

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

**APPEAL NO.01 of 2016**  
**APPEAL No. 26 OF 2016 & IA NO.72 OF 2016**  
**APPEAL NO. 20 OF 2016 & IA NO. 50 OF 2016**  
**AND**  
**APPEAL NO.9 OF 2016 & IA NO.113 OF 2016**

**Dated: 09<sup>th</sup> November, 2020**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S.D. Dubey, Technical Member**

**APPEAL NO.01 of 2016**

**In the matter of:**

1. Chairman-cum-Managing Director,  
Rajasthan Rajya Vidyut Prasaran Nigam Limited,  
Vidyut Bhawan, Jyoti Nagar,  
JAIPUR – 302 005.
2. Chairman-cum-Managing Director,  
Rajasthan Rajya Vidyut Prasaran Nigam Limited,  
As Head of State Load Despatch Centre,  
Heerapura, Jaipur Rajasthan – 302024.

.....APPELLANTS

**VERSUS**

1. Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chandernagore Building,  
36, Janpath, New Delhi -110 001.  
Through its Chairman
2. Northern Regional Load Despatch Centre,  
18-A, Qutub Institutional Area, Katwaria Sarai,  
Katwaria Sarai, New Delhi-110016  
Through its General Manager

.....RESPONDENTS

Counsel for the Appellant : Mr. Pradeep Misra for Appellant No.1

Counsel for the Respondents : Mr. K.S. Dhingra for R-1

**APPEAL No. 26 OF 2016 & IA NO.72 OF 2016**

**In the matter of:**

State Load Despatch Centre, Delhi  
SLDC Building, Minto Road  
New Delhi – 110002

.....APPELLANT

VERSUS

1. Central Electricity Regulatory Commission  
Through its Secretary,  
3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath,  
New Delhi- 110001

2. Northern Regional Load Despatch Centre  
Through its General manager (NRLDC),  
18-A, Katwaria Sarai,  
New Delhi-110016

.....RESPONDENTS

Counsel for the Appellant : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri

Counsel for the Respondents : Mr. K.S. Dhingra for R-1

**APPEAL NO. 20 OF 2016 & IA NO. 50 OF 2016**

**In the matter of:**

1. U.P. Power Transmission Corporation Ltd.,  
Through its Managing Director,  
Shakti Bhawan,  
14-Ashok Marg,  
Lucknow – 226001
  
2. Managing Director,  
UPPTCL  
Shakti Bhawan,  
14-Ashok Marg,  
Lucknow -226001.
  
3. State Load Despatch Centre,  
Uttar Pradesh,  
Through its Director,  
14-Ashok Marg,  
Lucknow-226 001.

...APPELLANTS

VERSUS

1. Central Electricity Regulatory Commission  
Through its Secretary,  
3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath,  
New Delhi- 110001.

.....RESPONDENTS

Counsel for the Appellant : Mr. Sunil Kumar Rai  
Mr. Puneet Chandra  
Mr. Altaf Mansoor

Counsel for the Respondents : Mr. K.S. Dhingra for R-1

**APPEAL NO.9 OF 2016 & IA NO.113 OF 2016**

**In the matter of:**

Delhi Transco Limited,  
Shakti Sadan, Kotla Road,  
New Delhi – 110002

...APPELLANT

VERSUS

1. Central Electricity Regulatory Commission  
Through its Secretary,  
3<sup>rd</sup>& 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath,  
New Delhi- 110001

2. Northern Regional Load Despatch Centre  
Through its General manager (NRLDC),  
18-A, Katwaria Sarai,  
New Delhi-110016

...RESPONDENTS

Counsel for the Appellant : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri

Counsel for the Respondents : Mr. K.S. Dhingra for R-1  
Ms. Kavita Parihar, Rep.  
For R-2

**J U D G M E N T**

**PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER**

1. The Appellants have filed the present Appeals namely Appeal Nos.01of 2016, 26 of 2016, 20 of 2016 and 9 of 2016 under Section 111 of the Electricity Act, 2003 against the Order dated 09.10.2015 passed by the Central Electricity Regulatory Commission in Petition

No. 6/MP/2014 (hereinafter 'the impugned order') whereby The Central Commission erroneously imposed a penalty of Rs.1 lakh on heads of STU as well as each of the heads of SLDC of each constituents.

- 1.1 In Appeal No. 01 of 2016, **Appellant No.1** is the head of Rajasthan Rajya Vidyut Prasaran Nigam Ltd., which is State Utility for the State of Rajasthan. **The Appellant No.2** being the head of STU for Rajasthan is also the head of State Load Despatch Centre for Rajasthan.
- 1.2 In Appeal No.26 of 2016, the Appellant, State Load Despatch Centre (SLDC), Delhi which is headed by GM(SLDC). The SLDC does not undertake (a) Bulk Purchase or Bulk Sale of Power, or (b) Distribution and Retail Supply of Power since 1.4.2007. These activities are undertaken by the distribution licensees in the National Capital Territory of Delhi.
- 1.3 In Appeal No.20 of 2016, Managing Director, U.P. Power Transmission Corporation Ltd.(UPPTCL) and SLDC, Uttar Pradesh are the Appellants.
- 1.4 In Appeal No.9 of 2016, the Appellant, Delhi Transco Limited (DTL) is a company incorporated under the provisions of the Companies Act, 1956. The Appellant is a wholly owned undertaking of the Government of National Capital Territory (NCT) of Delhi.
- 1.5 In the batch of Appeals, Respondent No.1 is the Central Commission which has jurisdiction in respect of inter-state transmission and Respondent No.2 is Northern Regional Load Despatch Centre which is apex body in respect of northern grid and

its directions are binding on all the constituent of Regional Load Despatch Centres including Appellant No.2.

1.6 Aggrieved by the Order dated 09.10.2015 passed by Central Electricity Regulatory Commission, the Appellants filed the present appeals.

2. **Facts of the Case(s):-**

2.1 Consequent to the major grid disturbance in the region on 30.07.2012 and 31.07.2012, a Petition No.221/MP/2012 had been filed by Respondent No.2/NRLD before the Central Commission.

2.2 On 21.12.2013, the said Petition was considered by the Central Commission and the same was finally disposed of vide order dated 23.12.2013.

2.3 On 12.03.2014, CGPL Station of 4000 MW tripped causing disturbance to Grid.

2.4 On 25.04.2014, CERC had passed an order in Petition No.006/SM/2014 by which it had issued Show Cause Notice to heads of SLDCs and M.D./C.M.D. of the STUs of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu & Kashmir and the Head of Electricity Department of UT Chandigarh that why action under Section 142 of the Electricity Act., 2003 should not be initiated against them for violation of the Grid Code.

2.5 On 17.05.2014, the Appellants filed their reply in the form of Affidavit in the Petition No.006/SM/2014. The Appellants through the affidavit brought on record the factual position in respect of df/dt relays, the work achieved in respect of the same and about future plan.

2.6 The Central Commission vide impugned order dated 09.10.2015 has imposed the penalty of Rs. 1,00,000.00 on each Heads of STUs and SLDCs of Uttar Pradesh, Rajasthan, Delhi, Haryana, Punjab, Himachal Pradesh, Uttarakhand and Head of Electricity Department of UT Chandigarh under Section 142 of the Electricity Act for non-compliance of the provisions of Regulations 5.2(n) and 5.4.2(e) of the Grid Code. The Order dated 09.10.2015 passed by Central Commission , inter-alia holding as under –

*“Perusal of the above status of df/dt operation in NR as on 12.3.2014 reveals that the respondents have not properly provided df/dt relays for load shedding in their respective systems in terms of Regulation 5.2 (n) of the Grid Code. Despite our repeated directions to set right and discrepancies in the defence mechanism and provide required load relief, the respondents have taken it very casually. All constituents except Jammu and Kashmir were required to provide load relief at 0.1 Hz/sec fall of frequency. However, the load relief provided by the constituents was not sufficient. We express our displeasure at the conduct of the respondents to ignore our directions and provisions of the Grid Code, especially in such a matter where grid security is involved. In our view, there are no mitigating factors which exonerate the respondents from the charges initiated under section 142 of the Act. In our view, the charges against the respondents are proved and accordingly, we impose a penalty of ` one lakh on each of the heads of STUs and SLDCs of Uttar Pradesh, Rajasthan, Delhi, Haryana, Punjab, Himachal Pradesh, Uttarakhand and head of Electricity Department of UT, Chandigarh under Section 142 of the Act for non-compliance of provisions of Regulations 5.2 (n) and 5.4.2 (e) of the Grid Code. The penalties shall be deposited within one month from the date of issue of the order.”*

2.7 The Appellants categorically and emphatically submit that they are taking all their steps under their command to improve day by day the position for achieving the mandate in all respect envisaged in Regulation 5.2(n) and 5.4.2(e) of Grid Code, at this juncture.

3. **Questions of Law:-**

The Appellants have raised following questions of law in the appeals for our consideration:-

(a) **Appeal No.1 of 2016**

- I. Whether without there being any wilful default to comply with the directions of CERC, provisions of Indian Electricity Grid Code, Electricity Act, 2003, could Appellant be penalized under Section 142 of the Electricity Act, 2003?
- II. Whether in the absence of any data that rate of fall in the frequency in the State of Rajasthan was observed more than 0.1HZ/second, could the penalty be imposed?
- III. Whether the penalty can be imposed on the basis of assumption that rate of fall in frequency on 12.03.2014 at 19.21 hours was observed as 0.1 HZ/second for 800 milli seconds when the rate of fall of frequency is different at different points and different load centres.

(b) **Appeal No.26 of 2016:-**

- I. Whether a proceeding under Section 142 which culminates into imposition of a personal penalty can proceed in violation of the principles of natural justice?
- II. Whether the Central Commission has jurisdiction to proceed against an Individual Officer of SLDC when SLDC is performing the statutory function and does not engage in drawal or trading of power?



- III. Whether the Central Commission has jurisdiction to proceed to impose penalty under the Electricity Act against SLDC which is performing statutory functions and is engaged in the management of the grid?

**(c) Appeal No.20 of 2016:-**

- I. Whether the finding recorded by Central Electricity Regulatory Commission in its Order dated 09.10.2015 passed in Petition No 6/SM/2014 that UPSTU and UPSLDC has failed to comply the provisions of Regulations 5.2(n) and 5.4.2(e) of the Grid Code is legally justified on the facts?
- II. Whether Central Electricity Regulatory Commission in its Order dated 09.10.2015 passed in Petition No 6/SM/2014 is legally justified to impose the penalty of Rs.1,00,000 each on Head of the UPSTU and UPSLDC, in the present case the Appellant No.2?
- III. Whether Central Electricity Regulatory Commission in its Order dated 09.10.2015 passed in Petition No 6/SM/2014 is legally justified in not taking into consideration the submission of the Appellants that it has installed df/dt relays for greater relief than to the targeted relief assigned to it and is also in the process of increasing the number of df/dt relays for yet much higher relief and that non accomplishment of the required relief on 06/03/2014 was due to the facts beyond its control and not intentional?

**(d) Appeal No. 9 of 2016:-**

- I. Whether a proceeding under Section 142 which culminates into imposition of a personal penalty can proceed on a charge

of violation on 30.07.2012 & 31.07.2012 and finally impose a penalty based on the status of matters on 12.03.2014 ?

- II. Whether the Central Commission has jurisdiction to proceed against an Individual Officer of the Appellant when the Appellant has shown that it has done all in its power to implement the provisions of the Grid Code Regulations?
  - III. Whether the Central Commission in a Section 142 proceeding can ignore the material placed by the Appellant and simply proceed on the data submitted (full of surmises and conjectures) by NRLDC ?
  - IV. Whether the Central Commission as a regulator can refuse to acknowledge a simple fact that 0.1 Hz / sec fall in frequency is not uniform all over a control area like Delhi and is fixed as a general reference but the df / dt relays operate in all those sub-stations wherever the frequency actually falls below the desired settings ?
  - V. Whether the Impugned Order is violative of the Judgment dated 13.9.2007 passed in Appeal No. 115 of 2007, in the matter of B. M. Verma vs. UERC and the Judgment dated 11.01.2010 passed in Appeal No.94 of 2009 Karnataka Power Transmission Corporation Ltd. v CERC & Anr.?
4. **The issues involved in the batch of appeals are common in nature, therefore, we decide to adjudicate batch of appeals by this common judgment.**

5. We have heard arguments of learned counsel for the Appellants and the Respondents in all the Appeals in detail over several hearings.

6. **Mr. Pradeep Misra, learned counsel appearing for the Appellant in Appeal No. 1 of 2016 has made the following oral submissions as also in the written submissions for our consideration:-**

6.1 The Appellant has filed above noted Appeal against the order dated 09.10.2015 passed by Central Electricity Regulatory Commission (hereinafter referred to as CERC) in Suo Motu Petition No. 6/SM/2014 whereby penalty under Section 142 of Electricity Act, 2003 has been imposed both on the head of STU as well as head of SLDC.

6.2 Major grid disturbance has occurred on 30.07.2012 & 31.07.2012. Northern Regional Load Despatch Centre (hereinafter referred to as NRLDC), Respondent No. 2 filed Petition No. 221/MP/2012 before CERC wherein following prayer were made:

*“(a) To direct the State utilities in Northern Region to carry out testing of all the existing UFR and df/dt relays installed in their respective systems on emergent basis so as to ensure their healthiness and functionality at all times in terms of Regulation 5.2 (n) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulation, 2010 (hereinafter referred to as “the Grid Code”);*

*(b) To direct the State utilities in Northern Region to install and commission UFR and df/dt relays at the designated substations so as to provide adequate relief as recommended by NRPC from time to time in terms of regulation 5.2 (n) of the Grid Code;*

*(c) To direct the Northern Regional Power Committee to carry out a thorough review of the safety net and defense plans in Northern Region in terms of regulation 5.2 (n) of the Grid Code so that it meets the requirement of the present and the likely system size in near future; and*

*(d) To pass such other order or directions as deemed fit in the circumstances of the case.”*

6.3 Appellant has filed an affidavit on 17.12.2002 wherein it has been submitted that its system has 81 Nos. UFRs with sequential circuit and 10 Nos. RLSS relays with setting to trip all feeders at 48.2 Hz and 18 df/dt relays are installed. The protection wing of RVPN has carried testing of all UFRs and df/dt relay installed in the system and Zonal C.E. (T&C) have been asked to ensure healthiness of these relays at all times. The protection wing found only 4 Nos. relays defective. RRVPNL has installed sufficient number of UFR and df/dt relays to provide adequate relief as recommended by NRPC. RRVPNL thus claims that it has already taken the steps as requested by the Petitioner.

6.4 Respondent No. 2 submitted rejoinder on 04.1.2013 wherein it has been stated as follows:

*“(b) In response to the submission of Rajasthan STU and SLDC, it has been stated that the said STU and SLDC have informed about increased number/quantum of UFR and df/dt relays than those recommended by NRPC. As per information given, Rajasthan State has 1493 MW UFR load shedding against the 1070 MW recommended by NRPC. It is further stated that despite additional planned load shedding scheme, actual load relief obtained on 30.7.2012 was 39 MW from UFR and 274 MW from df/dt relays. Similarly, relief on 31.7.2012 was 38 MW from UFR and 163 MW from df/dt. As per the POWERGRID survey report the relief from Rajasthan system was 52 MW from UFR and 175 MW from df/dt on 30.7.2012 and 38 MW from UFR and 153 MW from UFR on 31.7.2012. Against this, the expected relief as per the NRPC recommendation is 695 MW from UFR and 1070 MW from df/dt relay. Thus, it is evidence that the relief obtained was inadequate. This may be due to either the relays are non functional, feeders are not radial in nature, load connected is not adequate or feeders are already opened under some other load shedding scheme.”*

6.5 CERC on 15.01.2013, has directed that all the Respondents to keep all UFRs and df/dt relay in healthy condition so that adequate relief to the grid is always available. Respondents were also directed to revive all defective relays expeditiously and submit the data with the affidavit.

