Counsel submitted that pension and gratuity liability of DVC has to be met through normative O&M expenses. Regulation 3(42) of CERC Tariff Regulations 2014 define O&M expenses:

> *"Operation and Maintenance expenses or 'O&M expenses' means the expenditure incurred on operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, repairs, maintenance spares, consumables, insurance and overheads but excludes fuel expenses and water charges".*

96. As per the definition of Operation and Maintenance (O&M) expenses under CERC Tariff Regulations, 2014, all costs related to the operation and maintenance of a project, including manpower expenses, must be covered within the normative O&M framework. This applies regardless of the remuneration policy adopted by the generating company. The same definition is provided under Regulation 3(42) of the 2014 Regulations, reinforcing that no additional claims beyond normative O&M can be entertained.

97. Under the normative framework, CERC is required to determine tariffs strictly in accordance with the applicable Tariff Regulations, without considering the specific remuneration or retirement schemes adopted by a generating company for its employees. This Tribunal in ***UPPCL v. NTPC 2007 SCC OnLine APTEL 56*** observed:

> *"20. It may be pointed out that the entire exercise in compliance with Section 28 of Electricity Regulation Commission Act, 1998 and Section 61 of the Electricity Act 2003 undertaken by the Central Commission was performed through an extensive consultative process and the operational and financial norms were finalized and the orders passed in the year 2000 which finally culminated in the notification of Regulations, 2001. The Central Commission while finalizing the standard acceptable performance parameters or standard norms of the Thermal Power Stations had rationalized through normalizing values of the actual data obtained from various Thermal Power Stations, not only of NTPC but of other generating companies also. This process adopted by the Central Commission appears to be in full compliance with the clause 82(b) of the Regulations, 1999.*
>
> *21. While normalizing the different parameters based on actual data obtained from various Thermal Power Stations one could expect variation in each of the parameters depending upon the age of the plant, standard practices adopted in operation and maintenance, renovation, modernization, etc. The median of the performance values of each parameter is determined which became reflective of the standard acceptable performance criterian of the said parameter while taking into account the need to provide*

incentive for improvement in efficiency, economical use of resources, competition, etc. During the period the Regulations, 2001 was in operation the actual performance data of each plant was to be ideally referred to while reviewing the admissible variations in each operating parameters so that the norms for the tariff determination for the subsequent period could be finalized. Using the actual data for each parameter in tariff determination would lead to different tariffs for each plant and there will be no incentive for competition in improving the performance of the plant.

22. We are of the view that the Appellant's contention that the clause 82(b) of Regulations, 1999 provide for allowing the actual cost is simply not correct as it mandates the rationalization of tariff by means of normalizing the actual data of operation from various plant(s) to arrive at normative values for standard acceptable performance making it amenable to award incentive for improved performance or to penalize the degradation in the performance. In view of the aforesaid, we are of the opinion that the contention made by the Appellant that the norms applied should be ceiling and actual values of the operational parameters should be considered subject to the ceiling norms, is inconsistent with the provisions of the Act, which mandates encouraging efficiency, competition, good performance, etc.”

98. Similarly, in ***NTPC v. UPPCL 2016 SCC OnLine APTEL 66***, this Tribunal, referring to the normative scheme for tariff determination, observed as follows:

"13.10. The Central Commission while fixing the above normative O&M charges for determination of Tariff for the financial year 2009-14, followed the procedure laid down in Section 61 of Electricity Act, 2003 duly safe guarding of consumers interest and at the same time recovery of cost of electricity in a reasonable manner.

13.11 The Central Commission arrived the Normative O&M expenses for the Tariff period 2009-14 as a package considering all the elements/components of operation and maintenance expenses such as employees cost, repair & maintenance cost of generating stations including water charges. Hence, the increase in cost of one element cannot be considered in isolation as the normative O&M cost is arrived duly considering all the factors.

13.12. Further, while framing the Tariff Regulations, the Central/State Commissions considers the stakeholders/public opinion and as per National Tariff Policy etc., the Regulations are framed. Further, the Commission has considered an escalation factor of 5.72% as per WPI & CPI index published by Govt. of India.

13.13. According to Tariff Policy, the O&M expenses are controllable factor and hence, the Appellant/Petitioner has to take suitable measures to control the O&M expenditures and the Act provides reward for efficiency in performance. Further, the O&M expenditure as per Tariff Regulations, 2009, is norm based and not at actual, hence, any additional expenses in one component cannot be allowed and whole spectrum of cost should be looked into while considering the comparison of actual cost and the recovery based on norms.

13.14 – 13.16 ………

13.17. ……In our view, once, the tariff has been fixed on the basis of normative parameters; the same should not be opened, even if, there is, any variation between normative and actual. The Regulations, 44 of the Tariff Regulations, 2009, i.e. "Power to Relax" cannot be utilized in this case. We feel that the Power to Relax has to be strictly construed and is to be exercised judicially and with caution.

13.18. Further, the Central Commission duly followed their Tariff Regulations, 2009 while determining the Tariff by considering the Normative O&M expenses of the Appellant Generating Stations duly taking the stakeholders/public view at the time of approval of the Tariff Regulations.

13.19 …….

13.20. In our opinion after going through the above submissions, we do not find any infirmity in the decision of the Central Commission regarding disallowance of increase in water charges for the period 2009-14 as the increase in water charges is one of the component of the normative O&M charges in the tariff Regulations, 2009 and further the O&M charges in the Tariff Regulations, 2009 is one package under which water charges is one of the components and hence the increase in one component cannot be considered under Regulation, 44 of the tariff Regulations, i.e. "Power to Relax". However, the Appellant is allowed by the Central Commission for the Tariff period 2014-19 by excluding the water charges from the Normative O&M charges. Thus, this issue is decided against the Appellant".

99. The impugned order aligns with the 2014 Tariff Regulations, and DVC did not seek any relaxation of these regulations before CERC. However, in the present batch of appeals, DVC is effectively seeking such relaxation, despite not having a substantive case for it before CERC.

100. DVC's reliance on ***Bhaskar Shrachi Alloys Limited v. DVC (2018) 8 SCC 281*** is misplaced, as the Hon'ble Supreme Court did not consider or decide the issue of whether P&G fund contributions must be covered under normative O&M expenses. The case primarily addressed the recovery of 99% of P&G contributions through electricity tariffs, a contention recorded in paragraphs 26 and 29 of the judgment and refuted by DVC, with the Court's conclusion in paragraph 61.

101. DVC's claim for P&G fund contribution contradicts the normative tariff regime, which mandates that a generating company manage its expenses within the limits set by tariff norms, which have a legislative character and are binding on all stakeholders. It may be relevant to point out that Regulation 47 of the CERC Tariff Regulations 2014 expressly lays down that the prescribed norms shall be treated as ceiling norms:

> *"47.* Norms *to be ceiling norms: Norms specified in these regulations are the ceiling norms and shall not preclude the generating company or the transmission licensee, as the case may be, and the beneficiaries and the long-term transmission customers /DICs from agreeing to the improved norms and in case the improved norms are agreed to, such improved norms shall be applicable for determination of tariff."*

102. The purpose of prescribing tariff norms is to rationalize tariffs and encourage efficiency improvement, economic use of resources, competition, etc. In para 18 of ***BSES Rajdhani Power Limited vs. DERC (2023) 4 SCC 788***, the Hon'ble Supreme Court has reiterated the settled position with respect to tariff determination under the 2003 Act in the following words:

> *"18. The scheme of the 2003 Act is predicated on consolidating all laws governing electricity and repealing the existing laws. The legislative policy of distancing the Government from the tariff determination was carried forward in the 2003 Act. The intent and purpose of the 2003 Act is to liberalise the electricity sector and to ensure that the distribution and supply of electricity is conducted on commercial principles. The legislature intended to promote factors that encourage and reward efficiency, competition, economical use of resources and optimum investments and safeguard the interest of the consumers vis-à-vis recovery of cost of electricity in a reasonable manner as envisaged under Section 61 of the 2003 Act."*

103. Underscoring the sanctity of prescribed tariff norms under the applicable Regulations, the National Tariff Policy 2016 has laid down as follows:

> *5.11 Tariff policy lays down the following framework for performance based cost of service regulation in respect of aspects common to generation, transmission as well as distribution. These shall not apply to competitively bid projects as referred to in para 6.1 and para 7.1 (6). Sector specific aspects are dealt with in subsequent sections.*

"Operating Norms

(f) Suitable performance norms of operations together with incentives and disincentives would need to be evolved alongwith appropriate arrangement for sharing the gains of efficient operations with the consumers. Except for the cases referred to in para 5.11(h)(2), the operating parameters in tariffs should be at "normative levels" only and not at "lower of normative and actuals". This is essential to encourage better operating performance. The norms should be efficient, relatable to past performance, capable of achievement and progressively reflecting increased efficiencies and may also take into consideration the latest technological advancements, fuel, vintage of equipments, nature of operations, level of service to be provided to consumers etc. Continued and proven inefficiency must be controlled and penalized.

The Central Commission would, in consultation with the Central Electricity Authority, notify operating norms from time to time for generation and transmission. The SERC would adopt these norms. In cases where operations have been much below the norms for many previous years, the SERCs may fix relaxed norms suitably and draw a transition path over the time for achieving the norms notified by the Central Commission, or phase them out in accordance with the norms specified by the Authority in this regard.

