IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.97 OF 2022

Dated: 31.10.2025

Present: Hon`ble Mr. Virender Bhat, Judicial Member
Hon`ble Mr. Ajay Talegaonkar, Technical Member

In the matter of:

NTPC Limited
NTPC Bhawan
Scope Complex, 7, Institutional Area,
New Delhi – 110016
Email: office@msapartners.in … Appellant

Versus

1. **Central Electricity Regulatory Commission**
Through its Secretary,
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001
Email: secy@cerc.in

2. **Central Transmission Utility**
(Power Grid Corporation of India Limited),
Through its Chairman and Managing Director
B-9, Qutub Industrial Area,
Katwaria Sarai, New Delhi – 110003
Email: supriyasingh@powergridindia.com … Respondent (s)

Counsel on record for the Appellant(s)	:	Anand K. Ganesan Swapna Seshadri Ritu Apurva Aditya Dubey
Counsel on record for the Respondent(s)	:	Ranjitha Ramachandran Srishti Khindaria Aneesh Bajaj for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this appeal, assail is to the order dated 29.01.2020 passed by the 1st respondent Central Electricity Regulatory Commission (hereinafter referred to as "the Commission") in petition no.323/MP/2019 whereby the appellant has been held liable to pay late payment surcharge on the monthly transmission charges from August, 2017 to September, 2018 reflected in the revised bill/invoice dated 21.01.2019 raised by the 2nd respondent Central Transmission Utility of India Limited (in short CTUIL) in pursuance to the order dated 06.11.2018 passed by the Commission in previous petition no.261/MP/2017.

2. A brief conspectus of the facts and circumstances of the case are narrated hereinbelow.

3. The appellant NTPC Limited is a generating company and is, *inter alia,* engaged in supply of electricity from its various generating stations in the country.

4. The appellant has developed a 2400MW (3x800MW) coal-based power station at Kudgi in the State of Karnataka (hereinafter referred to as the Kudgi TPS) and power generated in the said power station is being supplied to various beneficiaries in southern region through ISTS under Long Term Access (LTA) granted by the CTUIL with the corresponding liability to pay LTA charges for the same. The transmission system for providing transmission services to the long-term transmission customers of the appellant has been implemented by Kudgi Transmission Limited (in short KTL) which is a wholly owned subsidiary of L&T Infrastructure Development Projects Limited, under the tariff based competitive bidding process. Vide letter dated 17.01.2011, the Ministry of Power allocated electricity from the said Kudgi TPS as under: -

i. Karnataka (1196.24 MW);
ii. Kerala (119.18 MW);
iii. Tamil Nadu (300.10 MW); and
iv. Andhra Pradesh (418.10 MW).

5. The appellant entered into Power Purchase Agreements with the beneficiaries on various dates. In terms of clause 3.1 of the Power Purchase Agreements, the sale of power by appellant is at the busbar of the station and it is for the beneficiaries to make arrangements thereafter to deal with the ISTS licensees / PGCIL and arrange for transmission of power. Thus, the title of the power passed on to the beneficiaries at the busbar.

6. In terms of clause 3.2 of the Power Purchase Agreements, the appellant applied for LTA for Kudgi generating station on 15.04.2011 on behalf of the beneficiaries of the power station for a period of 25 years. Power Grid Corporation of India Limited (in short PGCIL) which was previously notified by the Government of India as Central Transmission Utility (CTU) under Section 38(1) of the Electricity Act, 2003, granted LTA to the appellant vide letter dated 23.12.2011.

7. Upon reorganization of State of Andhra Pradesh, the allocation of power from the Kudgi TPS done earlier vide letter dated 17.01.2011 required modification. Consequently, PGCIL notified the LTA granted to appellant vide letter dated 23.01.2015.