- 6.6 The Appellant has submitted on 14.02.2013 that sufficient numbers of UFR and df/dt relays are provided in the Rajasthan system as per report of protection wing. Only four-numbers of relays were found defective which have also been rectified and now they are also healthy. The SLDC is regularly furnishing monthly report of UFR and df/dt relay operation to NRPC regularly in compliance to clause No. 5.2 (n) of the Grid Code. It has further been submitted that in Rajasthan system total 81 numbers of UFRs, 10 nos. of RLS relays (UFRs) and 18 nos. of df/dt relays are installed. Out of these relays, 52 UFRs and 17 df/dt relays are numerical type and balance 29 UFRs, 10 RLSSS (UFRs) and 1 df/dt relay are to be changed to numerical relays for which purchase process has been commenced.
- 6.7 In the compliance status of UFR and df/dt relay submitted by NRPC in respect of Rajasthan is as follows:

State	Nos. of UFR and df/dt relays installed.	Nos. of UFR and df/dt relays non-functional (as per self-certification by SLDCs/STUs)	Action taken/proposed for reviving defective/non-functional relays.
Rajasthan	UFR-88 df/dt-18	UFR-04	All 04 nos. of defective relays shall be made functional by 31.03.2013

- 6.8 The CERC issued notice to the head of SLDC as MD/CMD of STU Punjab, Haryana, Rajasthan, Delhi, U.P., Uttarakhand, Himachal Pradesh, Jammu & Kashmir and UT of Chandigarh to explain as to why action should not be initiated under Section 142 of Electricity

Act, 2003 for non-compliance of grid code and the following directions were issued:

- (a) Member Secretary, NRPC to submit the latest status of UFRs and df/dt installations in NR within 1 month from the issue of this order.
- (b) UFRs and df/dt relays also be mapped on the SCADA system of each state so that they can be monitored from SLDC/NRLDC.
- (c) All STUs and SLDCs to map/network the UFR and df/dt on their SCADA system.
- (d) NRLDC to submit the compliance report on the progress of installation of additional UFR and df/dt relays and quantum of load relief expected during contingency by 31.3.2014.
- (e) The staff shall examine the reports of the Member-Secretary, NRPC and NRLDC and shall submit to the Commission within one month of the receipt of the reports of NRPC and NRLDC.

It is submitted that argument in the said Petition No. 221/MP/2012 were heard on 09.04.2013, however order was issued by CERC on 23.12.2013.

- 6.9 On receipt of showcause notice as directed vide order dated 23.12.2013 the Appellant filed reply on 14.05.2014 to the showcause notice wherein it was stated that Stage-1 and Stage-2 UFRs have already been installed and also intimated to NRPC. Regarding Stage-3 and Stage-4 under “revised scheme for automatic load shedding through UFR”, proposal has been made and submitted to DISCOMs for seeking consent and it was prayed that Appellant has taken steps as per requirement of CERC (IEGC) Regulations, 2010 with amendment from time to time. The Appellant has informed Member Secretary, NRPC on 05.09.2013

that they have installed UFR as per revised scheme for automatically load shedding.

6.10 There was large tripping in western region on 12.03.2014 when entire CGPL station (Mundra) of 4000 MW (at that time running around 3500 MW) tripped. The effect of this tripping was different at difference areas and also different load centres which is as follows:

States	Observed df/dt in Hz/s	Applicable Stages	Envisaged quantum of load shedding in MW	Actual load shedding reported in MW	Inadequate by
Gujarat	-0.33	I&II	1911	636	1275 MW
Madhya Pradesh	-0.23	I&II	716	0	716 MW
Chhattisgarh	-0.17	I	64	0	64 MW
Maharashtra	-0.31	I&II	1167	334	1167 MW
TPC	-0.31	I&II	142	0	142 MW
			4000	960	3040 MW

It is submitted that as relays were calibrated that if the frequency will be 49.9 and rate would be 0.1 Hz/second, then the relay will operate automatically. However, since the effect of tripping was only 800 millisecond i.e. 0.8 second hence the relay were not operated because of calibration. The Appellant on 04.07.2014 has informed the Member Secretary, NRPC that UFRs have been implemented for all the four stages under revised scheme for load shedding. The Commission on 09.10.2015 has imposed a penalty of Rs. 1 lakh on each of the head of STU and SLDC of Rajasthan i.e. the Appellant herein. **(IMPUGNED ORDER)**

6.11 In the forth meeting of National Power Committee on 10.12.2015, it was decided that consultant may be appointed to analyze the location of df/dt relay. The relevant extract are as follows:

*“NRPC was of the view that Consultant may be appointed to analyse the location of df/dt relays.*

*Mentioning that an international consultant had been appointed by POWERGRID/POSOCO to review power transfer capability, operational planning, etc., CEA felt that study of emergency measures was also in the scope of the consultant. CEA, therefore, requested POWERGRID/POSOCO to include the study regarding settings/location of df/dt relays under those emergency measures by the consultant. POSOCO assured to examine the same and revert back to NPC secretariat.*

- 6.12 The penalty under Section 142 of Electricity Act, 2003 pre-supposes intentional disobedience of the orders. If such intentional disobedience is not present penalty should not have been imposed. The relays could not be operated because of calibration which was done as per the directions of Respondent No. 2. The relays could operate if there is a difference in frequency for 1 second. Since the difference was less than 1 second, the relay could not operate. There was no ill intention behalf of Appellant for not operating the relay. Hence, penalty ought not to have been imposed.
- 6.13 In the absence of any data that rate of fall in the frequency in the State of Rajasthan was observed more than 0.1 Hz/second, the penalty could not be imposed. The penalty was imposed merely on assumption that rate of fall in the entire northern region was assessed. As per the admitted position rate of fall in the frequency in Rajasthan and that too in different load centres was not placed before CERC.
- 6.14 The technology adopted by Respondent No. 2 for installation and calibration of the aforesaid UFR and df/dt relay was not foolproof and this was the reason that in the meeting held on 10.12.2015 they



wanted to appoint a consultant to remove such difficulties. In such circumstances the penalty ought not to have been imposed on the Appellant.

6.15 There was no *mens rea*, hence the penalty ought not to have been imposed. The Appellants have deposited the amount without prejudice to their rights in the present Appeal. In view of aforesaid submissions the penalty imposed on Appellant be set aside.

7. **Mr. Anand K. Ganesan, learned counsel appearing for the Appellant in Appeal No. 26 of 2016 has made the following submissions for our consideration:-**

7.1 The Appellant – State Load Dispatch Centre (SLDC), Delhi has filed the present appeal against impugned order dated 09.10.2015 passed by Respondent No.1, Central Electricity Regulatory Commission in Petition No.6/SM/2014 whereby the Central Commission has erroneously imposed a penalty of Rs.1 lakh on each of the head of SLDC Delhi and certain other Respondents under Section 142 of the Electricity Act, 2003 for alleged non-compliance of the provision of Regulations 5.2(n) and 5.4.2(e) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulation, 2010.

7.2 The Respondent No.1, Central Electricity Regulatory Commission has replied to the appeal raising several extraneous issues without giving any justification in imposing penalty upon the Appellant. The main issue raised by the Appellant was the imposition of penalty without giving a proper opportunity of being heard. This has not been dealt with by the Central Commission at All.

7.3 For the sake of brevity, the facts of the case are not reiterated and the facts in the appeal are relied upon. The Central Commission

has only chosen to file a preliminary reply raising technical grounds and not replying to the present appeal.

- 7.4 It is pertinent to note that Central Commission while registering an independent proceeding did not array the SLDC, Delhi as Respondent.
- 7.5 The impugned order dated 09.10.2015 was also only communicated to the Managing Director of Delhi Transco Limited who one of the Respondents in the SM/06/2014 proceedings and was not communicated to SLDC, on whom penalty has been imposed. None of the ROP's passed by the Central Commission in impugned proceedings was ever served on SLDC, Delhi and simply penalty cannot be imposed without complying with the principles of natural justice.
- 7.6 It is well settled position of law that it is mandatory to serve a show cause notice before imposing a penalty under Section 142 of the Electricity Act, 2003. This position has been upheld by this Tribunal in its judgment dated 19.04.2011 in Appeal No.183 of 2010.
- 7.7 The two main aspects raised in the reply are as under:-

**Re : Administratively, Functionally and Operationally the SLDC is under the control of Delhi Transco Ltd./STU Delhi**

- 7.8 The Central Commission has alleged that the SLDC is under the control of State Transmission Utility, Delhi. It is submitted that as per the scheme of Electricity Act, the SLDC manages the function of scheduling, load dispatch in the National Capital Territory of Delhi whereas, the DTL is the transmission licensee within the National Capital Territory of Delhi. The contentions of Central Commission are wrong and baseless and cannot be countenanced in law. The

Central Commission while registering an independent proceeding did not array the SLDC. The impugned order dated 09.10.2015 was also only communicated to the Managing Director Delhi Transco Limited who was one of the Respondents in SM/06/2014. Further, none of the ROP's or other proceeding held by the Central Commission in impugned proceeding was ever served on SLDC, Delhi.

7.9 The SLDC is headed by General Manager, SLDC. The SLDC does not undertake (a) bulk purchase or bulk sale of power, or (b) distribution and retail supply of power since 01.04.2007. These activities are undertaken by the distribution licensees in National Capital Territory of Delhi.

7.10 The SLDC is performing the statutory functions of a load dispatch centre in National Capital Territory of Delhi under 31, 32, 33 and other applicable provisions of Electricity Act, 2003. As per the scheme of Electricity Act, the SLDC coordinates with Respondent No.2 Northern Regional Load Dispatch Centre and the distribution companies in the National Capital Territory of Delhi for the smooth transmission of power and the management of the grid. This is different from STU function.

7.11 Further, it is submitted that for issuance of notice SLDC and STU Delhi is considered as one entity then the Central Commission for imposition of penalty also ought to have followed the same and not considered them as separate entities.

### **Re : Compliance**

7.12 The Central Commission has alleged that the SLDC has not complied with the orders of the Central Commission, this is wrong

and denied. In this regard it is submitted that load shedding scheme adopted during incident in Delhi has been a rotational load scheme and the feeder gets command through programmable logic controller. The healthiness of the PLC and the correctness of setting adopted were vital for providing effective load relief at the time of frequency excursion beyond the threshold limits. It is also submitted that the relays are installed at 24 stations and configured to achieve the desired load relief. As such, it need not be necessary that all relay shed the load at all stations and the operation is based on the logic set in this regard. Now DTL has already installed numerical under frequency relays as mentioned in above submissions. The log of events of the load shedding on account of operation of df/dt and under frequency relays as per the revised scheme approved by NRPC is available in SLDC and has been integrated into main SCADA. NRLDC can also monitor the system.

**8. Mr. Altaf Mansoor, learned counsel appearing for the Appellant in Appeal No. 20 of 2016 has made the following oral submissions as also in the written submissions for our consideration:-**

- 8.1 A bare perusal of the Regulation 5.2(n) of IEGC Regulations, 2010 would establish that the said provisions is a general provision giving responsibility to various constituents for ensuring measures for stability of the grid. The aforesaid provision not only places responsibility on the SLDC or the STU but also on the distribution licensees as well as RLDC itself for ensuring grid stability.
- 8.2 The aforesaid provision clearly speaks about a plan to be finalized by the RPC which is also to ensure its effective application. Therefore, the under-frequency and df/dt schemes have to be

formulated by the RPC and who has to ensure the effective implementation of the scheme.

8.3 Therefore, there is no specific requirement under Regulation 5.2(n) but is a general provision under which a plan has to be finalized by the RPC which has to be implemented by the RPC.

8.4 Northern Regional Load Dispatch Centre had filed the Petition No. 221/MP/2012 before CERC with the following reliefs:

- a) *“To direct the State utilities in Northern Region to carry out testing of all the existing UFR and df/dt relays installed in their respective systems on emergent basis so as to ensure their healthiness and functionality at all times in terms of regulation 5.2 (n) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulation, 2010 (hereinafter referred to as “the Grid Code”);*
- b) *To direct the State utilities in Northern Region to install and commission UFR and df/dt relays at the designated substations so as to provide adequate relief as recommended by NRPC from time to time in terms of regulation 5.2 (n) of the Grid Code;*
- c) *To direct the Northern Regional Power Committee to carry out a thorough review of the safety net and defense plans in Northern Region in terms of regulation 5.2 (n) of the Grid Code so that it meets the requirement of the present and the likely system size in near future; and*
- d) *To pass such other order or directions as deemed fit in the circumstances of the case.”*

8.5 The appellant at the very first instance begs to say that the aforesaid reliefs of the petition nowhere shows or reflects of any proceedings having been initiated under Section 142 of the Electricity Act. In fact a bare perusal of the aforesaid reliefs would itself establish that the petition was filed to review the defense mechanism under the Grid Code for better implementation of the Regulation 5.2 (n) of the Grid Code. Therefore, no notice under Section 142 or any proceedings under Section 142 were ever initiated by the CERC.

- 8.6 The petition itself analyses the fact that the Code having come into force in 2010 and amended in 2012, therefore the 'Plan' has to be put into place. There can be no violation of Clause 5.2(n) of the Grid Code without the 'Plan' in existence. The Respondent has wrongly alleged violation of Clause 5.2(n) of the Grid Code.
- 8.7 The inquiry committee setup by the Ministry of Power to investigate the above grid disturbance as mentioned in para 9.3 of its report as under:-

***"9.3 Ensuring proper functioning of defence mechanism"***

*All STUs should immediately enable under frequency and df/dt based load shedding schemes, Central Commission should explore ways and means for implementation of various regulations issued under the Electricity Act, 2003. Any violation of these regulations can prove to be costly as has been the case this time. RPCs need to take up the matter for compliance. In case non-compliance persists, POSOCO should approach Central Commission."*

- 8.8 The Power Grid, in pursuance to the request of the NRPC has collected field data of 175 stations where UFRs and Df/Dt relays have been installed in various States and has submitted its report to the NRPC from which it has transpired that only 19% of load relief was obtained on 30 July 2012 and 18% on 31<sup>st</sup> July 2012.
- 8.9 Further, the existing schemes of automatic load shedding through UFRs and df/dt relays was devised based on the load pattern that existed in 2008-09. Since then, the demand has grown manifold and the interconnection size also has increased substantially. In view of the above and considering the rapid capacity addition in the power system, there is a need for immediate review of the existing scheme. Thereafter, the review should be carried out on periodic intervals so as to ensure that the system has an adequate safety net in place in the present as well as the future system. Further, in order to facilitate

setting of the relays, monitoring of the performance of the relays, checking of healthiness of the relays, log keeping etc., there is a need to deploy state of the art technology in the defense mechanism through the under frequency and df/dt relays.

- 8.10 Powergrid had carried out the audit after the Grid disturbances of df/dt and under frequency relays at 175 sub-stations of 9 constituents. Out of total 175 sub-stations of various constituents of NR, the UFRs and df/dt relays operated at 40 numbers of stations which were set as per the NRPC recommendations. Relief during the grid disturbances on 30th and 31st July 2012 came from only 23% of the total number of stations in the region. Against the total targeted load relief of 6020 MW through df/dt relays, 14% was reported on 30.7.2012 and the same was only 9 % on 31.7.2012. Where time delays have been provided in the df/dt relays the same may be reviewed for instantaneous settings.
- 8.11 The load relief under UFR was reported to be 25% on 30.7.2012 incident and 24 % on 31.7.2012 against the total targeted relief of 3050 MW. The combined UFR &df/dt load relief on 30th and 31st July 2012 were 18% and 14% respectively against the target relief of 9070 MW. It was also observed during the site visits that the testing of UFRs was initially done during commissioning only. Records of any periodic testing were not evident from the site feedback reports. Worse still, non-availability of the test kits was reported from the sites in a number of places.
- 8.12 Therefore, it is intriguing that the constituents which provided relief now could not provide any relief during the disturbance of 12.03.2014, after the systems were further strengthened and

upgraded in pursuance to the various directions of CERC. Therefore, the CERC has clearly noticed in the aforesaid operations that the scheme of automatic load shedding was based on the load operation of 2008-2009 and therefore, there was a **need for review** of the existing scheme. Accordingly, power grid has suggested remedial measures in its report, some of them being is quoted hereunder:

“(i).....