Operating norms for distribution networks would be notified by the concerned SERCs. For uniformity, the Forum of Regulators should

> *evolve model guidelines taking into consideration the state specific distinctive features."*

104. The Tariff Regulations are binding, and the validity or inadequacy of the same cannot be questioned before this Tribunal. Needless to add, in ***PTC India Ltd. v. CERC (2010) 4 SCC 603***, the Hon'ble Supreme Court has laid down:

> *"92 (iii) 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".*

105. Therefore, DVC's contention that the O&M norms prescribed under the CERC Tariff Regulations 2014 do not factor in P&G liability is not tenable. The said contention is an indirect method adopted by DVC to circumvent the binding Tariff Regulations. DVC's grievance, if any, with respect to the inadequacy of Tariff Regulations could have been raised only by way of a challenge to the Tariff Regulations in appropriate proceedings. In ***NOIDA Entrepreneurs Assn. v. NOIDA, (2011) 6 SCC 508***, the Hon'ble Supreme Court has held:

> *"25. It is a settled proposition of law that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud, which means "whenever a thing is prohibited, it is prohibited whether done directly or indirectly…*

26. In Jagir Singh v. Ranbir Singh this Court has observed that an authority cannot be permitted to evade a law by "shift or contrivance". While deciding the said case, the Court placed reliance on the judgment in Fox v. Bishop of Chester, wherein it has been observed as under: (Jagir Singh case16, SCC p. 565, para 5)

> *"5. … 'To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.'*"*

106. Similarly, in ***Abdul Basit v. Mohd. Abdul Kadir Chaudhary, (2014) 10 SCC 754***, the Hon'ble Supreme Court held:

> *"25. It is a well-settled proposition of law that "what cannot be done directly, cannot be done indirectly". While exercising a statutory power a court is bound to act within the four corners of the statute. The statutory exercise of the power stands on a different pedestal than the power of judicial review vested in a court."*

107. DVC's Additional Affidavit dated 16.12.2024 in Appeal No. 268/2016 & Batch does not support its claim for P&G fund contribution beyond normative O&M expenses. The affidavit merely outlines the implementation of retirement schemes related to CPF, Pension, and Gratuity, which is irrelevant to the claim, as such expenses fall under 'expenditure on manpower' and must be covered within normative O&M expenses. Furthermore, DVC's reliance on the Statement of Reasons (SOR) to the 2009 Tariff Regulations is misleading, as

the SOR cannot override the plain meaning of O&M expenses, which explicitly include manpower expenditure. The specific employee-related expenses cited in the SOR are illustrative, not exhaustive, and do not justify DVC's claim. The relevant SOR is extracted hereunder:

> *"20.3 The Operation & Maintenance cost for the purpose of tariff covers expenditure incurred on the employees including gratuity, CPF medical, education allowances etc., repair and maintenance expenses including stores and consumables, consumption of capital spares not part of capital cost, security expenses, administrative expenses etc. of the generating stations, corporate expenses apportioned to each generating stations etc. but exclude the expenditure on fuel i.e. primary fuel as well as secondary and alternate fuels".*

108. Reliance is placed on the settled principle with respect to the inadmissibility of SOR for interpreting a provision, as reiterated in ***Laurel Energetics (P) Ltd. v. SEBI, (2017) 8 SCC 541***:

> *"24. In Utkal Contractors and Joinery (P) Ltd. v. State of Orissa [1987 Supp SCC 751] , a similar argument was turned down in the following terms:*
>
> > *"11. Secondly, the validity of the statutory notification cannot be judged merely on the basis of Statement of Objects and Reasons accompanying the Bill. Nor it could be tested by the government policy taken from time to time. The executive policy of the Government, or the Statement of Objects and*

Reasons of the Act or Ordinance cannot control the actual words used in the legislation. In Central Bank of India v. Workmen [AIR 1960 SC 12] S.K. Das, J. said:

'12. … The Statement of Objects and Reasons is not admissible, however, for construing the section; far less can it control the actual words used.'

12. In State of W.B. v. Union of India [State of W.B. v. Union of India, AIR 1963 SC 1241] , Sinha, C.J. observed: (AIR p. 1247, para 13)

'13. … It is however, well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary right vested in the State or in any way to affect the State Governments' rights as owner of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute."

109. It may be pointed out that in the Additional Affidavit dated 16.12.2024, DVC has not referred to the SOR to the 2014 Tariff Regulations. Such omission appears to be deliberate as the SOR to the 2014 Regulations expressly states:

> *"1.4 …..The Statement of Objects and Reasons (SOR) has been issued with the intent of explaining the rationale objection behind Tariff Regulations, 2014. However, in case of any deviation /discrepancy in the SOR with respect to the Tariff Regulations, 2014, the provisions of Tariff Regulations, 2014 shall be applicable."*

110. DVC's reliance on Regulation 53(2)(iv) of the 2014 CERC Tariff Regulations is misplaced for multiple reasons. First, this regulation, applicable to FY 2014-19, cannot be invoked to justify a P&G fund claim that pertains to the previous control period (FY 2009-14). Additionally, this regulation was not cited in the grounds of appeal.

111. Second, Regulation 53(2)(iv) does not mandate that an expenditure already accounted for under O&M norms should be allowed separately as a tariff element.

112. Third, DVC did not establish before CERC that the P&G fund was created pursuant to CAG's directions under Section 40 of the DVC Act. Instead, DVC's claim was solely based on actuarial valuation without reference to Section 40 or Regulation 53(2)(iv).

113. Moreover, the creation of a P&G fund is common among public sector enterprises, including NTPC, which follows actuarial valuation but does not receive an additional tariff allowance for its P&G contributions beyond normative O&M expenses. This underscores that DVC's claim lacks justification.

DVC is not entitled to any special treatment under the Electricity Act, 2003, with respect to tariff determination

114. DVC is not entitled to any special dispensation or additional tariff component beyond what is available to other generating companies under the Electricity Act, 2003. The fourth proviso to Section 14, read with Section 174, does not grant DVC any special status regarding tariff but merely affirms its deemed licensee status. It cannot be interpreted to override the cost-reflective tariff regime, especially when Chapter VII (Sections 61-66) of the Act does not provide any special tariff consideration for DVC.

115. The proviso to Section 61 allows only a one-year transitional period for tariff terms under certain enactments, none of which include the DVC Act. This confirms that the tariff must be determined under normative cost-plus principles.

116. Additionally, Section 173 exempts only three specific laws—Consumer Protection Act, 1956; Atomic Energy Act, 1962; and Railways Act, 1989—from the application of the Electricity Act, 2003, while Section 184 excludes certain government departments. The DVC Act is absent from these provisions, reinforcing that any inconsistency between the DVC Act and the Electricity Act is resolved in favor of the latter, per Section 174.

117. It may be noted that the interplay between the Electricity Act and DVC Act was examined by this Tribunal in judgment dated 23.11.2007 in the following terms:

> *"88. We further observe that the Sections 173 & 174 of the Act read together provide that the Act and any Rules and Regulations made therein shall be overriding other provisions of law not inconsistent with the Act, except in case of the Consumers Protection Act, Atomic Energy Act and Railway Act. The DVC Act, 1948, does not figure in the exemption clause of Section 173 implying that any Rule and Regulation made under the Act shall override the DVC Act only when they are inconsistent with the provisions of the Act. It is also observed that like Sections 173 & 174 of the Act, the Fourth proviso of Section 14 does not make any reference to inconsistency with any Rule or Regulation framed under the Act but only refers to the inconsistency with the provisions of the Act, meaning plenary Act, 2003. It seems to us that the Parliament intended not to apply ipso facto, the Rule and Regulation framed under the Act to the special legislation of DVC Act, 1948 under which the DVC was constituted, perhaps giving due regard to duties cast upon DVC to perform varied functions, some of which being in the nature of State obligations and are to be financed mainly out of the revenue from power operations and are not common to functions assigned to other Central Electricity Utilities".*

118. The opening lines of para 88 of this Tribunal's judgment dated 23.11.2007 may kindly be noted:

> *"88. We further observe that the Sections 173 & 174 of the Act read together provide that the Act and any Rules and Regulations made therein shall be overriding other provisions of law not inconsistent with the Act, except in case of the Consumers Protection Act, Atomic Energy Act and Railway Act…."*

119. The Tribunal has clearly held that the Electricity Act, 2003, along with the Rules and Regulations framed thereunder, prevails over any other law, even in the absence of inconsistency, except in cases where it conflicts with the Consumer Protection Act, Atomic Energy Act, or Railways Act. This principle is reinforced by Section 174 of the 2003 Act.

120. Accordingly, the provisions of the 2003 Act and its Rules and Regulations cease to apply only if they are inconsistent with these three specified enactments. By virtue of Sections 173 and 174, the CERC Tariff Regulations, framed under the 2003 Act and in conformity with Section 61, are fully applicable to DVC.

121. The legislative intent is evident from the exclusion of the DVC Act from Section 173, confirming that the Rules and Regulations under the 2003 Act, including the Tariff Regulations, apply to DVC irrespective of whether the provisions of the DVC Act are inconsistent with the Electricity Act.

122. Further, the Counsel referred to this Tribunal's judgment dated 01.05.2012, passed in Appeal No. 40/ 2011, titled ***Damodar Valley***

Corporation v. CERC & Ors., reported in 2012 SCC OnLine APTEL 97, whereby it was held as follows:

> *"11. Section 62 read with Section 79 of 2003 Act mandates the Central Commission to determine, inter alia, the tariff for supply of electricity by a generating company in accordance with the Regulations framed under Section 61 of the Act. Any provision of DVC Act providing recovery of revenue through tariff being inconsistent with the Tariff Regulations would not be applicable."*

123. The above-noted judgment dated 01.05.2012 was passed well after the judgment dated 23.11.2007 and, in fact, refers to the latter judgment in para 5.7.