8. It appears that subsequently dispute arose between appellant and KTL with respect to delayed operationalization of the 400kV D/C Kudgi TPS and Narendra (New) Transmission Line (Element-I) and payment of transmission charges for the same which led to the filing of petition no.236/MP/2015 by KTL before the Commission. In the said petition, KTL had sought declaration of deemed Commercial Operation Date (COD) of the said line as 04.08.2015 and for payment of transmission charges for it from the said date. There was no dispute with regards to the Elements-II and III namely Narendra (New)-Madhugiri 765kV DC Line and Madhugiri-Bangalore 400kV DC Quad line respectively as the transmission charges for the same were being recovered through the PoC mechanism from their respective Commercial Operation Dates.

9. Vide order dated 27.06.2016 passed in the said petition, the Commission observed that due to non-availability of interconnection facility required to be developed by appellant and PGCIL at each end, the transmission line could not be commissioned and therefore, the transmission charges for the period from 04.08.2015 to 23.08.2015 shall be shared by both equally. The Commission further directed the CTUIL to raise bills to PGCIL and appellant for the said period in the ratio of 50:50 and to PGCIL for the period from 24.08.2015 to 15.11.2015 and to the appellant from 16.11.2015 onwards and to disburse the same to the KTL.

10. The review petition filed by the appellant against the said order was partially allowed by the Commission vide order dated 17.10.2017 holding the appellant liable to bear transmission charges for Element-I from 11.12.2015 till the commercial operation of the first unit to Kudgi TPS. Accordingly, the appellant made payments of transmission charges for the Element-I for the said period as decided by the Commission till COD of the first unit of the power station i.e. 31.07.2017.

11. After declaration of the commercial operation of Unit-II on 31.07.2017 and considering that all the associated transmission system Elements had been commissioned by KTL/PGCIL by then, the LTA for the entire quantum of 2392.49MW was operational with effect from 01.08.2017. Consequently, the liability for payment of transmission charges for the said operationalized LTA also commenced.

12. When the Regional Transmission Account (RTA) for August, 2017 was published on the website of Southern Region Power Committee (SRPC) on 01.09.2017, CTUIL observed that LTA quantum for Kudgi TPS has wrongly been considered as 754MW instead of 2392.49MW. It requested SRPC vide letter dated 05.09.2017 for revision in the RTA by including the correct LTA quantum for Kudgi TPS for the purposes of billing. SRPC revised the RTAs for August, 2017 on 05.09.2017 incorporating the total LTA of 2392.49MW to be billed on the beneficiaries of Kudgi TPS in proportion to their LTA quantum from the power station. SRPC also further revised the RTA for August, 2017 and September, 2017 on 02.11.2017 incorporating the liability of appellant to pay transmission charges for un-commissioned generation of Units 2&3 of the Kudgi TPS while limiting the liability of the beneficiaries to pay the transmission charges for commissioned generation only and continued the same billing mechanism thereafter from October, 2017 onwards. Accordingly, CTUIL issued a combined bill dated 06.11.2017 to appellant for transmission charges for the months of August, 2017, September, 2017 and October, 2017.

13. Instead of making payment of the said bill, the appellant approached the Commission with petition no.261/MP/2017 with the prayer for setting aside of the said bill as well as the revision of RTAs issued by the SRPC.

14. Vide order dated 06.11.2018 passed in the said petition, the Commission held that operationalization of LTA was not linked with the

Commercial Operation Date of the generating units and that the LTA was required to be operationalized from the date of commissioning of the transmission system irrespective of the commercial operation of the generator. The Commission further held that all the Elements I, II & III were part of the evacuation system of Kudgi TPS and accordingly, sharing of their transmission charges was to be done in the manner as laid down in the order. The Commission further directed SRPC to revise the RTA accordingly and also directed CTUIL to raise bills based on the revised RTA.