- (iv) *Review of flat UFRs and df/dt settings considering present load scenario.*
- (v) *Review of load relief at each substation with feeders details for various voltage levels.*
- (vi) *The UFRs and df/dt may be replaced with numerical type so that following features can be achieved:*
  - *Storage of past data*
  - *Remote programming and status monitoring at ALDC/SLDC/RLDC*
  - *Remote on-line real time load flow of each feeders for local shedding*
  - *Time synchronization from remote*
  - *Tripping from remote under special protection scheme*
  - *Easy for developing islanding scheme for the constituents by monitoring the relay condition with trip circuit healthy and real time load flow on feeders*

.....”

8.13 It has also been further noted by the CERC in para 3 of the order that all constituents were to plan for 20% more than the agreed quantum as per the meeting and deliberations held on 03.09.2012, 14.09.2012 and 19.09.2012.

8.14 The CERC in its order dated 23.12.2013 in respect of appellants has further recorded as under:

*“In response to the submissions of STU of U.P. and SLDC Uttar Pradesh, NRLDC has stated that the STU of UP has reported the actions initiated by UPPTCL like plans for future procurement of under frequency relays, operation and monitoring of relief from UFR and df/dt relays, future relays to be numerical relays etc. It has further stated that an inspection of UFR at Sahibabad, Muradnagar, Sarojnagar and TRT (Lucknow) sub-stations was conducted by NRPC team in August/ October 2012. The report by NRPC indicates that*



*feeders associated with relays are non-radial in nature hence the load relief is not available and in some cases load relief estimate may be high due to double counting of same load fed from more than one fed at different time and UFR being on all feeds.*

*In view of above, it has been observed that as per the survey report of PGCIL, it may be concluded that the respondents who have sent their replies as well as those who have not sent the reply have failed to comply adequately with Regulation 5.2 (n) of the Grid Code. The commission may accordingly take necessary action as per the Grid Code.”*

8.15 The aforesaid findings of the CERC also clearly establish that the CERC has only in a mechanical manner held that there has been a violation of Regulation 5.2 (n) of the Grid Code without evaluating the fact that the Regulation 5.2 (n) is a general provision and its implementation is to be carried out in respect to the plan made by the RPC. Therefore, the responsibility of ensuring the provisions of Regulation 5.2 (n) is of RPC.

8.16 Similarly, the CERC order dated 23.12.2013 has also further recorded the submissions of the appellant from which it can be clearly mentioned that the CERC was also conscious of the fact that the proceedings being carried out was to ensure future stability of the grid as the plan in operation was with respect to 2008-09, after which there has been numerous changes. It was the only responsibility that the purchase of additional UFRs and Df/Dt relays as required by the RPC was brought to the knowledge of the CERC which has been recorded a under:

*“With regard to the directions of the Commission vide 'Record of Proceeding' dated 15.1.2013, for submission of information related to UFRs and df/dt relays in the formats prescribed for proper monitoring at RPC level, UPPTCL vide its submission dated 12.2.2013 has forwarded the details as received from the Chief Engineers of different zones where UFR and df/dt relays are installed. As regards Format-2, UPPTCL has submitted that frequency band of operation of grid has now become quite stable and does not warrant operation of under*

*frequency relays or df/dt relays. Accordingly the information with regard to actual operation of under frequency relays shall be submitted to SLDC which would forward it to NRPC in accordance with preset procedure of reporting.*

*We also take note of the fact that UPPTCL has placed order for supply of additional 76 Nos. of numerical under frequency relays, scheduled to be supplied from March 2013. Based on the various initiatives taken as intimated vide letter No. 4485/Director (Op)/CERC dated 21.12.2012 and commissioning of additional under frequency relays in the system, we are inclined to believe that UPPTCL may be capable of providing at least 20% additional load relief as per the directions of NRPC."*

8.17 CERC in its order dated 23.12.2013 has made following observations with respect to the information submitted by the UPPTCL:

*"UPPTCL has submitted data of 245 groups of feeders emanating from 220 kV or 132 kV S/S that are part of UFR or df/dt relays based on load shedding in U.P. There are 41 groups of feeders in UFR based load shedding scheme and 14 groups of feeders in the df/dt relay based load shedding scheme. The relays for the remaining 190 groups of feeders are either not yet installed or they are non-functional/defective. In 2012 and 2013, the relays for only 34 out of the 56 groups of feeders have been tested. Out of 41 groups feeders envisaged for UFR based load shedding, 35 groups of feeders are also part of manual load shedding/Emergency Rostering programme. Likewise, out of 14 groups feeders envisaged for df/dt relays based load shedding, 10 groups of feeders are also part of manual load shedding/Emergency Rostering programme. Thus it may be seen that the envisaged relief in U.P. system from df/dt and UFR based load shedding is inadequate."*

8.18 The stand of the respondent is that the penalty vide order dated 09.10.2015 has been imposed with respect to the events of grid disturbance having taken place on 30.07.2012 and 31.07.2012. However proceedings subsequent to the event of 30.07.2012 and 31.07.2012 nowhere establishes that any proceedings for imposition of penalty under Section 142 were being carried out. In fact, the relevant portion of which as quoted above clearly establishes steps to further strengthen the grid by reviewing its functions by various constituents. However, the CERC only in a mechanical manner has passed the following orders:

*“We are constrained to remark that we are thoroughly dissatisfied with the defense mechanism in terms of UFR and df/dt. Hard reality which stares us on the face is that these have not been provided and maintained as per Regulation 5.2 (n) and 5.4.2 (e) of the Grid Code by NR constituents. Accordingly, we hereby direct as follows:*

- a) Issue notices to the heads of SLDCs and MD/CMD of the STU of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu and Kashmir and head of Electricity Department, UT of Chandigarh and to explain why action should not be initiated under Section 142 of the Electricity Act, 2003 for non-compliance of the Grid Code.*
- b) Member Secretary, NRPC to submit the latest status of UFRs and df/dt installations in NR within 1 month from the issue of this order.*
- c) UFRs and df/dt relays also be mapped on the SCADA system of each state so that they can be monitored from SLDC/NRLDC.*
- d) All STUs and SLDCs to map/network the UFR and df/dt on their SCADA system.*
- e) NRLDC to submit the compliance report on the progress of installation of additional UFR and df/dt relays and quantum of load relief expected during contingency by 31.3.2014.*
- f) The staff shall examine the reports of the Member-Secretary, NRPC and NRLDC and shall submit to the Commission within one month of the receipt of the reports of NRPC and NRLDC.*

8.19 Therefore, the CERC has abruptly come to a finding that there was a violation of Regulation 5.2(n) of the Grid Code by different constituents. Therefore, a bare perusal of the aforesaid order would reveal that the CERC in its order has not only issued notices under Section 142 of the Electricity Act 2003 but has also sought compliance report from NRLDC with respect to the provisions of installation of additional UFRs and Df/Dt relays. Therefore, issuance of notice under Section 142 was mechanically done without following any proceeding as required under the provisions of Section 142.

8.20 It is further submitted that reviewing of the Grid stability by further enhancement cannot constitute willful or deliberate violation of the regulation on its part. Therefore, the very initiation of proceeding

under Section 142 was without any authority of law, and an abuse of the process of law.

**Disturbance again occurred in the Northern region on 12.03.2014. However, there was no grid failure.**

- 8.21 An order was passed on 25.04.2014 in Petition No. 006/SM/2014 of issuance of show cause notice for initiating action under Section 142 of the Electricity Act 2003. It may be relevant to state that the aforesaid suo-moto proceedings were initiated as the cue for the same lay in the grid disturbance having been taken place on 12.03.2014.
- 8.22 In the reply submitted by SLDC on 17.05.2014, it has categorically stated that as on 30.04.2014 the contracted URF load relief is of 4548 MW against 2225 Mw. Similarly, under-frequency relays have also been installed and as per the said information the STU has implemented the scheme at all frequency stages. Similarly the under frequency relays have also been installed. The report of the relief having been provided during the disturbances of 12.03.2014 was given on 11.04.2014.
- 8.23 The impugned order was passed on 09.10.2015 holding the appellant guilty of having violated the provisions of Regulation 5.2 (n) of the CERC Regulation 2010. With respect to the disturbance having taken place on 12.03.2014, the CERC has given a presumptive finding of the relays not having operated without scientifically analyzing the fact that, effect of the disturbance for a mere 500 to 600 milliseconds, that even of 0.1 Hz. The CERC has also recorded in its order in pursuance to the affidavit filed by the NRLDC, the revised targets of load reliefs required to be provided

as per various discussions held in OCC meeting of Northern-region and revised contracts as of 13.09.2012 has been given to the State Control Areas with respect to the load shedding. The NRLDC in the same affidavit dated 14.07.2014 had admitted the fact that the UPPTCL have confirmed having 10% spare relays.

8.24 Similarly, CERC has also prepared a chart of the real time  $df/dt$  relay operations of the Northern region as on 12.03.2014 as per which load relief of  $df/dt$  as reported by UP include 147 MW for 0.1Hz/sec and 99MW for 0.2 Hz/sec. Similarly 19 MW load also tripped on UFRs meaning thereby a total load relief of 245.87 MW was provided by the State of U.P. on 12.03.2014.

8.25 A comparative view of the charts of the disturbance/load relief as provided during the disturbance of 30.07.2012-31.07.2012 and that of 12.03.2014 would itself establish that the Ld. CERC has misapplied itself to the events of 12.03.2014 since it is not possible that even after enhancing the grid stability, the relief were not provided when the same very constituents even before the enhancement of stability measures had provided at least 23% load relief. This clearly establishes that immediately after the load relief in the State of U.P., the grid stabilized and therefore, there was no cascading effect resulting in the relays not operating. This further strengthens the fact that the requisite numbers of relays had operated and the moment the grid stabilized there being no further cascading effect on the fall of frequency, no further relays had operated.

NR state control Area	df/dt Stage - I (49.9 Hz, 0.1Hz/s) Required Relief (MW)	df/dt Stage-II (49.9 Hz, 0.3 Hz/s) Required Relief (MW)	df/dt Stage-III (49.9 Hz, 0.4 Hz/s) Required Relief (MW)	Tata Mundra tripping (Loss of 3700 MW on 12.03.2014 at 19.21 Hrs)			
				Observed df/dt (Hz/S)	Applicable stages of df/dt	Envisaged quantum of load shedding under df/dt stage-I (MW)	Load df/dt as reported by respective state control area
Punjab	430	490	490	Greater than (-) 0.1 Hz/S for 800ms	I	430	\$
Haryana	280	310	310		I	280	
Rajasthan	330	371	371		I	330	
Delhi	250	280	280		I	350	53
Uttar Pradesh	500	280	280		I	500	245.87*
Uttarakhand	70	70	70		I	70	
Chandigarh	50	70	70		I	50	
Himachal Pradesh	90	90	90		I	90	
Jammu & Kashmir	0	50	50		I	0	
Northern Region	2000	2010	2010		I	2000	

\*- Load relief on df/dt as reported by UP include 147 MW for 0.1 Hz/sec and 99 MW for 0.2 Hz/sec. also, reportedly 19 MW load also tripped on UFR.

\$- Relays at nine 132Kv Submitted Stations operated but quantum of relief not mentioned

8.26 Despite the aforesaid observations and submission recorded, the CERC in para 18 of its judgment has given the following finding:

*“SLDC UP has submitted that df/dt relays has been operated and provided adequate relief up to different bands of frequency. It is noted that SLDC UP has not submitted the quantum of load relief.”*

8.27 The aforesaid finding is incorrect and self-contrary. In fact it is also contrary to the submission of NRLDC which has also submitted the same very chart in its affidavit whereby it has clearly mentioned that load relief of 245.87 was provided by the State of U.P. during the disturbance of 12.03.2014. It may be relevant to state that the CERC has therefore incorrectly recorded the finding that the quantum of load relief has been mentioned.

8.28 CERC has mechanically recorded the finding that proper load relief has not been provided by the constituents during the findings as recorded by the CERC clearly shows that the same are reflective of the events having taken place on 12.03.2014 and not 30.07.2012 or 31.07.2012. The impugned order which has been mechanically passed without giving any reason to arrive at the fact that as to how there was no impediment factor and no relief was provided holding all the constituents including appellants guilty of the charges under Section 142 of the Electricity Act 2003.

8.29 The provisions of Section 142 of the Electricity Act, 2003 clearly prescribes the punishment for non-compliance of directions by the appropriate commission. Therefore, the provisions of Section 142 of the Electricity Act 2003 are punitive in nature which clearly provides that *firstly*, the Hon'ble Commission has to come to clear and specific finding of non-compliance, meaning thereby that the persons concerned has deliberately or intentionally contravened

any of the provisions, Act or Rules or Regulations or any directions issued by the commission. *Secondly*, the appropriate commission only after having recorded the findings will have to give opportunity of hearing. *Thirdly*, aforesaid provision being punitive in nature, the learned Commission will be required to confirm the relevant issues/ specific nature of charges by means of which it can be established that the persons concerned or the constituents concerned has violated the provisions of the regulations or the directions as the case may be. It is in this respect that the Appellate Tribunal has given detailed findings with respect to the proceedings to be followed before any effective orders can be passed. Reference may be made to the following judgments:

*i)Karnataka Rare Earth & another vs. Senior Geologist, Deptt. of Mines & Geology & another (2004) 2 SCC 783*

*ii)BSES Rajdhani Power Limited v. The Secretary Delhi Electricity Regulatory Commission and others 2017 SCC OnLine APTEL 40*

*iii)B.M. Verma v. Uttarakhand Electricity Regulatory Commission 2007 SCC OnLine APTEL 95 : [2007] APTEL 95*

*iv)BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission 2011 SCC OnLine APTEL 56 : [2011] APTEL 56*

**9. Mr. Anand K. Ganesan, learned counsel appearing for the Appellant in Appeal No. 9 of 2016 has made the following note of arguments for our consideration:-**

9.1 A perusal of the list of dates will show that the original proceedings being Petition No. 221/MP/2012 was filed by the Northern Regional Load Despatch Centre (**NRLDC**) specifically with regard to load relief to be given by the Appellant as well as other STUs in the Northern Region with regard to df/dt relays during the grid failure incident on 30.07.2012 and 31.07.2012. The enquiry also



proceeded for the situation on the above dates and the Order dated 23.12.2012 was passed by the Central Commission with reference to the grid incidents on 30.07.2012 and 31.07.2012. The suo motu proceeding No. 6 / SM / 2014 was also initiated on the basis of the findings in the Order dated 23.12.2012. However, in the Impugned Order dated 09.10.2015, the Central Commission has imposed a penalty on the Managing Director of the Appellant based on the findings of a report for an incident on 12.03.2014. This is inconsistent and the Impugned Order needs to be set aside on this short ground alone.