124. The Tribunal's finding that any provision of the DVC Act allowing revenue recovery through tariff, if inconsistent with the Tariff Regulations, would not be applicable, remains valid even after the Hon'ble Supreme Court's judgment in ***Bhaskar Shrachi Alloys Limited v. DVC (2018) 8 SCC 281***.

125. Notably, Bhaskar Shrachi affirmed the Tribunal's earlier ruling (23.11.2007), holding that Part IV of the DVC Act may be considered in tariff determination but does not override the Tariff Regulations unless there is an inconsistency. The judgment clarified that any provision of the 1948 Act conflicting with the Tariff Regulations would be overridden.

126. Furthermore, tariff determination and recovery must strictly adhere to the principles of Section 61 of the Electricity Act, 2003, and the Tariff Regulations framed thereunder.

127. Even in the absence of specific regulations, tariff determination must conform to Section 61. The regulations issued by the Appropriate Commission elaborate on these statutory principles, as Section 61 mandates their specification. As per Section 2(62), “specified” means prescribed by regulations under the Act, reinforcing the binding nature of these principles.

128. The fact that the Tariff Regulations are an elaboration of Section 61 to be uniformly applied to the concerned entities is also evident from the following observations of the Hon’ble Supreme Court in ***PTC India Ltd. v. CERC (2010) 4 SCC 603***:

> *“60. Recently, this concept of AAD came for consideration before this Court in National Hydroelectric Power Corpn. Ltd. v. CIT [(2010) 3 SCC 396]. AAD was suggested by the Central Commission as part of the tariff in order to overcome the cash flow problems faced by Central power sector utilities for meeting loan repayment obligations. The important point to be noted is that although under Section 61 of the 2003 Act the Central Commission is empowered to specify AAD as a condition for determination of the tariff, the Central Commission in its wisdom thought it fit to bring in the concept of AAD by enacting a regulation under Section 178 giving the benefit of AAD across the board to all Central power sector utilities. In other words, instead of giving the benefit of AAD on a case-to-case basis under Section 61, the Central Commission decided to make a specific regulation giving benefit of AAD across the board to all Central power sector utilities”.*

129. The following observation in PTC further shows that Regulations are a mechanism to give effect to Section 61 and ensure its general application:

> *"61. There is one more reason why a regulation under Section 178 with regard to AAD had to be made by CERC. Under the 2003 Act, the Central Commission is empowered under Section 61 to include depreciation as an item in the computation of tariff. However, if the rate of depreciation envisaged by the Central Commission under the 2003 Act is different from the rate(s) of depreciation prescribed under Schedule XIV of the Companies Act, 1956 then such differential rate can be prescribed under the 2003 Act only by way of regulation under Section 178 of the 2003 Act which is in the nature of subordinate legislation.*
>
> *62. It is important to note that the Companies Act, 1956 constitutes a law applicable to companies. It prescribes the format of balance sheet in Schedule VI. It prescribes the requirements as to profit and loss account vide Part II of Schedule VI. It also prescribes the rates of depreciation vide Schedule XIV. If a different rate is required to be prescribed under the 2003 Act, then it could be done only by way of subordinate legislation, which is contemplated by the Regulations framed under Section 178 of the 2003 Act. Similarly, profits earned by a trading company are not only required to be presented in the manner indicated under the Companies Act but it is also required to be computed under the Income Tax Act, 1961. If such profits/income of a trading company is required to be capped under the 2003 Act, it can only be done by a subordinate legislation made under Section 178 of the 2003 Act. Accrual of income/profit under the Companies Act, 1956 or the*

Income Tax Act, 1961 can only be curbed by a regulation made under the authority of subordinate legislation or primary legislation. This is exactly what is sought to be achieved by the impugned Regulations."

130. Any provision of the DVC Act that conflicts with or violates the Tariff Regulations would also be inconsistent with Section 61 of the Electricity Act, 2003, rendering such a provision inoperative. As clarified in Bhaskar Shrachi (para 55), the DVC Act's provisions must not be inconsistent with the 2003 Act.

131. The cost-plus tariff regime under Section 61 principles ensures that any violation of the Tariff Regulations inherently results in a breach of Section 61 itself.

132. Since the Tariff Regulations are framed in conformity with Section 61, any non-compliance with them directly contradicts the statutory framework. Accordingly, the Tribunal rightly held that any provision of the DVC Act permitting revenue recovery through tariff, if inconsistent with the Tariff Regulations, would not be applicable.

133. The binding effect of Tariff Regulations was underscored by the Hon'ble Supreme Court in ***PTC India Ltd. v. CERC (2010) 4 SCC 603*** in the following words:

"54. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted

with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that the Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity……. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178.

55. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under

Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.

56. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulations under Section 178."

Normative O&M expenses allowed to DVC are higher than the Actual O&M during 2014-19

134. The present appeals challenge DVC's generation tariff orders issued by CERC for FY 2014-19. However, CERC has since issued true-up orders for the same period, revealing that the normative O&M expenses allowed to DVC exceeded its actual O&M expenditure, including contributions to the P&G fund, by ₹209 crore.

135. This was specifically noted in CERC's true-up order dated 17.02.2023 for Mejia TPS I-III, which identified this excess under normative O&M expenses, water charges, and ash evacuation charges.

136. Further, CERC considered the entire Employee Benefit Expenses as recorded in Note 27 of DVC's audited accounts without any deduction for inadmissibility, which included P&G Fund contributions. Despite accounting for the full Employee Benefit Expenses, the normative O&M expenses granted to DVC still exceeded its actual O&M expenditure for FY 2014-19. This establishes that the O&M norms under the Tariff Regulations were more than adequate to cover all operational costs, including manpower-related expenses.

Independent Role envisaged for Appropriate Commission

137. Under the Electricity Act 2003, tariff determination must strictly adhere to the applicable Tariff Regulations as mandated by the Appropriate Commission. The public utility status of an entity is irrelevant in this process. This principle was affirmed in ***Northern Railway v. HERC (Appeal No. 11/2011), reported in 2012 ELR (APTEL) 0407***, where the Tribunal ruled that tariff determination must conform to regulatory norms rather than an entity's public utility character.

138. Furthermore, even directives issued by the Central and State Governments under Sections 107 and 108 of the Act do not hold binding authority in tariff determination matters. In this regard, reliance is placed on the settled position reiterated by this Tribunal in judgment dated 23.5.2012 in Union of India through ***Southern Railway vs. TNERC 2012 ELR (APTEL) 1041***:

> *"19. It is settled law as laid down by this Tribunal as well as by the Hon'ble Supreme Court that even the policy directions issued under section 108 of the Act relating to fixation of tariff are not binding on the State Commission and the powers of State Commission in the*

matter of determination of tariff cannot curtailed. Thus, the direction contained in Ministry of Power's letter dated May 1991 cannot be held to be binding on the State Commission so far as determination of tariff is concerned."

EXPENDITURE ON SUBSIDIARY ACTIVITIES

139. The Electricity Act and the Tariff Regulations do not permit the recovery of costs incurred by DVC on subsidiary activities through the tariff. Such a claim contradicts the principles of Section 61, which mandate that only the reasonable cost of electricity be passed through in the tariff while ensuring consumer protection.

140. Recovering non-electricity-related costs is also inconsistent with the objective of tariff rationalization, as outlined in the preamble to the 2003 Act and Section 61 principles. Additionally, the fourth proviso to Section 14 does not authorize such recovery. Moreover, given that the normative O&M expenses allowed to DVC exceed its actual O&M expenditure, there is no justification for including subsidiary activity costs as a pass-through in the tariff.

141. In Ground-J of the Appeal, DVC has relied on para E. 11 and E.12 of this Tribunal's judgment dated 23.11.2007, which read as follows:

"E.11 Section 32 of the DVC Act provides that DVC can make expenditure on objects other than irrigation, power and flood control. Section 33 of the DVC Act, under the heading "Allocation of expenditure chargeable to project on main objects" provides for allocation of total capital expenditure chargeable to a project

between the three main objects namely, irrigation, power and flood control.

E. 12. In view of the above provisions of the DVC Act, we feel that expenditure incurred by DVC on objects other than irrigation, power and flood control be allocated to these three heads as per section 32 and 33 of DVC Act and expenditure so allocated to power object, should be allowed to be recovered through the electricity tariff. The above would be in line with Fourth Proviso of Section 14 of the Act which provides that provisions of DVC Act to the extent not inconsistent with the Act shall remain in force."

142. Sections 29, 32, & 33 of the DVC Act are as follows:

"29. Fund of the Corporation :

The Corporation shall have its own fund and all receipts of the Corporation shall be carried thereto and all payments by the Corporation shall be made there from.

Except as otherwise directed by the Central Government, all moneys belonging to that fund shall be deposited in the Reserve Bank of India or the Agents of the Reserve Bank of India or invested in such securities as may be approved by the Central Government".