15. While rejecting the contentions of PGCIL on the applicability of Regulation 8(5) of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time (in short "Sharing Regulations, 2010") to justify the bill dated 06.11.2017, the Commission has observed/held in the said order as under: -

> *"……*
>
> ***39. Who shall pay the POC charges from operationalization of LTA?***

(i) It is evident that the beneficiaries have entered into LTA as per the provisions of the PPA. They have also agreed as per the signed PPA to bear the charges for utilisation of transmission system(s) owned by Powergrid/ other transmission licensee for wheeling of the electricity beyond bus-bar of the generating station.PPA provides that NTPC shall apply LTA "on behalf of beneficiaries" with all consequential liabilities with that of beneficiaries.

(ii) ***The Commission vide its orders in in Petitions 20/MP/2017, 133/MP/2012, 69/MP/2015 has directed that beneficiaries shall have to enter into LTA Agreement and bear the transmission charges in terms of their contractual obligations. The directions amply make it clear that LTA shall be signed by the beneficiaries and not NTPC. In the present case, LTA Agreements have been signed by the beneficiaries of Kudgi generating station. In terms of the LTAs signed, the beneficiaries have accepted the liability for payment of LTA charges***

proportionate to their share in the generating station. Therefore, we hold that the LTAs establish the contractual relationship between PGCIL and the beneficiaries for use of the transmission lines for evacuation of power from the Kudgi generating station and the beneficiaries are liable to pay the PoC charges after operationalisation of LTA in the instant case corresponding to LTA.

What shall be the liability of NTPC w.r.t payment of transmission charges?

(iii) Proviso 8(5) and 8(6) of the Sharing Regulations provides as under:

8. ***Determination of specific transmission charges applicable for a Designated ISTS Customer***

(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be

obliged to pay the transmission charges allocated under these regulations:

Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region: Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalised corresponding to the transmission system commissioned:

Provided also that where the construction of dedicated transmission line has been taken up by the CTU or the transmission licensee, the transmission charges for such *dedicated transmission line shall be payable by the generator as provided in the Regulation 8 (8) of the Connectivity Regulations:*

Provided also that during the period when a generating station draws startup power or injects infirm power before commencement of LTA, withdrawal or injection charges corresponding to the actual injection or withdrawal shall be payable by the generating station and such amount shall be adjusted in the next quarter, from the ISTS transmission charges to be recovered through PoC mechanism from all DICs:

Provided also that CTU shall maintain a separate account for the above amount received in a quarter and deduct the same from the transmission charges of ISTS considered in PoC calculation for the next application period.

(6) For Long Term Transmission Customers availing power supply from inter-State generating stations, the charges

attributable to such generation for long term supply shall be calculated directly at drawal nodes as per methodology given in the Annexure-I. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges."

(iv) We observe that Regulation 8 (5) of the Sharing Regulations provides that "in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective."

In the instant case, LTA for Kudgi STPP was effective from 1.8.2017. Kudgi STPP is 3x800 MW capacity out of which one unit was declared under commercial operation on 31.7.2017 and other two units are delayed. As per Regulation 8(5), a generator is liable to pay withdrawal charges corresponding to its LTA. We also

note that such average withdrawal rate of a region is presently calculated as per POC mechanism. As per regulations 8(5), the liability for withdrawal charges for the generator shall arise in case it has "ïts LTA". However, keeping in view that LTA is of the beneficiaries as concluded above, and that NTPC is not a LTA customer, its liability under 8(5) does not arise.

(v) However, Regulation 8(6) of the Sharing Regulations provides that for Long Term Transmission Customers availing power supply from interState generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes and such mechanism shall be effective only after commercial operation of the generator till which date it shall be the responsibility of the generator to pay transmission charges. This provision is specifically for cases of Long Term Transmission Customers availing power supply from inter-State generating stations under long term supply. We observe that NTPC Kudgi has long term supply Agreement with Southern Region

beneficiaries. Its one unit was declared commercial operation as on date of start of LTA. Therefore, the issue for our consideration is bearing transmission charges liability for remaining 2 units till they are declared under commercial operation.