- 9.2 The Central Commission has found that on 30.07.2012 & 31.07.2012, the entire northern region grid had collapsed and the df/dt relays commissioned by the Appellant did not yield the adequate load relief. This finding is completely contrary to the data which had been placed by the Appellant before the Central Commission. On both days i.e. 30.07.2012 & 31.07.2012, the actions of Under Frequency Special Protection Scheme (**UFSPS**) and df/dt relays gave a load relief of 1125 MW on 30.07.2012 and 953.4 MW respectively
- 9.3 The NCT of Delhi is required to give load relief of 1210MW and actual relief given was only marginally less than this figure. However, the Central Commission has simply relied on the data given by NRLDC which was not supported by any evidence to penalise the Appellant. Further, unlike the other STUs like UP, Punjab, Himachal Pradesh, Uttarakhand, Rajasthan, the Appellant's action had yielded the required load relief on both 30.07.2012 and 31.07.2012.
- 9.4 Even assuming the Central Commission could impose penalty for the grid disturbance on 12.03.2014, the basis of the imposition of

penalty by the Central Commission, namely that the  $df / dt$  relays are not functioning since the adequate relief of 250 MW was not given by Delhi during the incident of grid disturbance in the Western Region on 12.03.2014 is completely incorrect due to the following reasons –

- a) As per the implemented scheme in accordance with NRPC criterion, the load relief of 250MW shall be provided in the Appellant's system in case when the actual  $df/dt$  value of 0.1Hz/sec.
- b) The Central Commission has assumed that at the time of occurrence of the disturbance on 12.03.2014 the entire Delhi network was subjected to a slope of .1 Hz/Sec which is factually incorrect.
- c) The load relief of 250MW in case of Delhi is applicable for a peak load condition of about 5600MW for  $df/dt$  operation at 0.1Hz/sec.
- d) Since the power demand of Delhi at the time of incident on 12.03.2014 was 3028MW and corresponding relief from designated under frequency relays and translated down to 135MW.
- e) The actual load relief of 53 MW was given by Delhi through the State of the Art numerical under frequency relays which are installed at 33 Nos. of 220kV sub-stations. These numerical under frequency relays have been in operation since 2013 i.e. from the date of the commissioning and the regular testing/mock testing of these relays have also been carried out to ensure its healthiness. These records have been regularly submitted to the NRPC.
- f) In fact, much prior to the date of incident i.e, 12.03.2014, all the static type of relays had been replaced i.e. way back in July 2013 in compliance of NRPC Directions.
- g) It may be pointed out that in a large power network, the intensity and severity of fault is maximum at the point of its occurrence of disturbance. The intensity and severity of the impact of *disturbance propagating* in the network declines as it moves farther away. Whereas the impact of severity is also mitigated near source of generation. The relay operation is activated when the relay actually witnesses the condition it is programmed i.e,  $df/dt$  settings.
- h) The entire Indian Grid is now synchronized and the Generation loss occurred was in the Western Region so it is not necessary that same slope of 0.1 Hz./Sec may have been observed at all the locations.
- i) As can be seen from Para 13 (i) of the Order dated 09.10.2015, in western Region itself the slope was -0.33 in Gujarat, -0.23 in Madhya Pradesh, -0.17 in Chhattisgarh, -0.17 in Maharashtra and -0.31 at TPC.

- j) Therefore, the slope (i.e.  $df/dt$ ) was not same at all the locations in Northern Region. In fact the slope witnessed is steeper in close proximity where the incidence of generation outage has happened and the intensity decreased with disturbance propagation distance.
  - k) In locations far away from the point of incident of disturbance, the impact gets mitigated when disturbance moves away near another source of generation resulting in declining slope.
  - l) It is noted that relays in close proximity of generating stations in Delhi (viz. Indraprastha, Patparganj, Geeta Colony and S.O.W.) did not operate as the  $df/dt$  slope was less than 0.1 Hz/sec.
  - m) The entire NR regional transmission network was not subjected to uniform 0.1  $df/dt$  and so is the case with the Appellant's network. This is also corroborated from the real time data of NRLDC. Therefore, only those relays tripped where the slope was 0.1 Hz/sec. There is no evidence data to suggest that  $df/dt$  condition occurred at all the locations of Northern Region including Delhi.
  - n) The location of PMU's where 0.1 slope was recorded is not mentioned by NRLDC. There is no evidence to suggest/ demonstrate that 0.1 Hz./sec. slope was achieved in the proximity of Pragati Generating Complex.
  - o) Factually, there are 13 locations where 0.1 slope was configured to shed the load to achieve the 250MW relief in Appellant's system. Out of the 13 locations, these relays operated at 6 locations as such the 0.1 slope condition did not occur at other locations. The details of feeders tripped under  $df/dt$  and the load relief was already placed before the Central Commission.
- 9.5 The Enquiry also proceeded for the dates of 30.07.2012 and 31.07.2012 and the Central Commission passed the Order dated 23.12.2012 holding that the defence mechanism was not in place as per Regulations 5.2 (n) and 5.4.2(e) of the IEGC Regulations, 2010. The notice under Section 142 was also initiated in Petition 06/SM/2014 with reference to grid incident of 30.07.2012 & 31.07.2012. However, in the Impugned Order dated 09.10.2015, the Central Commission has imposed penalty on the Appellant based on the report on the incident on 12.03.2014.
- 9.6 In view of the above, having framed one charge under Section 142, it doesn't not stand to any reason that the Central Commission had

thereafter imposed the penalty for quite an another. This issue has been specifically decided by this Tribunal in the Judgement dated 11.01.2010 passed in Appeal No.94 of 2009 - **Karnataka Power Transmission Corporation Ltd. v CERC & Anr.**

- 9.7 Quite apart from the above, the Appellant had clearly stated in its reply as to how the existing UFSPS and df/dt relays at the designated substations had provided adequate relief both on 30.07.2012 & 31.07.2012. The Appellant cannot unilaterally decide the settings of df/dt relays and this is decided by the NRPC meetings from time to time. As and when, OCC/NRPC in its meetings on 19.07.2013 and 12.09.2013 and 13.09.2013 revised the frequency target and the Appellant duly implemented the same. A letter/report dated 19.07.2013 by Powergrid Corporation of India Limited gives the joint inspection report of the df/dt relays (@ point no. 6) wherein the frequency setting and the relief given has been recorded .
- 9.8 The Central Commission has ignored that the Appellant has tested relays for their healthiness, reliability and correctness of their operation before and after the occurrence of the events of 12.03.2014. This clearly indicates that the relays in the Appellant's network operated correctly on actual measurement of fault parameters. The report was submitted to NRPC as well. All these relays in the Appellant's system are of same make and model with similar characteristic and performance as demonstrated in real time condition and during testing. Joint testing of the relays was carried out at specified locations in the presence of NRPC representatives. A copy of the report duly signed by NRPC representatives dated 18.07.2014.

9.9 The Central Commission cannot mechanically hold that since 250 MW load relief was not given on 12.03.2014, the Appellant has not complied with the IEGC Regulations, 2010. Being a technical body, the Central Commission should at the very least understand that the entire Delhi Grid was not subjected to uniform fall in frequency of 0.1hz per second and as in where these frequency falls were detected, the df/dt relays operated successfully and provided the adequate load relief.

9.10 The National Power Committee (NPC) in its 4<sup>th</sup> Meeting held on 10.12.2015 has also accepted the position of the Appellant that the rate of frequency does not fall at the same slope throughout the grid. The relevant extract from the meeting is as under:

*"NPC discuss the issue and opined that in the event of sudden loss of generation or any other Grid disturbance, the rate of fall of frequency would vary from one location to another, and it would also vary from one point of time to another at a particular location depending upon the distance from the location of fault. Therefore, there could be no uniform setting of df/dt relays in different regions. In view of this, NPC decided that settings would be determined by each RPC separately after detailed study and of load and generation balance in different areas of region and communicate the same to the committee for ratification."*

9.11 In the reply of the Central Commission before this Tribunal, there is a reference to the submission filed by the Appellant on 09.04.2013, wherein it has admitted that the existing relays did not have 0.1 per second slope. No such submission was ever filed by the Appellant and the Central Commission being statutory authority cannot make such submissions without producing any records or evidence.

9.12 The Imposition of penalty under Section 142 cannot be on the basis of un-subtending allegations and there has to be an element of

*mens rea* to impose a penalty under Section 142. The same has been held by the Hon'ble Supreme Court in the cases of -

(i) M/s Hindustan Steel Ltd. v. State of Orissa, 1969 (2) SCC 627

*"8. Under the Act penalty may be imposed for failure to register as a dealer – Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately or in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute....."*

(ii) T. Ashok Pai v Comm. of Income Tax, Bangalore, (2007) 7 SCC 162

*"16. The order imposing penalty is quasi-criminal in nature and, thus, burden lies on the Department to establish that the assessee had concealed his income. Since burden of proof in penalty proceedings varies from that in the assessment proceeding, a finding in an assessment proceeding that a particular receipt is income cannot automatically be adopted, though a finding in the assessment proceeding constitutes good evidence in the penalty proceeding. In the penalty proceedings, thus, the authorities must consider the matter afresh as the question has to be considered from a different angle.*

.....

*27. It is not a case where penalty has been imposed for breach of contravention of a commercial statute where lack of or intention to contravene or existence of bona fides may not be of much importance. It is also not a case where penalty is mandatorily impossible (sic imposable). It was, therefore, not a case where the enabling provision should have been invoked."*

(iii) Bharjatiya Steel Industries v. Comm., Sales Tax, (2008) 11SCC 617

*“19.A distinction must also be borne in mind between a statue where no discretion is conferred upon the adjudicatory authority and where such a discretion is conferred. Whereas in the former case the principle of mens rea will be held to be imperative, in the latter, having regard to the purport and object thereof, it may not held to be so.*

*22.An assessing authority has been conferred with a discretionary jurisdiction to levy penalty. By necessary implication, the authority may not levy penalty. If it has the discretion not to levy penalty, existence of mens rea becomes a relevant factor.”*

9.13 The Central Commission has failed to take into account that the Appellant has always followed the instructions of NRPC in matters of Grid security and all the new under frequency and df/dt relays are operating correctly in real time. These relays have also been mapped in Delhi SLDC and report of the operations of df/dt and flat under frequency load relief is available at NRLDC. Further mock testing is being carried out regularly as per directions of NRPC. The report of the df/dt and flat frequency relays operation is also available at NRLDC also beside these are mapped in the Delhi SLDC system.

9.14 In the circumstances, the Impugned Order needs to be set aside on all three grounds, namely, one charge and imposition of penalty for another incident, lack of mens rea and ignoring the real time data provided by the Appellant before the Central Commission on the actual load relief given by it.

**10. Mr. K.S. Dhingra, learned counsel appearing for the CERC in the batch of Appeals has made the following oral submissions as also in the written submissions for our consideration:-**

10.1 As the penalty has been imposed for non-compliance with the provisions of the Grid Code, these provisions need be noticed first. By virtue of power conferred under clause (h) of subsection (1) of Section 79 of the Electricity Act read with Section 178 thereof, the

Central Commission has specified the Grid Code Regulation 5.2 (n) of the Grid Code, relevant for the present purpose is extracted below:

*“5.2(n) All SEBS, distribution licensees / STUs shall provide automatic under-frequency and df/dt relays for load shedding in their respective systems, to arrest frequency decline that could result in a collapse/disintegration of the grid, as per the plan separately finalized by the concerned RPC and shall ensure its effective application to prevent cascade tripping of generating units in case of any contingency. All, SEBs, distribution licensees, CTU STUs and SLDCs shall ensure that the above under-frequency and df/dt load shedding/islanding schemes are always functional. RLDC shall inform RPC Secretariat about instances when the desired load relief is not obtained through these relays in real time operation. The provisions regarding under frequency and df/dt relays of relevant CEA Regulations shall be complied with. SLDC shall furnish monthly report of UFR and df/dt relay operation in their respective system to the respective RPC.*

*RPC Secretariat shall carry out periodic inspection of the under frequency relays and maintain proper records of the inspection. RPC shall decide and intimate the action required by SEB, distribution licensee and STUs to get required load relief from Under Frequency and Df/Dt relays. All SEB, distribution licensee and STUs shall abide by these decisions. RLDC shall keep a comparative record of expected load relief and actual load relief obtained in Real time system operation. A monthly report on expected load relief vis-a-vis actual load relief shall be sent to the RPC and the CERC.”*

10.2 The responsibility assigned to STU under Regulation 5.2 (n) is to -

- (a) provide automatic under-frequency relays and df/dt relays for load shedding in case of emergency,
- (b) ensure that the under-frequency relays and df/dt load shedding/islanding schemes are always functional, and
- (c) abide by the decisions of RPC to get required relief from UFRs and df/dt relays.

10.3 The duties of SLDC under Regulation 5.2 (n) ibid are to:



- (a) monitor the load relief,
- (b) collect the operational details of UFRs and df/dt relays, and
- (c) furnish monthly reports of operation of UFRs and df/dt relay to RPC.

10.4 State-wise expected load relief from UFRs and df/dt relays at different frequencies was decided at a meeting of the OCC of Northern Regional Power Committee (**NRPC**) held in February 2008 as under:

**UFRs – State-wise Expected Load Relief**

State	Flat UFR Load Relief (MW)			
	48.8Hz	48.6 Hz	48.2 Hz	Total
Punjab	180	220	400	800
Haryana	110	140	350	500
<b>Rajasthan</b>	<b>120</b>	<b>150</b>	<b>425</b>	<b>695</b>
Delhi	110	140	350	600
Uttar Pradesh	190	240	475	905
Uttrakhand	30	30	100	160
Himachal Pradesh	20	20	75	115
Jammu & Kashmir	40	50	75	165
Chandigarh	0	10	0	10
<b>Total</b>	<b>800</b>	<b>1000</b>	<b>1250</b>	<b>4050</b>

**df/dt Relays – State-wise Expected Load Relief**

State	df/dt Load Relief (MW)			Total
	49.9Hz 0.1 Hz/sec	49.9 Hz 0.2 Hz/sec	48.2 Hz 0.3 Hz/sec	
Punjab	430	490	490	<b>1410</b>
Haryana	280	110	110	<b>900</b>
<b>Rajasthan</b>	<b>330</b>	<b>370</b>	<b>370</b>	<b>1070</b>
Delhi	250	280	280	810
Uttar Pradesh	500	280	280	1060
Uttrakhand	70	70	70	<b>210</b>
Himachal Pradesh	50	70	70	190
Jammu & Kashmir	90	90	90	270
Chandigarh	0	50	50	100
<b>Total</b>	<b>2000</b>	<b>2010</b>	<b>2010</b>	<b>6020</b>

10.5 Subsequently based on decision of the National Power Committee, the constituents of Northern Region in meeting of the Operations Coordination Committee of NRPC held on 19.7.2013, agreed to the

revised target of load relief for UFRs. The revised load relief for UFRs is given below:

**UFRs – State-wise Expected Revised Load Relief**

State	Flat UFR Load Relief (MW)				
	49.2Hz	49 Hz	48.8 Hz	48.6 Hz	Total
Punjab	400	402	406	408	<b>1616</b>
Haryana	308	309	312	314	<b>1243</b>
<b>Rajasthan</b>	<b>390</b>	<b>392</b>	<b>395</b>	<b>397</b>	<b>1574</b>
Delhi	258	259	262	263	1042
Uttar Pradesh	551	554	559	561	<b>2225</b>
Uttarakhand	77	77	78	78	<b>310</b>
Himachal Pradesh	77	77	78	78	<b>310</b>
Jammu & Kashmir	83	84	84	85	<b>336</b>
Chandigarh	16	16	16	16	<b>48</b>
<b>Total</b>	<b>2160</b>	<b>2170</b>	<b>2190</b>	<b>2200</b>	<b>8704</b>

- 10.6 The compliance with NRPC decisions regarding expected load relief from UFRs and df/dt relays is mandatory under Regulation 5.2 (n) of the Grid Code.
- 10.7 NRLDC had filed Petition No 125/MP/2012 wherein the appellants were impleaded as Respondent No 3 and 13, seeking certain directions to the respondents therein. The petition was disposed of vide the Central Commission's order dated 10.7.2012, *inter alia* directing the respondents therein to keep UFRs in service at all times and the Officers In-charge of STUs and SLDCs were made personally liable for compliance with the directions.
- 10.8 Northern Regional Grid failed on 30.7.2012 at about 2:30 hours and Northern, Eastern, North-Eastern and Western (NEW) grid failed at about 13:00 hours on 31.7.2012 affecting total load of 36,000 MW and 48,000 MW respectively.
- 10.9 As a result of grid failures, the entire Northern Region was engulfed in darkness and these failures adversely affected all sectors of economy like transport, communication, industrial production etc.