"32. Expenditure on objects other than irrigation, power and flood control

The Corporation shall have power to spend such sums as it thinks fit on objects authorised under this Act other than irrigation, power and flood control and such sums shall be *treated as common expenditure payable out of the Fund of the Corporation before allocation under Section 33.*

33. Allocation of expenditure chargeable to project on main objects :

The total capital expenditure chargeable to a project shall be allocated between the three main objects, namely, irrigation, power and flood control as follows, namely :

1) expenditure solely attributable to any of these objects, including a proportionate share of overhead and general charges, shall be charged to that object, and

2) expenditure common to two or more of the said objects, including a proportionate share of overhead and general charges shall be allocated to each of such objects in proportion to the expenditure which, according to the estimate of the Corporation, would have been incurred in constructing a separate structure solely for that object, less any amount determined under clause (1) in respect of that object.

143. In light of the above, the Counsel submitted that:

a) Even if Sections 32 and 33 of the DVC Act continue to apply, they do not mandate the recovery of expenditure on DVC's subsidiary activities through tariff. Section 32 merely provides an enabling mechanism for allocating funds from the Corporation's main fund under Section 29, primarily for capital expenditure distribution across irrigation, power, and flood control.

b) Under the cost-plus tariff framework of the Electricity Act, 2003, DVPCA opposes the recovery of capital expenditure on DVC's non-electricity activities through its power business. Regardless of Sections 32 and 33 of the DVC Act, no non-electricity-related costs—whether capital or revenue—can be passed onto electricity tariffs post-2003.

c) Since Sections 32 and 33 allow for the allocation of capital expenditure from "other objects" to the power sector, their application conflicts with Section 61 and other provisions of the 2003 Act, including Sections 41 and 51, and thus cannot be enforced.

d) The interpretation of Sections 41 and 51 in para E.9 of the judgment dated 23.11.2007 fails to account for the fact that power generation costs make up 70% to 80% of distribution tariffs, further emphasizing the need for strict adherence to electricity-specific tariff regulations.

ASH EVACUATION, MEGA INSURANCE & CISF SECURITY, etc.

144. DVC's claim for additional O&M expenses related to ash evacuation, mega insurance, and CISF security is unwarranted, as these costs are already accounted for under the normative O&M expenses allowed to it. The normative O&M expenses granted to DVC are substantially higher than its actual O&M expenditures, which already include these specific costs. This assertion is supported by relevant sections of DVC's annual reports annexed herein.

145. Given these facts, it is submitted that DVC's appeals lack merit and should be dismissed by this Tribunal.

<u>Written Submissions of the Respondent No. 5, M.P. Power Management Company Ltd. (MPPMCL) (Appeal No. 183 of 2017)</u>

146. The claim of the Appellant related to pension & gratuity for the year 2014-19 has been rightly and judiciously disallowed in the impugned order. The claim of the Appellant is unreasonable, illogical, arbitrary, and beyond the scope of the Tariff Regulations, 2014, and these kinds of expenditures are already covered in normative O&M expenses allowed to the Appellant, and thus the same is liable to be rejected. The Central Commission has rightly disallowed the claim, stating that such expenses can be met from the normative O&M Expenses allowed to the generating station. The Commission has held that:

> *"80. We have examined the matter. It is observed that the liability claimed by the petitioner pertains to the period 2009-14 and does not pertain to the tariff period 2014-19. In this regard it is observed that the, Commission in Para 101 of the order dated 29.7.2016 in Petition No. 471/GT/2014, had disallowed the claim of the petitioner and had observed as under:*
>
> > *"101. As stated, the Commission in order dated 7.8.2013 in Petition No. 275/GT/2012 had allowed the recovery of 40% of the difference in liability as per actual valuation 31.03.2009 and 31.3.2006 in five equal instalments. The Commission in the said order had allocated the same on its generating stations except Mejia Unit 5 & 6. The Commission has revised the allocation and has also allocated share of P&G liability to Mejia Unit 5 and 6 on the basis of capital cost of 2205946.66 lakh admitted by it as on 31.3.2009. It is observed that the O&M expenses norms specified by the Commission under the 2009 Tariff Regulations applicable for the period 2009-14 had taken*

into consideration the P&G liability as part of O&M expenses. The statement of reason of the 2009 Tariff Regulations, at para 20.3 clearly states that O&M cost for purpose of tariff covers expenditure incurred on the employees including gratuity, CPF, medical, education allowances etc. The expenses on account of CPF considered in Public Sector Undertakings take care of pension liability applicable in Government Undertaking."

81. In line with the above observation, these expenses maybe met from the normative O&M Expenses allowed to the generating station. In view of this the share of pension and gratuity is not allowed."

147. The Tariff Regulations, 2014, explicitly include Pension and Gratuity (P&G) liability within the specified O&M norms, leaving no legal basis for considering P&G charges separately. The Commission thoroughly examined the Appellant's claim and found it beyond the scope of the regulations, leading to its disallowance.

148. Similarly, the Appellant's claim for additional O&M expenses, including Mega Insurance and subsidiary activities, was rightly rejected. Regulation 29 of the Tariff Regulations, 2014, governs normative O&M expenses, which already encompass insurance costs under Regulation 3(42). Therefore, any claim for Mega Insurance beyond this scope is arbitrary and untenable.

149. Additionally, subsidiary activity expenses fall outside the ambit of normative O&M norms and cannot be included within O&M expenses by any rational interpretation.

150. The Statement of Reasons to the Tariff Regulations, 2014, clarifies that O&M norms are derived from data across multiple stations with a broad geographical spread, ensuring that specific expenditure components are already accounted for within normative O&M expenses. Accordingly, the Commission, in its impugned order, has correctly held that additional claims beyond the normative O&M framework are unwarranted. The Commission in its impugned order, has held that:

> *"74. We have examined matter. In terms of the statement of reasons in support of the 2014 Tariff Regulations the Commission' observed as under:*
>
> *"…29.39 Some of the generating stations have suggested that site specific factors should be taken into account and additional O&M expenses should be allowed. The Commission is of the view that the site specific norms in case of thermal generating stations may not serve much purpose as there is a set of advantages and disadvantages associated with every site, which average out, and the proposed norms are also based on multiple stations with wide geographical spread and therefore, such aspects are already factored in the norms."*
>
> *75. In line with the above observations and in accordance with the 2014 Tariff Regulations, the additional O& M expenses claimed by the petitioner have not been considered"*

151. The Commission has examined the Appellant's claim for additional O&M expenses, including Mega Insurance and the share of subsidiary activities for the period 2014-19, in light of the Statement of Reasons supporting the Tariff Regulations, 2014. It was determined that these claims fall outside the scope

of the regulations and were accordingly disallowed. Regarding the disallowance of common office expenditure, the Commission found that the Appellant's claim exceeded the regulatory framework. The Appellant did not furnish adequate details regarding additional capitalization under the IT office, leading to the disallowance of the claim, with the liberty to provide a detailed justification at the time of truing up. The Commission prudently assessed and apportioned the Annual Fixed Charges for common offices between the generating stations and the T&D system of DVC. The Commission in its impugned order has observed as under:

> *"89. In response to the directions of the Commission, it is observed that the petitioner has not submitted any details regarding the additional capitalization claimed under IT offices. In view of this, the additional capitalization claimed under IT office is not allowed. However, the petitioner is granted liberty to submit detailed justification on the said claim at the time of revision of tariff based on truing-up exercise in terms of Regulation 8 of the 2014 Tariff Regulations. It is noticed that the claim of the petitioner for common office expenditure is in line with the Commission's order dated 6.8.2009 in Petition No. 66/2005 and order dated 8.5.2013 in Petition No. 272/2010. The Commission has considered the O&M norms for this generating station as specified for 500 MW units including the expenditure for Common Offices in respect of depreciation and interest on loan. Accordingly, as also discussed earlier, only return on equity towards cost of cost offices has been allowed in computation of cost of common offices. The annual fixed charges of Common offices as worked out have been apportioned*

to the generating stations/T&D systems as considered as on 31.3.2014.
90. Accordingly, the fixed charges have been computed as per the admitted capital cost as on 1.4.2014 (as approved in order dated 27.2.2017 in Petition No. 204/GT/2015 and has been allocated to various generating stations…."

152. The Commission's order dated 17.03.2017 in Petition No. 205/GT/2015 is well-reasoned and does not suffer from any infirmity concerning the contested issues raised by the Appellant. The claims regarding additional O&M expenses, including Mega Insurance and subsidiary activities, as well as common office expenditure, were examined in accordance with the Tariff Regulations, 2014, and found to be beyond their scope.

153. The Commission prudently assessed the claims and provided an opportunity for justification at the truing-up stage where necessary. In light of these findings, the Appellant's contentions lack legal basis and merit. The order of the Commission does not warrant interference, and the Tribunal is urged to dismiss the Appeal.

Analysis and Conclusion

154. 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:

a) Whether the Central Commission is correct in holding that the O&M expenses adequately cover the contribution to the Pension and Gratuity Fund as factored into the normative O&M expenses.

b) Whether the Central Commission is justified in allowing only a part of the total expenditure claimed towards subsidiary activities.

c) Whether the Central Commission is right in disallowing the expenditure amounting to Rs. 522.20 Lakh for FY 2012-13 and Rs. 732.97 Lakh for FY 2013-14 claimed towards Ash evacuation, considering statutory environmental obligations.

d) Whether the Central Commission is correct in disallowing the claims for MEGA Insurance and CISF Security Expenses within the framework of the normative O&M expense determination.

155. The Appellant herein has prayed for the following:

"a. Allow the appeal and set aside the order dated 29.07.2016 passed by the Central Commission to the extent challenged in the present appeal; and

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

156. Let us take up the batch of appeals on an issue-wise basis:

ISSUE- a): Whether the Central Commission is correct in holding that the O&M expenses adequately cover the contribution to the Pension and Gratuity Fund as factored into the normative O&M expenses.