(vi) *In the light of the above, as per Regulation 8(6) of the Sharing Regulations, the petitioner is liable to pay the transmission charges till COD of its delayed units. Hence, we direct that the annual transmission charges of the associated transmission system (i.e Kudgi-Narendra, Narendra-Madhugiri and Madhugiri Bidadi and associated bays) as determined or adopted by the Commission shall be considered in PoC mechanism corresponding only to the unit declared under commercial operation i.e Unit-I (as per records available in this petition) and the balance transmission charges shall be recovered from NTPC till the remaining units are declared under commercial operation. On COD of Unit-II & Unit-III, proportionate transmission charges corresponding to Unit-II & Unit-*

III, shall be considered in PoC from their respective CODs.

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40. As a generator shall be liable to pay either the Withdrawal charges under Regulation 8(5) or transmission charges for Associated Transmission System under Regulation 8(6) as decided above, the petitioner shall be liable to pay only transmission charges under Regulation 8(6).

44. Summary of decisions:

a. The liability to pay charges towards Long term Access under Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and losses), Regulations, 2010 as amended from time to time shall be that of beneficiaries in view of Agreements entered into by them.

b. The LTA needs to be operationalized from the date of declaration of COD of the transmission system irrespective of the CoD of the generator.

c. Annual transmission charges of the associated transmission system (i.e in this case -Kudgi-Narendra, Narendra-Madhugiri and Madhugiri Bidadi and associated bays/ substation) as determined or adopted by the Commission shall be considered in PoC mechanism corresponding only to the units declared under commercial operation and the balance transmission charges shall be recovered from NTPC till the respective COD of remaining units.

45. SRPC shall revise the RTA accordingly and CTU shall raise the bills as based on revised RTA.

46. The Petition No.261/MP/2017 is disposed of in term of the above."

16. It appears that instead of raising a revised bill as per the revised RTA, as directed by the Commission vide said order dated 06.11.2018, PGCIL issued a credit note dated 27.11.2018 to the appellant. Vide letter dated 05.12.2018, appellant raised objection to the credit bill raised by PGCIL and requested it to issue a fresh bill in accordance with the order dated 06.11.2018 passed by the Commission.

17. Meanwhile, KTL filed petition for seeking review/clarification of the order dated 06.11.2018 of the Commission. Upon taking note of the submissions made on behalf of NTPC, the Commission vide order dated 20.12.2018 passed in the said review petition directed CTUIL to raise revised bills in terms of the order dated 06.11.2018 immediately and not later than seven days. The Commission also gave 15 days' time thereafter to NTPC to make payments.

18. Thereafter, PGCIL raised revised bill on 28.12.2018 which was paid by the appellant on 11.01.2019. Taking note of the said development, the Commission disposed off the review petition filed by KTL while giving liberty to PGCIL to raise the issue of surcharge, if any.

19. Subsequently, CTUIL approached the Commission again by way of petition no.323/MP/2019 seeking direction to the appellant to pay Late Payment Surcharge of Rs.35,91,98,901/- (Rupees thirty-five crore ninety-one lakh ninety-eight thousand nine hundred and one only) on account of delayed payment of transmission charges for the associated transmission system of Kudgi TPS since August, 2017, which were ultimately paid on 11.01.2019. The said petition has been disposed off by the Commission vide impugned order dated 29.01.2020 holding NTPC liable to pay Late Payment Surcharge, as demanded by CTUIL.

20. Hence, the appellant is in appeal before this Tribunal against the said order dated 29.01.2020 of the Commission.

Submissions on behalf of the parties:

21. We have heard learned counsel for the appellant as well as learned counsel for the 2nd respondent. We have also perused the impugned order as well as the written submissions filed by the learned counsels.