10.10 The Enquiry Committee set up by Ministry of Power under the Chairmanship of Chairman, CEA to investigate the reasons for grid failures, in its report concluded that the relief obtained through UFRs and df/dt relay load shedding scheme in Northern Region was inadequate. The relevant paras from the report of the Enquiry Committee are extracted herein below:

**30.7.2012**

*“3.4 XIV. The NR system was thereby isolated from the rest of the grid. In the NR system, there was loss of about 5800 MW import and resulted in decline of frequency. NR system has Automatic Under Frequency Load Shedding Scheme (AUFLS), which can shed about 4000 MW of loads, and df/dt relays scheme, which can shed about 6000 MW of loads to improve the frequency and save the system under such emergency situations. **However, not adequate load relief from the AUFLS and df/dt relays was observed and the NR system collapsed except for a few pockets at Badarpur and NAPS.**”* (Emphasis added)

**31.7.2012**

*“4.4 XIII. Further the loss of import from about 3000 MW import from WR resulted in decline of frequency in the rest of the NEW grid, which has Automatic Under Frequency Load Shedding Scheme (AUFLS), that can shed about 5600 MW of loads, and df/dt relays scheme, which can shed about 6020 MW of loads, to improve the frequency and save the system under such emergency situations. **However, not adequate load relief from the AUFLS and df/dt relays was observed on 31st July 2012 also.**”* (Emphasis added)

10.11 The Enquiry Committee recommended the Central Commission to explore ways and means for implementation of various regulations issued under the Electricity Act, 2003. The following are the extracts from the report of the Enquiry Committee:

***“9.3 Ensuring proper functioning of defence mechanism***

*All STUs should immediately enable under frequency and df/dt based load shedding schemes. **Central Commission should explore ways and means for implementation of various regulations issued under the Electricity Act, 2003. Any violation of these regulations can prove to be costly as has been the case this time.** RPCs need to take up the matter for compliance. In*

*case non-compliance persists, POSOCO should approach Central Commission.”*

10.12 After the grid disturbances, NRPC directed Power Grid Corporation of India Ltd (**Power Grid**), the Central Transmission Utility, to assist it in collection of information regarding UFRs and df/dt relays installed by the Northern Region constituents in their respective control areas.

10.13 Power Grid conducted a survey with site visits for collection of field data of 175 substations in the States in Northern Region, identified for installation of UFRs and df/dt relays in accordance with the decisions of NRPC. Power Grid in its report to the NRPC sent under letter dated 10.9.2012 pointed out deficiencies in the emergency protection system.

10.14 Power Grid *inter alia* pointed out that at a number of substations in Northern Region, UFRs and df/dt relays were either not installed or the settings were not as per NRPC decision. Power Grid reported that in a number of cases, UFRs and df/dt relays were non-operative.

10.15 Power Grid in the report pointed out that total load shedding actually obtained from UFRs was only 19% of the expected quantum on 30.7.2012 and 18% on 31.7.2012. Likewise, load shedding through df/dt relays was 14% and 9% of the expected quantum on 30.7.2012 and 31.7.2012 respectively.

10.16 The details of operation of UFRs and df/dt relays in Rajasthan Control area found by Power Grid and load relief obtained was as under:

UFRs and df/dt Settings as per NRPC	Expected Load Relief (MW)	Operation of Relays
<b>UFR Settings (Frequency)</b>		
48.8 Hz	120	Out of 12 stations, UFRs operated at 7 stations (Bhadra, Hanumangarh, Kotputli, 132 kV Bharatpur, Kuchamani, Mia Alwar and Padampur)
48.6 Hz	150	Out of 3 stations, UFRs operated at 1 station (Kekri)
48.2 Hz	225	Settings not implemented
<b>Total</b>	<b>495</b>	<b>Relief Available</b> <b>30.7.2012 - 52 MW</b> <b>31.7.2012 - 38 MW</b>
<b>Df/dt Relays Settings</b>		
Stage 1 (Frequency 49.9 Hz Slope 0.1 Hz/Sec)	330	Only one df/dt relay operated at 1 station (220 kV Bharatpur)
Stage 2 (Frequency 49.9 Hz Slope 0.2 Hz/Sec)	370	Out of 4 stations, df/dt relays operated at one station (Suratgarh)
Stage 3 (Frequency 49.9 Hz Slope 0.3 Hz/Sec)	370	Out of 5 stations, on 30.7.2012 and 21.7.2012 df/dt relays operated at 4 stations (Bali, Nagaur, Chomu and Hindon) and at 1 station (Bhinmal) on 31.7.2012.
<b>Total</b>	<b>1070</b>	<b>Relief Available</b> <b>30.7.2012 - 175 MW</b> <b>31.7.2012 - 153 MW</b>

10.17 Power Grid further reported the status of 50 stations visited by it where relays are said to have been installed them as per NRPC decisions, as under:

- (a) **Stations where UFRs not installed:** Dhod, Kankroli, Khetrinagar, Neem-ka-Thana, Ratangarh, Sardana and Sriganganagar
- (b) **Stations where UFRs not commissioned:** Rengus
- (c) **Stations where UFRs found defective:** Sultana
- (d) **Stations where UFRs installed but did not operate:** Alwar, Bagar, Bagru, Balotra, Bhansur, Bilara, , Dechu, Phulera, Fathehpur, Merta, Pindwara, Sirohi, Rajisar, Sikar, Thanagaji and Tinwari
- (e) **Number of Stations where Relay Operations took place:**  
15 out of 50 stations visited

- (f) **Stations where Relays operated through RLSS:** Against 10 such stations, 6 stations (Bheruanda, Dausa, Govindgarh, Newai, Renwal and Weir) operated on both days, 2 stations (Deedwana and Makrana operated on 30.7.2012 and 2 stations (Jhunjhunu and Shahpura) operated on 31.7.2012

10.18 Power Grid concluded that load relief available on 30.7.2012 from UFRs and df/dt relays was 7% and 16% respectively and on 31.7.2012, the load relief from UFRs and df/dt relays was 5% and 14% respectively. The findings of Power Grid are tabulated below:

**Performance of UFRs and df/dt relays on 30.7.2012**

State	Expected Load Relief (MW)			Actual Load Relief (MW)			Percentage of Load Relief Actually Achieved		
	UFR	Df/dt	Total	UFR	Df/dt	Total	UFR	Df/dt	Total
Punjab	800	1410	2210	297	0	297	33%	0%	13%
Haryana	600	900	1500	55	412	467	9%	46%	31%
<b>Rajasthan</b>	<b>695</b>	<b>1070</b>	<b>1765</b>	<b>52</b>	<b>175</b>	<b>227</b>	<b>7%</b>	<b>16%</b>	<b>13%</b>
Delhi	600	810	1410	176	126	302	29%	16%	21%
Uttar Pradesh	905	1060	1965	196	0	196	22%	0%	10%
Uttrakhand	160	210	370	0	102	102	0%	49%	28%
Himachal Pradesh	115	190	305	0	0	0	0%	0%	0%
Jammu & Kashmir	165	270	435	0	0	0	0%	0%	0%
UT Chandigarh	10	100	110	0	0	0	0%	0%	0%
<b>Total</b>	<b>4050</b>	<b>6020</b>	<b>10070</b>	<b>776</b>	<b>815</b>	<b>1591</b>	<b>19%</b>	<b>14%</b>	<b>16%</b>

**Performance of UFRs and df/dt relays on 31.7.2012**

State	Expected Load Relief (MW)			Actual Load Relief (MW)			Percentage of Load Relief Actually Achieved		
	UFR	Df/dt	Total	UFR	Df/dt	Total	UFR	Df/dt	Total
Punjab	800	1410	2210	267	0	267	33%	0%	12%
Haryana	600	900	1500	35	129	164	6%	14%	11%
<b>Rajasthan</b>	<b>695</b>	<b>1070</b>	<b>1765</b>	<b>38</b>	<b>153</b>	<b>191</b>	<b>5%</b>	<b>14%</b>	<b>11%</b>
Delhi	600	810	1410	223	124	347	37%	15%	25%
Uttar Pradesh	905	1060	1965	170	7	177	19%	2%	9%
Uttarakhand	160	210	370	12	115	127	8%	55%	34%
Himachal Pradesh	115	190	305	0	0	0	0%	0%	0%
Jammu & Kashmir	165	270	435	0	0	0	0%	0%	0%
UT Chandigarh	10	100	110	0	0	0	0%	0%	0%
<b>Total</b>	<b>4050</b>	<b>6020</b>	<b>10070</b>	<b>745</b>	<b>528</b>	<b>1273</b>	<b>18%</b>	<b>9%</b>	<b>13%</b>

10.19 In the wake of the grid disturbances on 30.7.2012 and 31.7.2012, the recommendations of the Enquiry Committee and the data collected by Power Grid, as also the directions of the Central Commission in the order dated 10.7.2012 in the earlier Petition (No 125/MP/2012), NRLDC filed a fresh petition, Petition No 221/MP/2012. In the petition by NRLDC, the appellants were impleaded as respondents.

10.20 NRLDC prayed for certain directions to the State utilities in Northern Region, which included direction to carry out testing of the existing UFRs and df/dt relays at the designated substations with a view to assessing the availability of relief in future in case of any

contingency or emergency and installation of balance relays at substations already identified.

10.21 The extracts from the report of the Enquiry Committee were reproduced in the body of the petition by NRLDC and the copy of the report of Power Grid were also annexed to the petition.

10.22 The appellants in its rejoinder to the reply of Respondent No 2 have denied receipt of copy of the report of Power Grid but they had filed replies to the petition of NRLDC without pointing out that the report was not annexed to the petition.

10.23 The Central Commission issued show cause notice to the appellants, among others, vide order dated 23.12.2013 as the Central Commission was satisfied that the entities concerned had not complied with Regulation 5.2 (n) of the Grid Code. Since there was no response to the show cause notice dated 23.12.2013, another notice dated 25.4.2014 was issued in Petition No 6/SM/2014. The proceedings started vide show cause notice dated 25.4.2014 in Petition No 6/SM/2014 resulted in imposition of penalty on the appellants, among others, vide the impugned order.

10.24 The submissions made by the appellants in their reply-affidavit dated 17.12.2012 in Petition No 221/MP/2012 have been taken note of in the order dated 23.12.2013 as under:

“RRVPNL, Rajasthan vide affidavit dated 17.12.2012 has submitted that its system has 81 Nos. UFRs with sequential circuit and 10 Nos. RLSS relays with setting to trip all feeders at 48.2 Hz and 18 df/dt relays are installed. The protection wing of RVPN has carried testing of all UFRs and df/dt relay installed in the system and Zonal C.E. (T&C) have been asked to ensure healthiness of these relays at all times. The protection wing found only 4 Nos. relays defective. RRVPNL has installed sufficient number of UFR and df/dt relays to provide



adequate relief as recommended by NRPC. RRVPNL thus claims that it has already taken the steps as requested by the petitioner."

10.25 NRLDC submitted its rejoinder dated 4.1.2013 to the submissions made by the appellants, which has been noticed in the order of 23.12.2012 thus:

"In response to the submissions of Rajasthan STU and SLDC, it has been stated that the said STU and SLDC have informed about increased number/quantum of UFR and df/dt relays than those recommended by NRPC. As per information given, Rajasthan State has 1493 MW UFR load shedding against the 1070 MW recommended by NRPC. It is further stated that despite additional planned load shedding scheme, actual load relief obtained on 30.7.2012 was 39 MW from UFR and 274 MW from df/dt relays. Similarly, relief on 31.7.2012 was 38 MW from UFR and 163 MW from df/dt. As per the POWERGRID survey report the relief from Rajasthan system was 52 MW from UFR and 175 MW from df/dt on 30.7.2012 and 38 MW from UFR and 153 MW from UFR on 31.7.2012. Against this, the expected relief as per the NRPC recommendation is 695 MW from UFR and 1070 MW from df/dt relay. Thus, it is evident that the relief obtained was inadequate. This may be due to either the relays are non functional, feeders are not radial in nature, load connected is not adequate or feeders are already opened under some other load shedding scheme."

10.26 The appellants filed another affidavit dated 14.2.2013 wherein they reiterated the submissions made in the earlier affidavit dated 17.12.2012 which have been recorded in the order dated 23.12.2013 as under:

"14. RRVPNL in its submission dated 14.2.2013 stated that sufficient numbers of UFR and df/dt relays are provided in the Rajasthan system as per report of protection wing. Only four-numbers of relays were found defective which have also been rectified and now they are also healthy. The SLDC is regularly furnishing monthly report of UFR and df/dt relay operation to NRPC regularly in compliance to clause No. 5.2 (n) of the Grid Code. It has further been submitted that in Rajasthan system total 81 numbers of UFRs, 10 nos. of RLSS relays (UFRs) and 18 nos. of df/dt relays are installed. Out of these relays, 52 UFRs and 17 df/dt relays are numerical type and balance 29 UFRs, 10 RLSSS (UFRs) and 1 df/dt relay are to be changed to numerical relays for which purchase process has been commenced."

10.27 In response to the appellants' affidavit dated 14.2.2013 NRLDC in its further submission vide affidavit dated 25.3.2013 pointed out that-

*“RRVPNL has submitted data of 99 groups of feeders emanating from 220 kV or 132 kV S/S that are part of UFR or df/dt relays based on load shedding. There are 81 groups of feeders in UFR and 18 groups of feeders in df/dt relay based load shedding scheme. 47 out of 81 groups of feeders in the UFR scheme are operated through numerical relays while 17 out of 18 groups of feeders in df/dt scheme are operated through numerical relays. The operation of only 23 out of 95 was reportedly checked after the Grid Disturbance in July 2012. The status of healthiness is difficult to make out from the submitted information. Hence, likely relief obtained from the scheme is difficult to ascertain. The telemetry of the feeders used in the df/dt or UFR scheme is unavailable at the SLDC (except for 132 kV Bidasar-Sujanagarh).”*

10.28 As noted in the order dated 23.12.2013, NRPC in its submission dated 8.4.2013 pointed out the discrepancies in the information submitted by the appellants as under:

*“The relays have been checked by the utility from 2010 to 2013. However, in accordance with decision taken in 79th meeting of OCC, which was approved by NRPC in its 27<sup>th</sup> meeting, checking is to be carried out on quarterly basis. This issue was again taken up in Protection Sub-Committee meeting held on 5.4.2013 and utilities were requested to comply with the decision taken in NRPC meeting. RRVPNL has submitted the list of sub-station at which UFRs and df/dt relays have been installed. However, the 1st page of submission is not in the prescribed format and hence could not be scrutinized. RRVPNL had earlier submitted that they have 88 Nos. of UFRs and df/dt relays out of which 4 Nos. UFRs were non-functional. However, in the affidavit submitted to the Commission, total number of relays is found to be 109. Hence, there is slight discrepancy. Further, a few feeders are having both UFR as well as df/dt relays.*

10.29 The appellants in their submissions dated 9.4.2013 reiterated that Rajasthan control area had 109 group of feeders instead of 99 groups of feeders emanating from 220 kV or 132 kV S/S that were part of UFRs and df/dt relays based load shedding in Rajasthan control area. It was stated that the missing 10 groups of feeders were with RLSS feature action for replacement of which by flat UFRs was initiated. The appellants submitted that the reported events

pertained to the period 26.12.2012 to 23.1.2013 is the monthly tripping information which was being sent in the prescribed formats and since the format did not have any column for reason of tripping, reason of tripping was not mentioned. It was further reported that the matter was taken up with the concerned for telemetry of the feeders used in df/dt under frequency scheme to show at SLDC through SCADA.