157. The crux of the issue is whether the Normative O&M covers the P&G liability of the employees of the DVC.

158. Before we proceed, it is important to take note of CERC orders. The relevant extract of the impugned order dated 29.07.2016 in respect of CTPS Unit I-III for FY 2009-14, is quoted as under:

> *"82. It is observed that the petitioner has claimed P&G liability as on 31.3.2006 and 31.3.2009 in line with the methodology adopted by the Commission in order dated 7.8.2013 in Petition No. 275/GT/2012. The petitioner has also claimed the P&G liability as valued on 31.3.2011, 31.3.2012, 31.3.2013 and 31.3.2014 during the period 2009-14. The Commission vide its order dated 6.8.2009 in Petition No. 66/2005 had allowed 60% of the P&G liability as on 31.3.2006 to be recovered during the period 2006-09 and balance 40% of the liability during the period 2009-14 in five equal yearly installments. The relevant portion of the order dated 6.8.2009 in Petition No. 66/2005 is as observed as under:-*
>
> *…*
>
> *84. Thus, the Commission in its order dated 7.8.2013 in Petition No. 275/GT/2012, had allowed balance 40% of the liability as on 31.3.2006 to be recovered during the period 2009-14 in terms of the judgment of the Tribunal dated 10.5.2010 in Appeal No. 146/2009. In addition to the above, 40% of difference in P&G liability as on 31.3.2009 and 31.3.2006 was also allowed to be recovered in five equal installments during the period 2009-14. The yearly P&G amount allowed for the period 2009-14 was allocated*

to different generating stations and T&D system of the petitioner on the basis of the capital cost as on 31.3.2009.

85. As the petitioner has submitted the Certificate from the Actuary as per the Accounting Standard -15 (AS-15) the Commission directed the petitioner to furnish the detailed actuarial valuation report submitted by the Actuary to the petitioner. In response the petitioner vide affidavit dated 10.6.2016 has submitted the Certificate received from the Actuary has been furnished to the Commission and no separate report has been received from the Actuary to the petitioner.

86. The petitioner was further directed to furnish the complete details of all the elements with assumptions considered by the Actuary for arriving at the Pension & Gratuity fund requirement on year to year basis. The petitioner was also directed to submit the details of year wise (for each year from 2009-10 to 2013-14) amount deposited in the trust towards P&G fund along with reconciliation of P&G fund booked in annual accounts for the respective year. In response, the petitioner vide affidavit dated 23.6.2016 has submitted the details assumptions considered i.e. mortality, attrition, discount rate, normal age retirement, salary escalation (basis salary and Basic + DA) and the method used for computation of P&G liability.

87. As stated, the Commission in order dated 7.8.2013 in Petition No. 275/GT/2012 had allowed the recovery of 40% of the difference in liability as per Actuarial valuation 31.3.2009 and 31.3.2006 in five equal installments. The Commission in the said order had allocated the same on its generating stations except Mejia Unit 5 & 6. ***The Commission has revised the allocation and has also allocated***

share of P&G liability to Mejia Unit 5 and 6 on the basis of capital cost of ₹205946.66 lakh admitted by it as on 31.3.2009. It is observed that the O&M expenses norms specified by the Commission under the 2009 Tariff Regulations applicable for the period 2009-14 had taken into consideration the P&G liability as part of O&M expenses. The statement of reason of the 2009 Tariff Regulations, at para 20.3 clearly states that O&M cost for purpose of tariff covers expenditure incurred on the employees including gratuity, CPF, medical, education allowances etc. The expenses on account of CPF considered in Public Sector Undertakings take care of pension liability applicable in Government Undertaking.

88. In this background, the additional claim of the petitioner towards P&G liability for the period 2009-14 based on Actuarial valuation cannot be allowed. However, the allocation of P&G liability pertaining to period 2004-09 has been revised by re-allocating the total P&G liability approved in order dated 7.8.2013 taking into consideration Mejia Unit 5 & 6. …"

*[**Emphasis Supplied**]*

159. Further, CERC in the impugned order dated 20.09.2016 in respect of MTPS Unit I-III for FY 2014-19 has held as:

"Pension & Gratuity Contribution

67. The petitioner has claimed pension and gratuity contribution for the period 2014-19 and has submitted that it has considered the actuarial valuation as on 31.3.2014, for liability towards pension and gratuity fund and projected P&G liability for the tariff period

> *2014-19.* ***It is observed that the liability claimed by the petitioner pertains to the period 2009-14 and does not pertain to the tariff period 2014-19.*** *In this regard it is observed that the Commission in its order dated 29.7.2016 in Petition No. 465/GT/2014, Para No. 107, has disallowed the claim of the petitioner…*
>
> *68.* ***Since the claim of the petitioner relates to the tariff period 2009-14 which had not been allowed, the claim of the petitioner has not been considered in this order".***

160. From the above, it is seen that the Central Commission, in its order dated 29.07.2016, has rejected the prayer of the DVC, reasoning that-

i) O&M expenses norms specified by the Commission under the 2009 Tariff Regulations applicable for the period 2009-14 had taken into consideration the P&G liability as part of O&M expenses,

ii) the statement of reason of the 2009 Tariff Regulations, at para 20.3, clearly states that O&M cost for the purpose of tariff covers expenditure incurred on the employees, including gratuity, CPF, medical, education allowances, etc., and

iii) the expenses on account of CPF considered in Public Sector Undertakings take care of pension liability applicable in Government Undertakings.

161. Para 20.3 of the SoR states as under:

> *"20.3 **The Operation & Maintenance cost for the purpose of tariff covers expenditure incurred on the employees including gratuity, CPF medical, education allowances etc,** repair and maintenance expenses including stores and consumables, consumption of capital spares not part of capital cost, security expenses, administrative expenses etc. of the generating stations, corporate expenses apportioned to each generating stations etc. but exclude the expenditure on fuel i.e. primary fuel as well as secondary and alternate fuels."*

162. From the above, it is clear that the O&M charges include **expenditure incurred on the employees, including gratuity, CPF, medical, education allowances, etc.**

163. DVC argues that such a provision excludes the Pension & Gratuity liability of DVC, which is mandated under the DVC Act.

164. DVC submitted that all employees of DVC must subscribe to one of the following welfare schemes:

- CPF (DVC)- Under CPF, both employee and employer contribute, and the funds are released at once to the employee at the time of retirement, with no liability of the corporation post superannuation.
- EPF (DVC)
- General Provident Fund Scheme.

165. Even though each employee is contributing to only one of the welfare schemes, granting additional allowance on account of Pension & Gratuity shall

be in addition to the manpower expenditure, which includes **gratuity, CPF, medical, education allowances, etc.,** that have already been covered under the Normative O&M expenses.

166. DVC, further, contended that under the Pension Scheme, the obligation to pay starts at the time of retirement and continues till the death of the employee (in some cases, benefits to the LR even after the death of the employee). To meet such liability, DVC had established the P&G fund, which is topped up regularly based on the Actuarial Valuation report. **Naturally, the liability for 'Pension' is far more than that of 'CPF'. Also, Employees subscribing to the Provident Fund on January 18, 1964, were required to choose between continuing with the Provident Fund or switching to the Pension-cum-Gratuity Scheme. Fundamental distinction lies in how CPF prioritizes pre-retirement contributions, while the Pension Scheme is designed for post-retirement financial security.**

167. Placing reliance on the judgment dated 23.11.2007 passed in ***Appeal No.271 of 2006 & batch***, on the issue of P&G (Para D.1 to D.10), DVC is entitled to recover entire contribution to such fund, with 40% of liability pertaining to FY 2006-09 period was allowed to be recovered in the next control period i.e., FY 2009-14, in a staggered manner to avoid tariff shock. After careful consideration of the reasoning adopted by this Tribunal on the issue of P&G fund contribution, the apex court refused to interfere; therefore, it has attained finality.

168. We do not find merit in such an argument, as the period 2006-2009 is the past period when such a provision had not been made, and the additional allowance was granted to DVC.

169. DVC itself submitted that the Hon'ble Supreme Court has held that CERC, while framing regulations under the plenary Electricity Act, 2003, will take care of such provisions of the DVC Act not inconsistent with the Act, inter alia, CERC was directed to frame Regulations to accommodate Section 40 of the DVC Act. Accordingly, Regulation 43(2) was inserted in the CERC Tariff Regulation, 2009, which provided that the funds established under Section 40 shall be considered as an item of expenditure to be recovered through tariff.

170. DVC also argued that the CPF envisaged at the time of framing of O&M norms is clearly distinct from the P&G fund mandated under Section 40 of the DVC Act. The Hon'ble Supreme Court in the Judgment of ***Krishena Kumar v. Union of India, (1990) 4 SCC 207,*** has accepted this distinction, while referring to ***D.S. Nakara v. Union of India, (1983) 1 SCC 305***, held that once an employee retires, their CPF rights are finalised, leaving no further obligation on the part of the employer. In contrast, under the Pension Scheme, the employer's responsibility begins only after the employee retires and continues for the rest of the employee's life.

171. Based on the above arguments, DVC submitted that CERC, in its Order dated 03.10.2006, has approved 60% of liability on account of P&G fund for FY 2006-09, and accordingly, all pension, gratuity, and leave encashment liability was to be taken out on a cash basis from the normalised O&M expenses.