22. Learned counsel for the appellant vehemently argued that the impugned order of the Commission holding the appellant liable to pay late payment surcharge for delayed payment of transmission charges since August, 2017, is patently erroneous and cannot be sustained. It is submitted that the appellant did not pay the bill dated 06.11.2017 raised by the 2nd respondent as the same was not as per the Sharing Regulations, 2010 and was subsequently set aside/quashed by the Commission itself vide order dated 06.11.2018 passed in petition no.261/2017. It is pointed out that when the 2nd respondent raised revised bill dated 28.12.2018 in pursuance to the said order dated 06.11.2018 of the Commission, the same was duly paid by the appellant on 11.01.2019 without any delay. It is, thus, argued that the appellant cannot be said to have committed any delay in payment of the bill, and therefore, no occasion arose for the Commission to burden the appellant with late payment surcharge.

23. Per contra, learned counsel for the 2nd respondent supported the impugned order of the Commission in entirety and submitted that the said order does not suffer from any legal lacuna or infirmity. She submitted that the 2nd respondent is statutorily responsible for raising the transmission charges bills, collection and disbursement of the collection charges to the ISTS transmission licensees on the basis of RTAs and that by the concerned Regional Power Committee (which, in this case, is SRPC). It is pointed out that as per the Billing, Collection and Disbursement Procedure (in short "BCD Procedure"), the bills are to be raised by CTU i.e. the 2nd respondent on behalf of the licensees. The learned counsel further submitted that the bill dated 06.11.2017 raised by the 2nd respondent to the appellant was based on the RTAs as well as information from National Load Despatch Centre and therebefore, there was no error on the part of the 2nd respondent in raising such bill.

24. According to the learned counsel, there may be revisions in the RTAs for various reasons – whether directed by the Central Commission, this Tribunal or on account of certain aspects raised by the entities and considered/resolved by the National Load Despatch Centre/ Regional Power Committee etc. In such cases, the adjustment bills are issued through credit or debit note, reflecting either downward or upward revision in the bill amount but these are not considered as fresh bills. It is the submission of the learned counsel that issuance of bills as well as adjustment bills by way of credit note / debit note to carry out the revisions is a regulatory practice already provided for under the Sharing Regulations read with BCD Procedure but this does not mean that the original bills are not payable and the entity committing delay in payment of original bills is not liable to pay late payment surcharge. Reference, in this regard, is made by the learned counsel to clause 3.1 of BCD Procedure and Regulation 45 of Tariff Regulations, 2014.

25. It is argued that the 2nd respondent is recovering the transmission charges on behalf of the transmission licensees and disbursing the same to the transmission licensees. Any shortfall in recovery has impact on the recovery of such licensees, and therefore, when there is a delay in payment, the entities such as the appellant must be held liable to pay late payment surcharge so that the same is not passed on to the licensees who have received full recovery only after some delay.

26. The learned counsel would also argue that vide order dated 06.11.2018 passed in petition no.261/2017, the Commission did not set aside the bill dated 06.11.2017 raised to the appellant but only directed for the revision of RTA and issuance of bill accordingly. It is submitted that this does not mean the bill dated 06.11.2017 was erroneous and not payable by the appellant, and therefore, the appellant having deliberately delayed the payment of transmission charges since August, 2017 cannot claim that the late payment surcharge is not payable by it. To buttress her submissions, the learned counsel has relied upon the two judgments of the Hon'ble Supreme Court in <u>Nava Bharat Ferro Alloys Limited v. Transmission Corporation of Andhra Pradesh Limited and Another (2011) 1 SCC 216</u> and <u>State of Rajasthan and Another v. J.K. Synthetics Limited and Another (2011) 12 SCC 518</u>.