10.30 From the affidavits dated 17.12.2012, 14.2.2013 and 9.4.2013 filed by the appellant the following conclusions are drawn:

- (a) The appellants had installed sufficient number of UFRs and df/dt relays to provide adequate relief as decided by NRPC.
- (b) On testing by Protection Wing of the appellants only 4 relays found defective, were rectified and were in healthy condition.
- (c) The appellants did not give data load relief obtained of on 30.7.2012 and 31.7.2012, the cause for filing of the petition.
- (d) The appellants did not deny the correctness of the data collected by Power Grid, according to which the relief from Rajasthan system was 52 MW from UFRs and 175 MW from df/dt relays on 30.7.2012 and 38 MW from UFR sand 153 MW from df/dt relays on 31.7.2012, against the expected relief of 695 MW from UFRs and 1070 MW from df/dt relays both days.
- (e) The replies do not throw enough light on discharge of function of monitoring of load relief by Rajasthan SLDC under Regulation 5.2 (n).
- (f) Though in the affidavit dated 14.2.2013 it was stated that Rajasthan SLDC was regularly furnishing monthly reports of UFR and df/dt relay operation to NRPC in compliance to clause No. 5.2 (n) of the Grid Code, no corroborative evidence in support of the averment was placed on record.

10.31 Contrary to the claim of the appellants, NRLDC in its rejoinder dated 4.1.2013 to the appellants' reply dated 17.12.2012 disputed the correctness of the details of the relays installed in Rajasthan system, furnished by the appellants in the reply and reiterated that adequate load relief was not available in Rajasthan system on 30.7.2012 and 31.7.2012.

10.32 NRLDC in its further affidavit dated 25.3.2013 in response to the appellants' affidavit dated 14.2.2013 noted that the status of healthiness of relays was difficult to make out from the information submitted by the appellants and therefore, likely relief obtained from the scheme was difficult to ascertain. It was pointed out by NRLDC that the telemetry of the feeders used in df/dt or UFR schemes was also unavailable with Rajasthan SLDC (except for 132 kV Bidasar-Sujangarh).

10.33 After thorough consideration of the submissions of the appellants, NRLDC and NRPC, the Central Commission drew the following conclusion in the order dated 23.12.2013:

"24. We have considered the submission of the petitioner, respondents and NRPC taking into consideration the survey report conducted by POWERGRID after the grid disturbances in July, 2012. We are convinced that the constituents of the Northern Region have not provided adequate load relief. Consequently, we hold that all the constituents of the NR namely Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, UT of Chandigarh and J&K have failed to comply with the Regulation 5.2 (n) of the Grid Code."

10.34 In this manner the Central Commission charged the appellants and other concerned entities in Northern Region with non-compliance with Regulation 5.2 (n) of the Grid Code when the grid failures occurred during July 2012, as the relays on Rajasthan system did not provide adequate relief.

10.35 In above view of the matter, the Central Commission in the said order dated 23.12.2013 directed to issue notice to the Heads of SLDCs and MDs/CMDs of the STUs to seek their explanation as to why action under Section 142 of the Electricity Act be not initiated against them for non-compliance of Regulation 5.2 (n) of the Grid Code. The direction of the Central Commission in this regard is extracted hereunder:

“29. We are constrained to remark that we are thoroughly dissatisfied with the defense mechanism in terms of UFR and df/dt. Hard reality which stares us on the face is that these have not been provided and maintained as per Regulation 5.2 (n) and 5.4.2 (e) of the Grid Code by NR constituents. Accordingly, we hereby direct as follows:

- (a) *Issue notices to the heads of SLDCs and MD/CMD of the STU of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Uttar Pradesh, Jammu and Kashmir and head of Electricity Department, UT of Chandigarh and to explain why action should not be initiated under Section 142 of the Electricity Act, 2003 for non-compliance of the Grid Code.”*

10.36 The appellants did not show cause.

10.37 For sake of convenience, the proceedings initiated vide order dated 23.12.2013 in Petition No 221/MP/2012 were carried forward on the Central Commission’s file in *suo motu* Petition No 6/SM/2014.

10.38 In continuation of the notice issued under order dated 23.12.2013, to which there was no response from the appellants, another show cause notice vide order dated 25.4.2014 was issued to Heads of SLDCs and MDs/CMDs of STUs, based on the findings in the order dated 23.12.2013. The contents of the said notice dated 25.4.2014 are reproduced below:

“2. Northern Regional Load Despatch Centre filed Petition No. 221/MP/2013 seeking directions to State Utilities to comply with the Regulation 5.2 (n) of the

Grid Code. After hearing the parties, the Commission came to the conclusion that the State utilities have not complied with the provisions of the Grid Code. Accordingly, the Commission vide order dated 23.12.2013 in Petition No. 221/MP/2012 directed to issue notices under Section 142 of the Act to the heads of SLDCs and MD/CMD of the STU of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Uttar Pradesh, Jammu and Kashmir and head of Electricity Department, UT of Chandigarh for non-compliance of the Grid Code. The relevant portion of order dated 23.12.2013 in Petition No. 221/MP/2012 is extracted as under:

.....

3. In view of the above, the respondents i.e. heads of SLDCs and MD/CMD of the STU of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Uttar Pradesh, Jammu and Kashmir and head of Electricity Department, UT of Chandigarh are directed to show cause, latest by 15.5.2014, as to why action under Section 142 of the Electricity Act, 2003 should not be taken on them for non-compliance with the provisions of the Act and the Grid Code.

4. Matter shall be listed for hearing on 22.5.2014.

5. Officer-in-charge of NRLDC or its representative shall assist the Commission in the proceedings.”

10.39 The notice dated 25.4.2014 meant for the appellants was sent to Shri Alok Kumar, Managing Director, Rajasthan Rajya Vidyut Vitran Nigam Ltd, impleaded as Respondent No 3 which is designated as STU Rajasthan and also operates SLDC Rajasthan.

10.40 The reply to the show cause notice dated 25.4.2014 was filed by the appellants vide affidavit dated 14.5.2014.

10.41 The reply-affidavit, like earlier affidavits dated 17.12.2012, 14.2.2013 and 9.4.2013 filed by the appellants in Petition No 221/MP/2012 was completely silent regarding the status of installation of UFRs and df/dt relays in Rajasthan control area and the load relief achieved on 30.7.2012 and 31.7.2012 when the grid disturbances occurred.

10.42 In their reply, the appellants did not traverse the findings recorded in the survey report of Power Grid, which was the very foundation of the show cause notices dated 23.12.2013 and 25.4.2014.

10.43 The appellants did not contest the correctness of the findings of the Enquiry Committee which investigated the incidents of grid failure on 30.7.2012 and 31.7.2012 constituted by Ministry of Power.

10.44 It is also relevant to point out that the appellants did not dispute the correctness of the discrepancies pointed out by NRLDC and NRPC the cognizance of which was duly taken by the Central Commission in the order dated 23.12.2013, which was the first show cause notice.

10.45 At this stage itself it may be pointed out that the appellants even in the Memo of Appeal have failed to furnish the necessary details in relation the operation of UFRs and df/dt relays on the fateful days or contradict the findings of the Enquiry Committee and Power Grid or point out any error in the views of NRLDC and NRPC incorporated in the order dated 23.12.2013.

10.46 On consideration of the material on record, the Central Commission in the impugned order concluded that the charge of non-compliance of the provisions of Grid Code in relation to the show cause notices was established. The conclusion arrived at by the Central Commission is recorded as under:

*“19..... As per the above provisions of the Grid Code, STUs and SLDCs are required to ensure that the above under-frequency and df/dt load shedding/islanding schemes are always functional. We are pained to remark that mechanism in terms of UFR and df/dt have not been provided and*

*maintained by the constituents of Northern Region as per the provisions of the Grid Code.”*

10.47 At this stage it may be submitted that Mundra Ultra Mega Power Project in Western Region had tripped on 12.3.2014 at 19.21 hrs and during tripping there was inadequate load relief in that region.

10.48 Tripping of Mundra Ultra Mega Power Project had cascading effect on the grid of Northern Region where rate of change of frequency (df/dt) was greater than 0.1 Hz/sec for 800 millisecond (0.8 second). Accordingly, df/dt relays of Stage 1 were expected to operate with total load relief of 500 MW in Northern Region, but was, however, not achieved.

10.49 NRLDC vide its letter No NRLDC/TS-15/670-739 dated 24.3.2014 addressed to various entities in Northern Region brought out that consequent to tripping of one unit of Mundra STPP at 7.21 hrs on 12.3.2014 there was sudden fall in the frequency of NEW Grid by 0.67 Hz, from 49.95Hz to 49.28HZ.

10.50 At the hearing of Petition No 6/SM/2014 on 22.5.2014, attended by the representatives of the appellants, it was *inter alia* stated by NRLDC that-

*“(e) On 12.2.2014, there was large tripping in Western Region (WR) when the entire CGPL station of 4000 MW (at that time running around 500 MW) tripped. At that time, the rate of change of frequency was much higher (0.3 HZ per sec in WR), most of the df/dt relays had not operated in, and very little support was observed from these relays in WR.*

*(f) In NR, as per data from Phasor Measurement Units (PMUs), rate of change of frequency was above 0.1 Hz/sec for around 500 to 600 ms. Some of the relays in NR should, therefore, have operated in Stage-1 (0.1 Hz/sec). However, during discussion in OCC meeting, none of the States discussed about relay operated in their State. Therefore, no operation of df/dt relays has taken place in WR and NR on 12.3.2014.”*

**(RoP of 22.5.2014 in Petition No 06/SM/2014)**



10.51 After the hearing, the Central Commission directed NRLDC to file the following information on affidavit:

- “(a) Report of 12.3.2014 incidence and steps taken thereafter.
- (b) Report on the incident of 12.3.2014 wherein the df/dt relays should have operated.
- (c) Report on mapping of UFRs and df/dt relays on to SCADA system by STUs and put the report on its website.”

**(RoP of 22.5.2014 in Petition No 06/SM/2014)**

10.52 NRLDC in its affidavit dated 15.7.2014 filed before the Central Commission and uploaded on its website pursuant to the direction of 22.5.2014, extracted above, in relation to the incident of 12.3.2014, NRLDC stated as under:

*“29. That as per Phasor Measurement Unit (PMU) data from all areas of Northern Region has shown the rate of change of frequency above 0.1Hz/sec for more than 800 ms and thus stage – 1 of the df/dt setting in NR should have operated. The PMU plot is given below:*

.....

10.53 NRLDC in the affidavit also pointed that in response to its letter dated 24.3.2014 the load relief data was submitted by Uttar Pradesh Power Transmission Corporation, Delhi SLDC and Punjab Power Transmission Corporation.

10.54 Non-submission of data by the appellants leads one to conclude that the relays were not properly maintained and were not functional, because of which adequate relief was not available to respond to the situation that developed on 12.3.2014.

10.55 The load relief on 12.3.2014 communicated by NRLDC based on information received from UPPTCL, PPTCL and Delhi SLDC has been taken note of in the impugned order as under:

“20. NLDC has submitted that the following status of df/dt relay operation in NR as on 12.3.2014:

State	Df/dt Stage I (49.9Hz 0.1 Hz/sec) Required Relief (MW)	Df/dt Stage II (49.9 Hz 0.2 Hz/sec) Required Relief (MW)	Df/dt Stage III (48.2 Hz 0.3 Hz/sec) Required Relief (MW)				
				Observed df/dt (Hz/s)	Applicable Stages of df/dt	Envisaged quantum of load shedding under df/dt stage-I (MW)	Load df/dt as reported by respective state control area
Punjab	430	490	490	Greater than (- ) 0.1Hz/s for 800 ms	1	430	\$
Haryana	280	110	110		1	280	
<b>Rajasthan</b>	<b>330</b>	<b>370</b>	<b>370</b>		<b>1</b>	<b>330</b>	
Delhi	250	280	280		1	250	53
Uttar Pradesh	500	280	280		1	500	245.87
Uttarakhand	70	70	70		1	70	
Himachal Pradesh	50	70	70		1	50	
Jammu & Kashmir	90	90	90		1	90	
Chandigarh	0	50	50		1	0	
<b>Northern Region</b>	<b>2000</b>	<b>2010</b>	<b>2010</b>		1	<b>2000</b>	

\* Load relief on df/dt as reported by UP include 147 MW for 0.1 Hz/sec and 99 MW for 0.2Hz/sec. Also, reportedly 19 MW load also tripped on UFR.

\$Relays at nine 132 kV sub-stations operated but quantum of relief not mentioned.

10.56 In the light of the fact that non-compliance of the provisions of Regulation 5.2 (n) of the Grid Code on 30.7.2012 and 31.7.2012 stood established, the Central by the impugned order Commission imposed the penalty on the Heads of the STU Delhi and SLDC Delhi, among others, as under:

*“In our view, there are no mitigating factors which exonerate the respondents from the charges initiated under section 142 of the Act. In our view, the charges against the respondents are proved and accordingly, we impose a penalty of one lakh on each of the heads of STUs and SLDCs of Uttar Pradesh, Rajasthan, Delhi, Haryana, Punjab, Himachal Pradesh, Uttarakhand and head of Electricity Department of UT, Chandigarh under Section 142 of the Act for non-compliance of provisions of Regulations 5.2 (n) and 5.4.2 (e) of the Grid Code. The penalties shall be deposited within one month from the date of issue of the order.”*

10.57 The penalty was imposed primarily because of inadequate load relief achieved and status of operation of UFRs and df/dt relays

during grid disturbances on 30.7.2012 and 31.7.2012 for which there was no explanation from the appellants and conclusion in this regard has been recorded in Para 19, extracted above and not for reason of the inadequate relief achieved on 12.3.2014, the reference to which has been made in Para 20, also extracted above.

10.58 The reference to the event of 12.3.2014 was just incidental and not substantive, to show that till that date the settings were not provided up to the desired level and thus supplemented the finding on the charge of non-compliance of the provisions of the Grid Code as witnessed during the grid disturbances on 30.7.2012 and 31.7.2012.

10.59 The penalty has been imposed after failure of the entities, including the appellants, to comply with Regulation 5.2 (n) of the Grid Code despite repeated directions by the Central Commission to remedy the situation and not as a kneejerk reaction, but was the outcome of deep thought and deliberation.

10.60 In the first instance, the direction for installation and maintenance of UFRs and df/dt relays was enacted in the statutory Regulation 5.2 (n) of the Grid Code.

10.61 The Central Commission in its order dated 10.7.2012 in Petition No 125/MP/2012, reproduced herein below, directed the entities in Northern Region to ensure that UFRs were kept in service at all times:

*“23. The petitioner has sought directions to the respondents for ensuring safety and security of the grid and to obviate any possibility of grid disturbance. We are convinced that urgent actions are called for to maintain the grid at frequency specified in the Grid Code and to ensure smooth operation of the grid. Accordingly, the following directions are issued for strict compliance by the respondents:*

.....  
(c) The respondents shall ensure that Under Frequency Relays (UFR) are kept in service at all times and the feeders used for load shedding through UFRs are different from the feeders used for manual load shedding so that security of the grid is not compromised.  
.....