172. On the contrary, DVPCA submitted that CERC, referring to rejection of P&G fund contribution during the previous control period FY 2009-14 on the ground that such expenditure was covered under the normative O&M

expenses, has reiterated its approach in the impugned order pertaining to FY 2014-19 and rejected DVC's claim. Once the P&G liability for FY 2009-14 had been previously disallowed by CERC, there was no justification whatsoever for DVC to claim the same in FY 2014-19, along with the estimated CAGR and 7th Pay Commission increment. Such a claim was barred, inter alia, by the doctrine of *res judicata*.

173. DVPCA, further, submitted that Clause 20.3 of the SoR of the Tariff Regulations 2009 clearly implies that Regulation 19 of the Tariff Regulations 2009 provides that O&M expenses include "*expenditure incurred on the employees including gratuity, CPF medical, education allowances etc*". Therefore, the expenditure of DVC on account of P&G liability already stands taken care of under O&M Expenses in the Tariff Regulations 2009 itself. A similar definition of O&M expenses has been provided for under Regulation 3(42) of CERC Tariff Regulations, 2014.

174. **Undisputedly, the grant of "Pension & Gratuity" fund expenses in addition to the O&M expenses, which includes gratuity, CPF, medical, and education allowances, will result in double payment as the employees are entitled to either the P&G fund or Gratuity & CPF fund, as also confirmed by DVC that employees are entitled to only one.**

175. DVPCA also argued that it is trite that the Tariff Regulations are binding, and the validity or inadequacy of the same cannot be questioned before this Tribunal. Needless to add, in ***PTC India Ltd. v. CERC (2010) 4 SCC 603*** held- *"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."

176. The Regulation 3(28) of the CERC (Terms and Conditions of Tariff) Regulations, 2009, defines the O&M expenses as "*O&M expenses' means the expenditure incurred on operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads*".

177. CERC Regulations also provide that a generating company is entitled to O&M expenses on a normative basis.

178. Undoubtedly, the 'O&M expenses' are meant to cover all expenditures that are incurred on the operation and maintenance of the generating station. The expenditure on manpower is also specifically included in the definition of O&M expenses. Therefore, all expenditure relating to the manpower of a generating company has to be met from the O&M expenses that are allowable at normative levels prescribed under the Tariff Regulations, or otherwise, some expenditures are required to be met, which were not anticipated earlier, like pay revisions under the implementation of Pay Commission recommendations.

179. The harmonious reading of the SoR and the Tariff Regulations, 2009, along with the Impugned Order, supports the view taken by the Central Commission, the contribution made by DVC to the P&G fund is indisputably a manpower related expenditure, and such expenditure is already allowed to DVC as part of the normative O&M expenses that are allowed in terms of the Tariff Regulations.

180. The O&M tariff component categorization under the normative tariff category provides for meeting all O&M expenses through the prescribed O&M norms. Such a normative tariff regime would be defeated if a generating company is allowed any O&M-related expenditure by way of an additional allowance over and above the O&M norms that are allowed to it in accordance with the Tariff Regulations, in line with the observation of this Tribunal in ***UPPCL vs. NTPC, 2007 SCC OnLine APTEL 56***. The purpose of a norms-based tariff scheme is to incentivise efficiency, so that a generating company incurs expenditure prudently within the prescribed norms. The relevant extract of the UPPCL judgment is quoted as under:

> *"We are of the view that the Appellant's contention that the clause 82(b) of Regulations, 1999 provide for allowing the actual cost is simply not correct as it mandates the rationalization of tariff by means of normalizing the actual data of operation from various plant(s) to arrive at normative values for standard acceptable performance making it amenable to award incentive for improved performance or to penalize the degradation in the performance. In view of the aforesaid, we are of the opinion that the contention made by the Appellant that the norms applied should be ceiling and actual values of the operational parameters should be considered subject to the ceiling norms, is inconsistent with the provisions of the Act, which mandates encouraging efficiency, competition, good performance, etc."*

181. We agree with the contention of the DVPCA that the Tariff Regulations are binding, and the validity or inadequacy of the same cannot be questioned before this Tribunal. Hon'ble Supreme Court in ***PTC India Ltd. v. CERC (2010)***

4 SCC 603 has already settled the issue deciding that "***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.***"

182. We find the approach of DVC, indirectly challenging the 2009 Tariff Regulations, stating that the Regulations have not covered the P&G fund under the O&M norms. In fact, the SoR read with the 2009 Tariff Regulations provides that all manpower expenses, including the P&G liability, are covered by the Normative O&M expenses. The Central Commission, while finalising the 2009 Tariff Regulations, has used the phrase '***including gratuity, CPF, medical, education allowances, etc.***', thus including similar manpower expenses, also complying with the Hon'ble Supreme directions, as referred by DVC itself, as noted in the foregoing paragraphs- 'CERC was directed to frame Regulations to accommodate Section 40 of the DVC Act. Accordingly, Regulation 43(2) was inserted in the CERC Tariff Regulation, 2009, which provided that the funds established under Section 40 shall be considered as an item of expenditure to be recovered through tariff.'

183. Thus, the specific employees' related expenditure mentioned in the SOR is by way of illustration and is not exhaustive. Reliance is placed on the following judgments:

1. Lila Vati Bai v. State of Bombay, 1957 SCC OnLine SC 31, decided on 05.03.1957, **Paragraph Nos. 11 and 12;**
2. Jage Ram v. State of Haryana, (1971) 1 SCC 671, decided on 02.03.1971, **Paragraph Nos. 13, 14, 15, 16, and 17;**

3. RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424, decided on 22.01.1987, **Paragraph No. 33.**

184. In fact, DVC has given details of the manner in which it implements the retirement schemes relating to CPF, Pension, and Gratuity. Such details have no relevance to DVC's claim for P&G fund contribution, as the same is an 'expenditure on manpower' and has to be met through the normative O&M expense.

185. With reference to DVC's reliance on Regulation 53 read with Section 40 of the DVC Act, the DVPCA argued that DVC neither pleaded nor established before CERC that the P&G Fund had been created pursuant to CAG's directions under Section 40 of the DVC Act. Further, Regulation 53(2)(iv) does not lay down that an expenditure, which is adequately provided for under the O&M norms, has to be once again allowed as a tariff element.

186. Such a fund is created by other public sector enterprises as well, including NTPC. Any contribution to its P&G fund by NTPC is based on actuarial valuation, and the same is not allowed as an additional tariff element to NTPC over and above the normative O&M expenses.

187. **We are, therefore, satisfied that the Central Commission has correctly decided the issue and passed the impugned orders without any infirmities. The issue is decided against the Appellant, DVC.**

Issue b) : Whether the Central Commission is justified in allowing only a part of the total expenditure claimed towards subsidiary activities.

188. CERC in the true-up order for FY 2009-14 had allowed expenditure limited to the activity of soil conservation to be recovered through tariff. Relevant excerpt of the true-up Order for CTPS Unit 1-3:

> *"65. Considering the fact that the normative O&M allowed to this generating station for period 2009-14 does not include revenue expenses on subsidiary activities, we allow the additional O&M expenses for share of subsidiary activities limited to the expenditure required for soil conservation. The petitioner has not submitted the station-wise soil conservation cost but has only submitted the total soil conservation cost for the petitioner's company as a whole for the year 2012-13 and 2013-14. Accordingly, the expenditure towards soil conservation activities has been worked out by considering the total soil conservation expenditure and the same has been allocated to each of the generating stations (including Mejia Unit 5 & 6) and T&D system of the petitioner in proportion to the admitted capital cost as on 1.4.2009. Further, the expenditure towards soil conservation activities worked out above pertaining to generating stations has been allocated to different units on the basis of installed capacity. Accordingly, the share of subsidiary activities limited to the expenditure towards soil conservation activities has been allowed as additional O&M expenses in relaxation of the provisions of the 2009 Tariff Regulations."*

189. Further, in the true-up order for FY 2014-19, CERC allowed the entire expenditure towards subsidiary activities to be recovered through the tariff. Relevant excerpt of the true-up Order for CTPS Unit 1 to 3 is quoted as under:-

"Accordingly, the expenses of 'other activities' is being allowed as claimed by the Petitioner during the period 2014-19".

190. However, in the tariff order for FY 2014-19, CERC had initially disallowed the entire expenditure claimed towards subsidiary activities as additional O&M expense.

191. DVC placed reliance on Para E11-12 of the judgement dated 23.11.2007 passed in Appeal No.271 of 2006 & batch, as stated below-

"E.11 Section 32 of the DVC Act provides that DVC can make expenditure on objects other than irrigation, power and flood control. Section 33 of the DVC Act, under the heading "Allocation of expenditure chargeable to project on main objects" provides for allocation of total capital expenditure chargeable to a project between the three main objects namely, irrigation, power and flood control.