<u>Our Analysis:</u>

27. It is not in dispute that the 2nd respondent had raised bill dated 06.11.2017 to the appellant in respect of transmission charges for the months of August, 2017, September, 2017 and October, 2017 on the basis of Regulation 8(5) of the Sharing Regulations, 2010. The appellant found the bill erroneous and accordingly, instead of paying the same, assailed the same before the Commission by way of the petition no.261/2017. The said petition was disposed off by the Commission vide order dated 06.11.2018 holding that the operationalization of LTA was not linked to the Commercial Operation Date of the generating unit and that the LTA was required to be operationalized from the date of commissioning of the transmission system irrespective of the commercial operation of the generator. The Commission specifically rejected the contention of the 2nd respondent on the applicability of Regulation 8(5) of the Sharing Regulations, 2010 and held that as per the Regulation 8(6) of these regulations, appellant is liable to pay transmission charges for specific assets to the extent of non-commissioned capacity alone. Accordingly, the Commission directed SRPC to revise the RTA with further direction to 2nd respondent to raised bills based on the revised RTA.

28. We are unable to countenance the submissions on behalf of the 2nd respondent that the Commission, vide said order dated 06.11.2018, did not set aside the bill dated 06.11.2017 but has merely directed the 2nd respondent to raise bills based on the revised RTA. These submissions appear to be fallacious on the face of it. The direction of the Commission to

SRPC to revise the RTA and to 2nd respondent to raise bill based on revised RTA carries implicit in it the observation of the Commission that the bill in question dated 06.11.2017 was erroneous and needed to be rectified by issuing a fresh bill. In case the Commission would not have found any error in the bill dated 06.11.2017, it would not have directed the 2nd respondent to raise fresh bill on the basis of revised RTA. Moreover, there is a specific finding of the Commission in the order dated 06.11.2018 passed in first round of litigation between the parties i.e. petition no.261/2017, that Regulation 8(6) of Sharing Regulations, 2010, on the basis of which the bill dated 06.11.2017was prepared, is not applicable to the instant case and the appellant was liable to pay transmission charges till commercial operation of its delayed units as per Regulation 8(5) of these Regulations. Therefore, it does not lie in the mouth of the 2nd respondent to say that the bill dated 06.11.2017 raised by it to the appellant has not been set aside by the Commission and the same did not contain any error.

29. Concededly, the appellant did not commit any delay in paying the revised bill dated 28.12.2018 which was duly paid by it on 11.01.2019.

30. In these facts and circumstances of the case, we wonder how the Commission came to conclusion in the impugned order that the appellant is liable to pay late payment surcharge on account of delayed payment of transmission charges since August, 2017. Patently, the bill dated 06.11.2017 raised initially by 2nd respondent to the appellant was erroneous based upon wrong RTAs, and therefore, the appellant was within its right to refuse payment of such bill and to assail the same before the Commission.

31. Learned counsel for the 2nd respondent had referred to clause 3.1 of the BCD Procedure as well as Regulation 45 of Tariff Regulations, 2014 to vehemently contend that whenever there is delay in payment of any charges by a beneficiary of long-term transmission customer, late payment surcharge is to be levied. Clause 3.1of the BCD Procedure reads as under: -

> *"3.1 Due Date*
>
> *3.1.1 Due date in relation to any Bill shall mean the thirtieth (30th) day from the date on which such Bill is raised and published on the website of CTU for payment by the DIC.*
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> *…*
>
> *3.4 Late Payment Surcharge*
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> *The late payment surcharge shall be as per Tariff Regulations 2009 and any subsequent amendment made thereto."*

32. Regulation 45 of Tariff Regulations, 2014 reads as under: -

> *"45. Late Payment Surcharge: In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary of long term transmission customer/DICs as the case may be, beyond a period of 60 days from the date of billing, a late payment surcharge at the rate of 1.50% per month shall be levied by the generating company or the transmission licensee, as the case may be"*

33. It cannot be gainsaid that these two provisions imposed a statutory liability for payment of late payment surcharge in case of delay in payment of any bill. However, it is to be noted that these provisions apply only when the bill in question is correct in all aspects and does not suffer from any lacuna. These do not apply or operate where the bill in question is found to be erroneous and based upon inapplicable regulations. These provisions are applicable only when there has been deliberate or contumacious delay in payment of bill and not where the refusal to pay is due to error in the bill, which error is later on affirmed by the Commission also.