24. We direct that it shall be the personal liability of the officers in overall charge of the State Transmission Utilities/State Load Despatch Centres to ensure compliance of the directions in Para 22 and 23 above and non-compliance of the directions in any form will be viewed seriously and appropriate actions under provisions of the Act shall be taken.”

10.62As seen from para 24 of the order extracted above, it was the personal liability of the officers in overall charge of STUs and SLDCs to ensure compliance.

10.63During the process of hearing of Petition No 221/MP/2012 on 15.1.2013, the Central Commission again directed the entities to keep UFRs and df/dt relays in healthy condition so that adequate relief became available. The directions conveyed through RoP are extracted below:

“12. The commission took serious view of the state of these relays which are essential for safety of the grid in the event of any untoward incident. The Commission directed all respondents to keep all UFR and df/dt relays in healthy conditions so that adequate relief to the grid is always available. The respondents were also directed to revive all defective relays expeditiously.

13. The Commission directed the respondents to submit data in formats attached with this ROP, within two weeks on affidavit for proper monitoring at RPC level and responsibility of person in each area for each relay is fixed.”  
**(RoP of 5.1.2013 in Petition No 221/MP/2012)**

10.64The above direction was reiterated after hearing on 14.2.2013. The relevant part of the direction is extracted below:

“8. The Commission directed as under:

(a) All entities shall ensure healthiness of the defense mechanisms i.e. UFR, df/dt relays etc at all the time;”

**(RoP of 14.2.2013 in Petition No 221/MP/2012)**

10.65 Despite the above directions, the entities did not take the adequate steps to comply with the directions of the Central Commission and it became evident from the incident of 12.3.2014.

10.66 Therefore, in the interest of security and safety of the grid and overall economy, it became necessary to invoke Section 142 of the Electricity Act.

10.67 Though in the Memo of Appeal the appellants have alleged that the rate of change of frequency can be different at different substations and that substations would have experienced less than 0.1 Hz/sec slope, they have not furnished any data or the details of substations which experienced less than 0.1 Hz/sec slope on 12.3.2014 to establish its claim that rate of fall of frequency in their control area was beyond the capability of df/dt relays. Accordingly the above averment of the appellants does not merit any consideration.

10.68 Though it is an established principle of law that *mens rea* is the necessary ingredient of a criminal offence it is equally well established that the statute can exclude applicability of *mens rea* either expressly or by necessary implication.

10.69 The plain language of Section 142 excludes the applicability of the principle of *mens rea* to the non-compliances mentioned therein.

10.70 Part XIV of the Electricity Act titled "Offences and Penalties" contains the provisions in regard to punishments; Section 135 (Theft of electricity), Section 136 (Theft of electric lines and materials), Section 137 (Punishment for receiving stolen property), Section 138

(Interference with meters or works of licensees), Section 139 (Negligently breaking or damaging works), Section 140 (Penalty for intentionally injuring works), Section 141 (Extinguishing public lamps), Section 142 (Punishment for non-compliance of directions of the Appropriate Commissions), Section 143 (Power to adjudicate), Section 144 (Factors to be taken into account by the Adjudicating Officer), Section 145 (Civil Court not to have jurisdiction), Section 146 (Punishment for non-compliance of orders or directions), Section 147 (Penalties not to affect other liabilities), Section 148 (Penalty where work belongs to Government), Section 149 (Offences by companies), Section 150 (Abetment), Section 151 (Cognizance of Offences), Section 151A (Powers of the Police Officer to investigate offences), Section 151B (Cognizance of offences) and Section 152 (Compounding of offences).

10.71 It is thus clear that where the Parliament intended to introduce *mens rea* as the necessary element of the offences defined in Sections 135 to 141, it has used appropriate words to signify that intention.

10.72 The qualifying expressions used in Sections 135 to 141 are conspicuously omitted in Section 142 which vests power in the Appropriate Commission to levy penalty for non-compliance or contravention by any person of the provisions of the Electricity Act or the Rules or Regulations made thereunder, or any direction issued by the Appropriate Commission.

10.73 The omission or absence of the expressions “fraudulently”, “dishonestly”, “intentionally” etc. which show positive mental attitude of the offender, in Section 142 is intended, by necessary implication,

to exclude *mens rea* while dealing with non-compliances or contraventions.

10.74 The nature of penalty for contravention of the provisions of the Act, Rules, Regulations or directions of the Appropriate Commission made punishable under Section 142 is also relevant. The nature of penalty provided under Section 142 is akin to penalty imposed consequent to departmental action against the employees for contravention of the code of conduct and contravention of traffic rules, which per se do not require proof of *mens rea*.

10.75 The Hon'ble Supreme Court in *Union of India Vs J Ahmed (AIR 1979 SC 1022)* has held that though gross or habitual negligence constitutes misconduct but does not involve the element of *mens rea*. The Hon'ble Supreme Court expressed its opinion in the following words:

*“12. The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.”*

10.76 Section 142 has been enacted to ensure compliance of the provisions of the Electricity Act, Rules, Regulations or directions to achieve the objects of the Act which is the civil obligation and is not by way of punishment for a crime.

10.77 The Hon'ble Supreme Court in a series of judgments, the reference to which is being made below, has held that *mens rea* is not an essential ingredient for punishment for breach of civil obligations, like those specified in Section 142.

10.78 After referring to a series of judgments, the Hon'ble Supreme Court in *Chairman, SEBI v. Shriram Mutual Fund* (AIR 2006 SC 2287) while considering the scope of Section 15D and 15E of the SEBI Act, which are in *pari materia* with the provision of Section 142 and 143 of the Electricity Act, has held that the requirement of *mens rea* has not been laid down in those provisions.

10.79 The decision in *Chairman SEBI (Supra)* was approved in *Union of India and others v. Dharamendra Textile Processors and others* [AIR 2008 SC (Supp) 668] and followed in *SEBI Vs Pan Asia Advisors Ltd and another* (AIR 2015 SC 2782).

10.80 The Hon'ble Supreme Court in yet another recent judgment reported as *Hemant Madhusudan Nerurkar Vs State of Jharkhand* (AIR 2016 SC 2219), which is a case under the Factories Act has taken the view similar to that taken in *Chairman SEBI (Supra)*.

10.81 In view of the above law, it was not necessary to separately establish *mens rea* on the part of the appellants for not acting in accordance with the statutory provisions of the Grid Code.

10.82 The Appellate Tribunal in the *Judgment dated 13.9.2007 in Appeal No 115/2007 (B M Verma Vs Uttranchal Electricity Regulatory Commission)* held that for holding a person guilty under Section 142 it is necessary for the Commission to obtain evidence of *mens rea*, as under:

*"9. We are shocked to see how Commission has totally gone wrong both in the matter of procedure and in the matter of approach. The Commission entirely lost sight of the fact that it was proceeding to take criminal action and accordingly the basic principles of criminal law and procedure should not have been lost sight of. We are not saying that the Commission was required to follow*



*the strict procedure of Criminal Procedure Code. But the basic principles could not have been ignored, a proposition to which the respondent counsel agreed.*

*10. Firstly, mens rea is the basic ingredient of any offence. Mere non-compliance with an order could not be sufficient to take penal action. It was necessary for the Commission to obtain evidence of mens rea or culpable state of mind before holding the appellant guilty of a punishable offence. A mere failure to meet a deadline in complying with an order cannot be an offence. Section 142 of The Electricity Act 2003 does not create an absolute offence.”*

10.83 Section 146 of the Electricity Act also provides for punishment for non-compliance of similar nature as provided under Section 142. Section 146 is extracted below:

**“146. (Punishment for non-compliance of orders or directions):**

*Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:*

*Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.”*

10.84 Under Section 146, non-compliance is categorized as “offence” whereas Section 142 labels non-compliance as “contravention”. In view of the distinctive language of Sections 142, non-compliance or contravention adverted to in Section 142 does not constitute an offence or, if at all, the non-compliance or contravention is only a civil offence like violation of traffic rules. For all the above reasons, the proof of *mens rea* is not necessary for award of punishment by the Central Commission under Section 142. On facts, the case of *B M Verma* (Supra) is distinguishable. In *B M Verma* (Supra) the penalty was imposed on the appellant therein in individual capacity

whereas in the case on hand the penalty has been imposed on Head, STU Rajasthan and Head, SLDC Rajasthan, the body corporates in their official capacity.

10.85 The present appeal has been filed by the appellants in their official capacity, which shows that in the appellants' own understanding the penalty has been imposed on the body corporates and not on Head, STU Rajasthan and SLDC Rajasthan in their individual capacity.

10.86 Rajasthan High Court in *P. R. Maheshwari and another vs Municipal Council Alwar (1978 Cr LJ 1594)* has held that when an offence is committed by a corporate body, the question of *mens rea* is not of much relevance. The relevant para from the judgment of Rajasthan High Court reads as under:

"7. When a Company commits an offence, the question of knowledge or mens rea cannot be said to be of much significance. Adulteration of food stuff is so rampant and the evil has become so widespread and persistent that nothing short of a somewhat drastic remedy provided in the Act can change the situation. Only a concerted and determined onslaught on this most anti-social behaviour can bring relief to the nation: vide Statements of Objects and Reasons of the Act. Public Welfare offences are to be essentially standardised. Criminal law used as means of securing the social standard of correct trading and social welfare behaviour necessarily has to enforce the principle of vicarious liability. Emphasis is laid on the importance of not doing what is prohibited and the method of business must be arranged on individual alertness in trade or calling. Rescoe Pound has made the following observations:-

"The good sense of courts has introduced a doctrine of acting at one's peril with respect to statutory crimes which expresses the need of society. Such statutes are not meant to punish the vicious will but to put pressure on the thoughtless and inefficient to do their whole duty in the interest of public health or safety or morals."

10.87 The proof of *mens rea* is not of any relevance in the present case since the implication of the penalty is on the body corporates and

not on any individual, the penalty having been imposed on Head, STU Rajasthan and Head, SLDC Rajasthan in official capacity.

10.88 In the alternative, if it is construed that the penalty has been imposed on Head, STU Rajasthan and Head, SLDC Rajasthan in their individual capacity, the present appeal is not maintainable since, in that case, the appellants cannot be said to be “the aggrieved person” in terms of Section 111 and only Head, STU Rajasthan and Head, SLDC Rajasthan in their individual capacity are competent to maintain the appeal.

**11. Learned counsel appearing for the NRLDC in the batch of Appeals has made the following oral submissions as also in the written submissions for our consideration:-**

11.1 The present written submission is filed on behalf of Respondent No. 2, Northern Regional Load Dispatch Centre, in compliance to ROP dated 02<sup>nd</sup> January, 2020 in Appeal no. 9 of 2016, as directed by the Hon'ble Appellate Tribunal.

11.2 Subsequent to grid disturbances on 30.07.2012 and 31.07.2012, the Northern Regional Load Dispatch Centre filed Petition no. 221/MP/2012 dated 19<sup>th</sup> September, 2012 based on the ground survey report of Power Grid. The lack of planned load relief during July 2012 Grid Disturbances has been confirmed by the report of Power Grid dated 10<sup>th</sup> Sept 2012 which is based on the ground survey conducted after the July 2012 grid disturbances. This report has jointly been signed by the Power Grid Staff and the Local Staff at the respective Substations.

11.3 Power Grid had carried out an audit of Under Frequency Relays (UFRs) and df/dt (rate of change of frequency) relays at 175 substations of the 9 constituents of Northern Region (NR) after the Grid Disturbances of 30<sup>th</sup> and 31<sup>st</sup> July 2012.

11.4 Out of 175 stations of various constituents of NR, the UFR and df/dt relays operated at only 40 number of stations which were set as per NRPC recommendations. Relief during the Grid Disturbances (30<sup>th</sup> and 31<sup>st</sup> July 2012) came only from 23% of the total no. of Stations in the Region. Against the total targeted load relief of 6020 MW through df/dt relays, 14% was reported on 30.07.2012 and only 9% on 31.07.2012. The status of the UFR and df/dt relays was found as follows:

State	Peak load typical	Expected Flat UFR load relief	Total Expected Load Relief with df/dt relays	Expected combined Flat UFR and df/dt load relief	Installed as per NRPC/ Constituents (Total Stations)	No. of stations where df/dt relays are not provided	No. of stations where UFRs & df/dt relays not-operated as per NRPC recommendations	No. of Stations with UFRs & df/dt relay operation as per NRPC recommendation	% of UFRs & df/dt relay operation as per NRPC recommendations %
	MW	MW	MW	MW	NOs	NOs	NOs	NOs	%
Punjab	6588	650	1410	2060	28	12	11	5	18%
Haryana	4201	400	900	1300	20	0	13	7	35%
Rajasthan	4946	495	1070	1565	50	9	26	15	30%
Delhi	3736	400	810	1210	24	0	17	7	29%
UP	7531	705	1060	1765	30	7	20	3	10%
Uttarakhand	991	110	210	320	11	4	4	3	27%
HP	873	115	190	305	3	0	3	0	0%
J&K	1309	165	270	435	7	4	3	0	0%
CHD	247	10	100	110	2	0	2	0	0%
TOTAL	30392	3050	6020	9070	175	36	99	40	23%

11.5 Para 24 of the CERC's order dated 23.12.2013 in petition no. 221/MP/2012 (mentioned at line no. 5, Point no.6 on page no.

4 of the reply filed by NRLDC dated 18<sup>th</sup> April 2016) is relevant and is quoted below:

*“24. We have considered the submission of the petitioner, respondents and NRPC taking into consideration the survey report conducted by POWERGRID after the grid disturbances in July, 2012. We are convinced that the constituents of the Northern Region have not provided adequate load relief. Consequently, we hold that all the constituents of the NR namely Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, UT of Chandigarh and J&K have failed to comply with the Regulation 5.2 (n) of the Grid Code.”*

11.6 Reference is made page no.196 and 197 of the Appeal No.9 of 2016 filed by Delhi Transco Ltd wherein the CERC in its Order dated 23.12.2013 in petition No. 221/MP/2012 had observed and directed as follows :

Quote

*29. We are constrained to remark that we are thoroughly dissatisfied with the defense mechanism in terms of UFR and df/dt. Hard reality which stares us on the face is that these have not been provided and maintained as per Regulation 5.2 (n) and 5.4.2 (e) of the Grid Code by NR constituents. Accordingly, we hereby direct as follows:*

*(a) Issue notices to the heads of SLDCs and MD/CMD of the STU of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu and Kashmir and head of Electricity Department, UT of Chandigarh and to explain why action should not be initiated under Section 142 of the Electricity Act, 2003 for non-compliance of the Grid Code.*

*(b) Member Secretary, NRPC to submit the latest status of UFRs and df/dt installations in NR within 1 month from the issue of this order.*

*(c) UFRs and df/dt relays also be mapped on the SCADA system of each state so that they can be monitored from SLDC/NRLDC.*

*(d) All STUs and SLDCs to map/network the UFR and df/dt on their SCADA system.*

*(e) NRLDC to submit the compliance report on the progress of installation of additional UFR and df/dt relays and quantum of load relief expected during contingency by 31.3.2014.*

Unquote

11.7 In view of the directions in 221/MP/2012, suo-moto notices dated 25.04.2014 were issued by CERC under section 142 of the Electricity Act to the NR constituents in 06/SM/2014. It is clarified that the suo-moto notices dated 25.04.2014 issued in

06/SM/2014 were issued specifically in respect of the incidents of Grid Disturbance that occurred on 30<sup>th</sup> and 31<sup>st</sup> July 2012.

11.8 Delhi Transco Limited has claimed that a Load relief of approx. 1000 MW was given on both days i.e. 30<sup>th</sup> and 31<sup>st</sup> July 2012.