E. 12. In view of the above provisions of the DVC Act, we feel ***that expenditure incurred by DVC on objects other than irrigation, power and flood control be allocated to these three heads*** *as per section 32 and 33 of DVC Act* ***and expenditure so allocated to power object, should be allowed to be recovered through the electricity tariff.*** *The above would be in line with Fourth Proviso of Section 14 of the Act which provides that provisions of DVC Act to the extent not inconsistent with the Act shall remain in force."*

192. DVC has also placed reliance on the judgment in ***Bhaskar Shrachi Alloys Limited & Ors. v. DVC & Ors.*** (Paras. 62-63), wherein the Hon'ble Supreme Court has held as under-

> *"In the instant case, the "**other activities" of the Corporation are not optional as contemplate under Sections 41/51 of the 2003 Act but are mandatorily cast by the statute i.e. Act of 1948** which, being in the nature of socially beneficial measures, per se, do not entail earning of any revenue so as to require maintenance of separate accounts. **The allowance of recovery of cost incurred in connection with "other activities" of the Corporation from the common fund generated by tariff chargeable from the consumers/customers of electricity** as contemplated by the provisions of the Act of 1948, therefore, **do not collide or is, in any manner, inconsistent with the provisions of the 2003 Act.** We will, therefore, have no occasion to interfere with the findings recorded by the learned Appellate Tribunal on the above score."*

193. On the contrary, DVPCA relied on the tariff order dated 07.08.2013 for FY 2009-14, wherein CERC had allowed expenditure on subsidiary activities limited to soil conservation. The same was never challenged by DVC; therefore, it had attained finality. The methodology adopted in the true-up order has to align with the tariff order.

194. Also argued that recovery of expenditure on subsidiary activities through tariff is manifestly wrong and opposed to principles of Section 61, which inter

alia, only provides for reasonable cost of electricity as a pass-through in tariff whilst also ***safeguarding the consumer interest***. Recovery of such extraneous cost cannot even be sanctioned in terms of the 4th proviso of section 14 of the Act. In light of the afore-mentioned, this Tribunal may disallow the expenditure allowed even on soil conservation in exercise of its powers under Order 41 Rule 33.

195. We decline to agree with the submissions of the DVPCA. This Tribunal and the Hon'ble Supreme Court have already settled the issue as noted above. The CERC is bound to act accordingly.

196. **The issue is decided in favour of the DVC.**

197. **The matter is remanded to CERC to determine the allowance of the subsidiary activity in the ratio of allocation to the three main revenue-based functions of the DVC, as held by this Tribunal in the afore-mentioned judgment.**

Issue- c): Whether the Central Commission is right in disallowing the expenditure amounting to Rs. 522.20 Lakh for FY 2012-13 and Rs. 732.97 Lakh for FY 2013-14 claimed towards Ash evacuation, considering statutory environmental obligations.

198. The Central Commission has held as follows:

> *"53. The matter has been examined. It is observed that the said expenditure has been incurred by the petitioner to meet the environment and pollution control norms and also normative O&M*

expenses allowed to this generating station for the period 2009-14 do not include expenditure towards ash evacuation.

55. It is observed that the claim of the petitioner has substantially increased in 2012-13 when compared to 2011-12. The Commission has therefore computed the compounded annual growth rate (CAGR) of 3.78% for Ash evacuation expenses considering actual for 2009-10 to 2011-12. The ash evacuation expenses for 2011-12 have then been escalated by CAGR to derive expenses for 2012-13 and 2013-14. The Commission has then considered the minimum of such derived expenses and petitioner's claim. In view of the above, we have allowed the expenditure towards additional O&M on Ash evacuation in relaxation of the provisions of the 2009 Tariff Regulations for 2009-14.

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Claimed	296.02	312.95	330.85	865.55	1089.29
Approved in this order	296.02	312.95	330.85	343.35	356.32

199. DVC submitted that these expenses were not included in the normative O&M expenses allowed for the Generating Station for FY 2009-14, therefore, additional O&M was allowed in relaxation of the norms by CERC. However, CERC has arbitrarily computed CAGR of 3.78% on actuals for FY 2012-13 and escalated the same to derive expenses for FY 2012-14.

200. Further, contended that once CERC had held the ash evacuation expenses to be based on actuals as additional O&M expenses, then there was no occasion to arbitrarily apply an escalation rate. This violates the decision in ***BSES Rajdhani Power Limited v. DERC, (2023) 4 SCC 788***, wherein it was held that an Electricity Regulatory Commission cannot change the

rules/methodology used in the initial tariff determination by changing the basic principles, premises, and issues involved in the initial projection of ARR. The disallowed amounts are as follows:

- Rs. 575.64 lakhs: i.e. more than 55% for the year 2012-13; and
- Rs. 388.36 Lakh i.e. more than 45% for the year 2013-14.

201. DVPCA submitted that there is nothing on the record to establish the sudden increase in DVC's ash evacuation claim for FY 2012-14 vis-à-vis the claim in FY 2009-12, therefore, it should not be allowed at actuals. The normative O&M expenses allowed to DVC are higher than the actual O&M expenses, which is inclusive of ash evacuation, CISF security, mega Insurance, etc.

202. The CERC has partially disallowed the Ash Evacuation claimed as an additional O&M expense for certain generating stations. However, CERC in the Tariff Order had allowed Ash Evacuation as an additional O&M expense since it was not provisioned in the O&M norms; however, this was subject to a prudence check at the time of true-up. The CERC in true-up for FY 2009-14 has considered the projections approved in the tariff order(s) passed at the end of the said control period and has accordingly restricted the abnormal increase in the expenditure incurred in the last two FY, i.e., 2012-14, by considering a CAGR of 3.78%.

203. It is a settled principle of law that the truing-up has to be done based on actuals, except for the normative parameters/ costs. However, the Regulatory Commission is bound to carry out prudent checks on the expenditure incurred.

204. In the instant case, if CERC has not provisioned the impugned expenditure as part of the Normative O&M expenditure, it is bound to allow the costs on actuals after a prudent check of the expenditure incurred.

205. Undoubtedly, based on the records placed before us, we observe that there is an abnormal increase in such charges as claimed during the True-up exercise. However, no justification or reasons were put forth by the Appellant, DVC.

206. The only argument made by the DVC is that the dispensation adopted by CERC is in clear contravention of the Judgment of the Hon'ble Supreme Court in ***BSES Rajdhani Power Limited v. DERC, (2023) 4 SCC 788***, wherein it was held that an Electricity Regulatory Commission cannot change the rules/methodology used in the initial tariff determination by changing the basic principles, premises and issues involved in the initial projection of ARR.

207. We agree with the submission of the DVC; however, we observe that the Central Commission has not changed the methodology or the norms for such allowance to be made, but capped the allowance for the reason that there is an abnormal or manifold increase in the expenditure incurred without any reason or justification. We also note that no explanation was put forth by the DVC before us during the oral hearing or as part of their written submissions.

208. **The issue is decided against DVC; the Impugned Order is upheld.**

Issue- d): Whether the Central Commission is correct in disallowing the claims for MEGA Insurance and CISF Security

Expenses within the framework of the normative O&M expense determination.

CISF SECURITY (2009-14 & 2014-19)

209. CERC, in the true-up Order dated 09.02.2017 (MTPS Unit 5-6) for FY 2009-14, has held as follows-

> *"68. The matter has been examined.* ***It is observed that the actual O&M expenses for this generating station is higher than the normative O&M expenses for the years 2012-13 and 2013-14****. The Commission vide order dated 7.8.2013 in Petition No.276/GT/2012 in respect for determination of tariff for Durgapur Thermal Power Station had allowed the expenditure towards CISF security for the period 2009-14 and has observed as under: -*
>
> > *"69…The matter has been considered.* ***Based on the documentary evidence and considering the location and significant threat perception to the generating station and the personnel employed there, we consider the matter favorably and allow the claim of the petitioner for additional O&M on this count in relaxation of the provisions of the 2009 Tariff Regulations.*** *However, the petitioner is directed to furnish the generating station wise CISF personnel deployed/employed in its generating station during the period 2008-09 to 2013-14 at the time of truing up exercise to be undertaken in terms of Regulation 6 of the 2009 Tariff Regulations."*
>
> *69. In line with the above decision and considering the significant threat perception to the generating station and the personnel*

> *employed there,* ***we allow the expenditure towards CISF Security claimed by the petitioner for the period 2009-14, in relaxation of the provisions of the 2009 Tariff Regulations****.*
>
> *70. It is observed that* ***the claim of the petitioner has substantially increased in 2013-14 when compared to 2012-13****. The Commission has therefore considered* ***the escalation rate of 5.72% as considered by the Commission for the norms for O&M expenses during 2009-14. The CISF expenses for 2012-13 have then been escalated by 5.72% to derive expenses for 2013-14…***

210. The Appellant had claimed expenditure of ₹327.27 lakh in 2012-13 and ₹457.45 lakh in 2013-14. Due to the substantial increase claimed by the Appellant for 2013-14, the actual O&M expenses of 2012-13 were escalated @5.72% to derive expenses for 2013-14. Accordingly, the CISF expenses allowed were of Rs 327.27 lakh, Rs 345.99 lakh for 2012-13 and 2013-14, respectively.

211. DVC submitted that CERC in Paras 68-69 of the Impugned Order of MTPS Unit 5-6, holds that the actual O&M expenditure is higher than the normative O&M expenditure allowed in the Tariff Regulations, 2009, and accordingly, in line with its decision in the Order dated 07.08.2013 for Durgapur TPS and considering the significant threat perception to the generating station and the personnel employed there, CERC allowed the expenditure claim towards CISF Security. In the true-up, documentary evidence was also submitted to the satisfaction of the commission. However, CERC has arbitrarily considered an escalation factor and has not considered the actual expenditure incurred, which is incorrect, as CERC recognized the fact that this type of

expenditure cannot be met from normative O&M expenses, as observed in the Order dated 22.08.2016 in Petition No. 295/GT/2015 for KTPS, also the finding of CERC is without any reason, therefore, in violation of principle - *"A quasi-judicial authority must record reasons in support of its conclusions"- as settled by kranti Associates v. Masood Ahmed Khan, (2010) 9 SCC 496.*

212. DVC also argued that CERC is also in contravention of the position laid down by the Hon'ble Supreme Court in T. Takano v. SEBI, (2022) 8 SCC 162 [Para. 50] wherein it was held that a quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication.