34. Two judgments of the Apex court cited by learned counsel for the 2nd respondent are clearly not applicable to the fact and circumstances of this case. In Nava Bharat case (supra), the respondent (Board) revised the rate for supply of electricity to power intensive consumers from 6 paise/unit to 11 paise/unit in the year 1975. Similar revision was done by the Board for power intensive consumers on 29.01.1984. Aggrieved by the said order which permitted charging of higher rate of tariff, the power intensive consumers filed writ petitions before the High Court of Andhra Pradesh which were dismissed by the Division Bench of that court on 03.04.1985. However, during the pendency of the writ petitions, the High Court had granted interim order of stay against the collection of the disputed amount. Ultimately the writ petitions were dismissed and the dismissal order was assailed by the consumers before the Supreme Court by way of Special Leave Petitions (SLPs). While granting leave to appeal, the Supreme Court vide order dated 22.07.1985 directed continuation of interim arrangement which had also been made by the High Court. Eventually the appeals failed and were dismissed by the Supreme Court vide order dated 02.05.1991. In this background, that the respondent Board sought to recover, in addition to the outstanding electricity charges, additional charges and interest on the delayed payment, which was assailed by the consumers by way of fresh writ petitions in the High Court of Andhra Pradesh. The writ petitions were dismissed and the matter reached the Supreme Court. It is in these facts and circumstances of that case that the Hon'ble Supreme Court observed as under: -

> *"26. The very fact that there was during the intervening period an erroneous decision of the High Court obliterating the revision in full or in part would make little difference insofar as the liability to pay the amount under the revised tariffs was concerned. So also the fact that the consumers were not deliberately in default on account of the judgment of the High Court did not affect the enforceability of the demand arising from the revised tariffs or the stipulation regarding payment of interest demanded on the same on account of the non-payment or delayed payment of the amount recoverable by the Board."*

35. Similarly, in the J.K. Synthetics case also, the Hon'ble Supreme Court has observed as under: -

> *"23. … whenever there is an interim order of stay in regard to any revision in rate or tariff, unless the order granting interim stay or the final order dismissing the writ petition specifies otherwise, on the dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order. …"*

36. In both these cases, even though by way of the interim orders passed by the High Court and the Supreme Court, the payment of higher tariff by the Power Intensive consumers was stayed, yet the writ petitions/SLPs were ultimately dismissed by the High Court /Supreme Court. This indicates that the challenge of the Power Intensive consumers to the levy of higher tariff did not fructify and was repelled by both High Court as well as the Supreme Court and therefore, they were held liable to pay interest. That is not the position in the instant case. In the present case, the challenge of the appellant to the initial bill dated 06.11.2017 raised by the 2nd respondent by way of petition no.261/2017 succeeded as the contentions raised by the appellants were accepted by the Commission and accordingly the 2nd respondent was directed to raise fresh bill on the basis of revised RTA.

Therefore, the reliance placed by the learned counsel for the 2nd respondent on these two judgments of the Apex court is totally misplaced.

Conclusion:

37. In the light of above discussion, the impugned order of the Commission cannot be sustained as the same suffers from legal lacuna as well as infirmity. The same is hereby set aside. We hold that the appellant is not liable to pay any late payment surcharge on the monthly transmission charges from August, 2017 to Sept, 2018 to the 2nd respondent. Resultantly, the petition no.323/2019 filed by the 2nd respondent before the Commission stands dismissed.

Pronounced in the open court on this the 31st day of October, 2025.

(Ajay Talegaonkar) Technical Member (Electricity)	(Virender Bhat) Judicial Member

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REPORTABLE / ~~NON-REPORTABLE~~

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