213. It cannot be argued that the normative O&M expenses for the purposes of tariff, as per the 2009 Tariff Regulations, cover expenditure on account of security associated with the Generating Station. This is also evident from Clause 20.3 of the SOR to the relevant regulations.

214. Thus, CISF Security is expressly covered under the Normative O&M expenses; accordingly, CERC, in the tariff order, only considering the threat perception and location of certain generating stations, had agreed to relax the norms and allowed additional O&M expense under this head, subject to due prudence check, as seen from the impugned order.

215. Under the law, CERC is bound to carry out a prudent analysis and check on the information and claim placed before it. In the true-up orders for FY 2009-14, CERC has done a case-by-case analysis and accordingly allowed the CISF expenses subject to due prudence check.

216. Undisputedly, an increase in the cost of one element cannot be seen in isolation, as the normative is arrived at by duly considering all factors. Since the O&M is norm-based and not at actuals, any additional expense in one element cannot be allowed, and the whole spectrum of costs needs to be looked into while considering the actual cost and recovery based on norms; otherwise, there is an essential expenditure on an element not covered under the O&M.

217. DVC has claimed the actual expenditure incurred on CISF security. The entire claim cannot be allowed as the normative O&M does already have security expenses covered under it, and accepting DVC's submission will lead to double allowance. From the recovery perspective, it may also be noteworthy that normative O&M expense for all generating stations and T&D system approved by CERC for DVC is higher than the actual expenditure incurred. In view of the aforementioned, the claim of DVC is not tenable.

218. We are satisfied that CERC, after prudent examination, partially disallowed CISF as an additional O&M expense for MTPS Unit 5-6; MTPS Unit 7-8; CTPS Unit 7-8 & DSTPS Unit 3&4.

219. It may be noted that for stations wherein actual O&M was higher than the normative O&M expense, additional O&M expense towards CISF security should be allowed.

220. For the year 2014-19, CERC in the tariff Order for FY 2014-19, had placed reliance on the SOR to the Tariff Regulations, 2014, and disallowed additional O&M expense on account of CISF Security, the relevant extract is quoted as under:

"43. ***In addition to above, the petitioner has claimed additional O&M expenses towards Ash evacuation, Mega insurance, CISF security and Share of Subsidiary activity…***

44. The petitioner has claimed additional O&M towards ash evacuation, CISF Security, Mega insurance and share of subsidiary activity for the tariff period 2014-19 and has submitted that it is necessary expenditure and required for successful operation of the plant.

45. We have considered the submissions of the petitioner. In the statement of reasons in support of the 2014 Tariff Regulations, it has been observed by the Commission as under:

> ***"…29.39 Some of the generating stations have suggested that site specific factors should be taken into account and additional O&M expenses should be allowed. The Commission is of the view that the site specific norms in case of thermal generating stations may not serve much purpose as there is a set of advantages and disadvantages associated with every site, which average out, and the proposed norms are also based on multiple stations with wide geographical spread and therefore, such aspects are already factored in the norms…"***

*46****. In line with the above observations and in accordance with the 2014 Tariff Regulations, the additional O&M expenses claimed by the petitioner under the above head have not been allowed.***

221. CERC in the true-up for FY 2014-19 has observed as under-

"*Further, the Commission while specifying the O&M expense norms for the 2014-19 tariff period, had considered security expenses for the generating station, as part of the O&M expenses and had factored the same in the said norms. Considering the above, we do not find any reason to allow additional O&M expenses towards CISF security…*

It is evident from the above, that the total normative O&M expenses allowable in respect of all the generation and transmission tariff petitions of the Petitioner for the 2014-19 period is Rs.1044745.04 lakh, in terms of the 2014 Tariff Regulations. Also, considering the actual water charges of Rs.38226.00 lakh and Ash Evacuation Charges w.e.f. 26.1.2016 of Rs.39334.64 lakh, the total works out to Rs.1122305.68 lakh, which is higher than the normalised actual O&M expenses of Rs.1101392.70 lakh, as per audited financial statements pertaining to Power segment. Further, as per Regulation 29(2) of the 2014 Tariff Regulations, capital spares are allowable separately, and in this petition an amount of Rs.391.19 lakh has been allowed. Further amounts towards Capital spares will be allowed on prudence check, in the remaining tariff petitions of the Petitioner. ***Since the normative O&M expenses including the actual Water charges and Ash Evacuation charges allowed separately, are in excess of the actual O&M expenses in the case of the Petitioner, we are not inclined to allow the impact of pay revision and the contribution towards P&G, Mega Insurance, CISF expenditure etc., during the period 2014-19, as sought by the Petitioner, in this petition."***

222. In light of the tariff and true-up Order for FY 2014-19, CERC has rightly disallowed such additional O&M expenses of CISF security. It is a settled

position of law that a tariff component cannot be charged twice, burdening the end consumer.

223. **We are satisfied that the Central Commission has correctly addressed the issue; accordingly, the impugned order is upheld on this count.**

MEGA INSURANCE (2009-14 & 2014-19)

224. The CERC has disallowed the Mega Insurance expense claimed for DSTPS Units 1-2 and in the case of MTPS Units 7-8.

225. The Central Commission in respect of DSTPS Unit 1-2 and MTPS Unit 7-8 has held as under:

DSTPS Unit 1-2

"*It is noticed that the actual O&M expenses incurred for the generating station for the period 2012-14 are within the normative O&M expenses allowed to the generating station in terms of the regulations as specified by the Commission. In view of this, we find no reason to allow the additional O&M expenses as the normative O&M expenses are adequate to meet the additional O&M expenses incurred by the petitioner. Accordingly, the claim of the petitioner for additional O&M expenses has not been allowed".*

MTPS Unit 7-8

"*The petitioner has claimed expenditure of `151.18 lakh in 2012-13 and `113.99 lakh in 2013-14 as additional O&M expenses towards Mega*

Insurance. In response to the directions of the Commission vide ROP of the hearing dated 22.1.2016, the petitioner vide affidavit dated 27.1.2016 has furnished the details of Mega insurance. However, the details of the actual O&M expenditure of the generating station incurred during the tariff period since COD of Unit-I to 31.3.2014, as sought for in the ROP has not been furnished by the petitioner. In the absence of the actual O&M expenses, the claim of the petitioner for additional expenses towards Mega insurance has not been considered and hence not allowed."

226. DVC, in respect of MTPS Unit 7-8, has argued that this Tribunal, in its judgment dated 09.05.2019 in Appeal No. 125 of 2017, had held that if at all Commission needed some more information, they ought to have asked for such information instead of opining that there is incomplete information.

227. Further, argued that in the true-up order for KTPS, Mega Insurance has been allowed due to the threat perception and location of the station, while recognizing the fact that this type of expenditure cannot be met from normative O&M expenses.

228. It cannot be denied that, in true-up order for KTPS, Mega Insurance has been allowed due to the threat perception and location of the station in line with the expense considered for CISF security, as they have been approved on a similar basis by CERC for each station.

229. Further, in the case of Insurance expenses not being duly accounted for at the time of framing of norms, CERC, in exercise of its *"Power to Relax",* had done a case-by-case analysis and arrived at the findings impugned here.

230. For the sake of clarity, we reiterate our earlier noted observation that the Central Commission arrives at the normative expenses considering all elements of O&M. An Increase in the cost of one element cannot be seen in isolation, as the normative is arrived at by duly considering all factors. Since O&M is norm-based and not at actuals, any additional expense in one element cannot be allowed, and the whole spectrum of costs needs to be looked into while considering the actual cost and recovery based on norms.

231. In fact, the impugned Order records that DVC had failed to furnish the actual O&M expenditure incurred between CoD to 31.03.2014, and therefore, even though the norms were relaxed, in the absence of such information, CERC has rightly not considered the claim of DVC as to Mega Insurance Expense. Accordingly, the claim of DVC is not tenable for the period 2009-14.

232. The CERC in the tariff Order for FY 2014-19, had placed reliance on the SOR to the Tariff Regulations, 2014, and disallowed additional O&M expense on account of CISF Security, as already noted in the foregoing paragraphs.

233. Further, CERC in the true-up for FY 2014-19 has decided the issue, along with the claim for ash evacuation, and CISF Security, as already noted in the foregoing paragraphs.

234. **In light of the tariff and true-up Order for FY 2014-19, CERC has rightly disallowed such additional O&M expenses of Mega Insurance. We find no infirmity in the order of the Central Commission, and the issue is decided against the Appellant.**

ORDER

For the foregoing reasons as stated above, we are of the considered view that the Appeal No. 268 of 2016 and the batch have merit and are partly allowed.

The matter pertaining to expenditure claimed towards subsidiary activities is remanded to CERC for determining the allowance of the subsidiary activity in the ratio of allocation to the three main revenue-based functions of the DVC.

To this extent, the impugned orders of the Central Commission are set aside. Claims of the Appellant, including Pension and Gratuity Fund, additional O&M expenses on Mega Insurance, CISF Security, and Ash Evacuation, stand rejected.

PRONOUNCED IN THE OPEN COURT ON THIS 11th DAY OF SEPTEMBER, 2025.

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

REPORATBLE/~~NON-REPORATBLE~~
pr/mkj/kks