(a) In this regard, Reference is made to page no. 132 of Appeal No.9 of 2016 filed by Delhi Transco Ltd wherein Rejoinder dated 04<sup>th</sup> Jan 2013 filed by NRLDCin221/MP/2012 is quoted:

*Quote*

*BB:Reply to Delhi STU (the respondent number 04 & 13) response*

*11. That the respondent number 04 viz STU of Delhi ..... in his statement has given a very high figure of load relief on both the days. However, the survey of POWERGRID does not support such high relief from Delhi system. Further the frequency curves of both disturbance days are not supportive of the claim of Delhi STU.*

*Unquote*

- (b) *Also, kindly refer to Table 3 and Table 4 on page no. 106 of Appeal No.9 of 2016 filed by Delhi Transco Ltd. wherein load relief obtained from UFR and df/dt relays on 30<sup>th</sup> and 31<sup>st</sup> July 2012 based on the POWERGRID survey report dated 10.09.2012 is tabulated. It can be seen that the load relief from the df/dt relays installed in the Delhi system was inadequate and was only 16% on 30<sup>th</sup> July 2012 and only 15% on 31<sup>st</sup> July 2012.*
- (c) *Kindly refer to page no. 204-207 of Appeal No.9 of 2016 filed by Delhi Transco Ltd (DTL) wherein the deficiencies in the scheme implemented by DTL have been accepted by the appellant before the CERC in its reply dated 21<sup>st</sup> May 2014 in petition No. 06/SM/2014. The relevant extracts are quoted below:*

*Quote*

*5.b. ....(Line no. 25, page no. 204) For df/dt operation these were not having provision of 0.1Hz/sec slope. However for other stages i.e. 0.2Hz/sec slope and 0.3Hz/sec slope these relays were quite satisfactorily operating. In order to provide load relief envisaged at 0.1Hz/sec slope and 0.2Hz/sec slope the total load relief at 0.2Hz/sec slope was envisaged 590MW against the recommended load of 530MW (250MW for stage 1 i.e. 0.1Hz/sec slope & 280MW for stage 2 i.e. 0.2Hz/sec slope). The Stage 3 i.e. 0.3Hz/sec slope load of 280 MW was also implemented as per NRPC guidelines. These settings were duly intimated to NRPC.*

*c. ....(para2, page no.205) Hon'ble Commission has issued Show Cause Notice based on PGCIL's Protection Audit Report conducted*

after grid disturbances occurred on 30<sup>th</sup>& 31<sup>st</sup> July 2012. The report categorically pointed out that setting of under frequency relays installed in Delhi System is not as per NRPC guidelines based on the report saying that in DTL system the df/dt relays have been installed only at 16 substations against total of 24 S/Stns. In this regard it is submitted that settings of all under frequency and df/dt stage need not be implemented at all the stations as the required load relief as per NRPC guidelines can be achieved by implementing the settings at specific stations and as such DTL has rightly implemented the schemes to get the desired load relief. The same has already been brought out in the submission of DTL before the Hon'ble Commission on 08.04.2013.

d. As regards to the aberration noticed on 30.07.2012 and 31.07.2012, it is submitted that the under frequency based load shedding scheme adopted in Delhi had been a Rotational Load Shedding Scheme. The feeders were divided in three groups viz X, Y and Z at each 220kV S/Stns. The feeders in these groups get command through Programmable Logic Controller (PLC). The healthiness of the PLC and the correctness of setting adopted was vital for providing effective load relief at the time of frequency excursion beyond the threshold limits.

As already submitted Delhi system has provided the load relief of approx. 1000MW on 30.07.2012 & 31.07.2012 at the time of Grid disturbances. It is worth mentioning that this load relief also included the load relief on the additional settings for Delhi Generating Stations and under frequency special protection schemes implemented as per NRPC directives. It is also to clarify that though the relays are installed at all the 24 stations and configured to achieve the desired load relief. As such, it need not be necessary that all relays shed the load at all stations and the operation is based on the logic set in this regard. It is also submitted that the operation of df/dt relays occurs first and if the frequency declines continues then only the UFR operates.

Though considerable load relief was achieved but the scheme could not provide relief at some station due to the problem in Programmable Logic Controller (PLC) and DC supply etc which had already been rectified.

f. (Page No. 206) The new State of the Art Numerical relays now procured and installed have the facility of operation of df/dt with slope of 0.1Hz/sec also.

7.....(Para2, page no. 207) Therefore, under the circumstances as stated above, it is further submitted that the aberration, if any, as alleged were not willful or intentional for the reasons stated herein above and especially in consideration of the fact that the appropriate remedial measures have already been undertaken by DTL.....

Unquote

11.9 The Appellant has submitted that *“In fact, much prior to the date of incident i.e. 12.03.2014, all the static type relays had been replaced i.e. way back in July 2013 in compliance of NRPC directions.”* The Appellant has also submitted in its reply dated 21<sup>st</sup> May 2014 in 06/SM/2014 that *“The new State of the Art Numerical relays now procured and installed have the facility of operation of df/dt with slope of 0.1Hz/sec also.”* Thus admittedly the df/dt relays with 0.1Hz/sec was not available in the DTL system at the time of Grid Disturbances of 30<sup>th</sup> and 31<sup>st</sup> July 2012.

11.10 For the compliance of regulation 5.4.2 (e) of IEGC, the feeders that are identified for providing the load relief through UFR and df/dt have to be mutually exclusive and cannot be used for any other kind of load shedding whatsoever as UFR and df/dt schemes are the last resort to save the grid.

11.11 All of these which are purely technical issues have been dealt with in detail by the CERC during the hearing of petition 221/MP/2012. The CERC vide order dated 23.12.2013 in Petition No. 221/MP/2012 had directed as quoted below:

*“29(c) UFRs and df/dt relays also be mapped on the SCADA system of each state so that they can be monitored from SLDC/NRLDC.  
29 (d) All STUs and SLDCs to map/network the UFR and df/dt on their SCADA system.”*

In this regard, the details of mapping of UFR, df/dt based feeder information in SCADA and availability of their real time data as per the minutes of the 162<sup>nd</sup> Operation Co-ordination Committee (OCC) meeting of Northern Regional Power Committee (NRPC) dated 30<sup>th</sup> Aug 2019 is placed on record. It can be seen that the status of availability of real time data of df/dt relays installed on



main feeders is only 2% even after 6 years of the order passed by learned Commission on 23.12.2013.

11.12 The allegations have been made by the Appellant with regard to the incident of tripping of CGPL Mundra at 19.21 hrs on 12.03.2014 in its rejoinder dated 14<sup>th</sup> Feb 2017 to the reply filed by NRLDC dated 18<sup>th</sup> April 2016. In this regard it is clarified that the appeal is filed by the appellant against the order dated 09<sup>th</sup> Oct 2015 which was passed by the CERC in 06/SM/2014 for non-compliance of the Grid Code provisions of 5.2(n) and 5.4.2(e) during the Grid Disturbances of 30<sup>th</sup> and 31<sup>st</sup> July 2012. The appellant is mixing up the incidents of Grid Disturbance of 30<sup>th</sup> and 31<sup>st</sup> July 2012 and the incident of tripping of CGPL Mundra on 12.03.2014.

11.13 The allegations made by the appellant regarding the CGPL Mundra tripping incident on 12.03.2014 are mentioned below:

(a) With regard to the incident on 12.03.2014, the load relief of 250 MW in case of state of Delhi is considering df/dt operation at all the locations whereas the slope of 0.1Hz /sec was actually experienced at some locations and the relays have operated successfully and provided load relief at these locations.

(b) Factually there are 13 locations where 0.1 Hz /sec slope was configured to shed load to achieve 250 MW relief in DTL system. Out of 13 locations, these relays operated at 6 locations as such 0.1Hz/sec slope condition did not occur at other locations.

Regarding the allegation, NRLDC submits that on 12.03.2014, the load relief should have been 250 MW. As per the appellant, relays at only 6 out of 13 locations operated to give a relief of 53 MW. The appellant is trying to prove that because the relays did not operate at the balance 7 locations, therefore those 7 locations did not experience the rate of fall of frequency of 0.1 Hz/sec. The appellant has reiterated the same plea again and again that because the relays did not operate therefore it did not experience a rate of fall of frequency of 0.1 Hz/sec as the rate of fall of frequency is not same throughout the Grid, without giving any proof to substantiate its own claim. The appellant has rather quoted the Minutes of 4th NPC meeting to corroborate its claim.

Quote

*NPC discussed the issue and opined that in the event of a sudden loss of generation or any grid disturbance, the rate of fall of frequency would vary from one location to another, and it would also vary from one point of time to another at a particular location depending upon the distance from the location of the fault. Therefore, there could be no uniform setting of df/dt relays in different regions. In view of this, NPC decided that settings would be determined by each RPC separately after detailed study of load and generation balance in different areas of the region and communicate the same to the committee for ratification.*

Unquote

11.14 It is clarified that the agenda before the 4<sup>th</sup> NPC meeting was whether to have uniform df/dt settings across all regions in the country in view of different settings prevailing in different regions. The NPC in its 4<sup>th</sup> Meeting only decided that the settings of the df/dt relays may not be uniform across the country and each RPC may have a different setting of these relays depending on the likely contingencies in the respective regions. There has been no decision

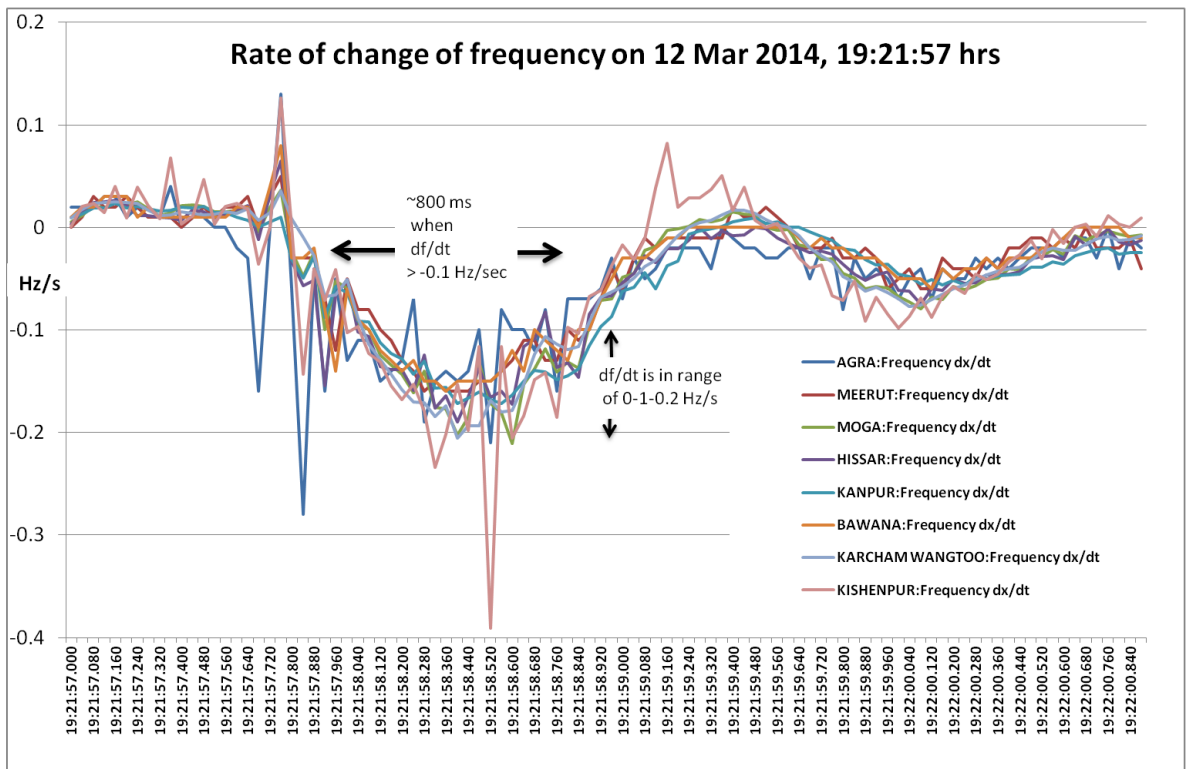
to change the settings for Northern Region. Therefore, discussions in NPC have no bearing on the present case.

11.15 It is true that the rate of change of frequency is different at different locations. This has also been affirmed by NRLDC in its submission to CERC wherein Western Region had a rate of change of frequency as high as 0.3Hz/sec whereas Northern Region had the rate of change of frequency above 0.1 Hz/sec during the tripping of CGPL Mundra at 19.21 hrs on 12.03.2014.

11.16 In its reply dated 18<sup>th</sup> April 2016 NRLDC has submitted that the rate of change of frequency recorded through Phasor Measurement Units (PMUs) installed across Northern Region has been relied on in the submission of NRLDC. The PMU data from all locations of Northern Region has shown that the rate of change of frequency was above 0.1Hz/sec for more than 800 ms. the appellant is simply setting aside the PMU data placed on record. Kindly refer to point no.21 on page no 7 of the reply dated 18<sup>th</sup> April 2016 filed by NRLDC wherein it is submitted that the PMU plot included the PMUs for eight locations in the Northern Region including Agra, Meerut, Moga, Hissar, Kanpur, Bawana, KarchamWangtoo and Kishenpur. Evidently, these locations of the PMU cover areas of Bawana (which is in Delhi) and as far as Kishenpur (in Jammu) and Karcham (in H.P.) and therefore offer a wide coverage.

11.17 In the reply dated 18<sup>th</sup> April 2016 filed by NRLDC, the PMU plot showing the rate of change of frequency in the Northern region

locations is shown. The PMU plot of the incident at 19.21 hrs on 12.03.2014 is reproduced below for ready reference:



11.18 It is pertinent to mention here that the entire Indian Grid runs at the same frequency and Delhi being electrically nearer to Western Region as compared to many locations of NR whose PMU plot shows the rate of fall of frequency as 0.1 Hz/sec, shows that the rate of change of frequency in Delhi was 0.1 Hz/sec or higher. The other states in Northern Region have also confirmed the operation of relays in their control areas, that are much far off from the location of disturbance than Delhi is. Delhi Transco Ltd, on the contrary, has not produced any evidence to justify its claim.

11.19 This submission has already been made by NRLDC on 16<sup>th</sup> July 2014 before the CERC in compliance to ROP dated 22.05.2014 in petition no. 06/SM/2014 and is also enclosed at Annexure-I of the reply filed by NRLDC dated 18<sup>th</sup> April 2016. It is worth mentioning

here that PMU is an advanced tool in power system to analyse the dynamic conditions in the grid.

11.20 The Appellant has contended that load relief of 250 MW through df/dt operation at 0.1Hz is applicable for peak load condition of about 5600 MW. As the power demand in Delhi at the time of the incident on 12.03.2014 was only 3028 MW, the corresponding relief from the designated under frequency relays translated down to 135 MW. In this regard it is submitted that the contentions regarding fixation of targets for the Load relief to be given by the appellant on the basis of peak load are raised by the appellant only after it could not provide the desired load relief during the tripping incident of CGPL Mundra on 12.03.2014. It is important to note that NRPC fixes the targets in consultation with the respective states and the appellant never raised any objections regarding fixation of target load relief not to be based on Peak Load of the State.

11.21 Also, the CERC in its order dated 19.12.2013 in Petition no. 263/MP/2012 had observed as follows with regard to consideration of load on feeders:

Quote

*We are in agreement with the petitioner that there is a need to review and estimate the actual load on the feeders and the constituents should consider average load in the feeders for computation of target relief on identified feeders. As sufficient load relief has not been achieved, the respondents are directed to identify more feeders for installation of UFR and df/dt relays and submit the details to NRPC.*

Unquote

11.22 Thus the directions regarding considering the average load on the feeders for computation of target load relief were already passed by

the learned Commission on 19.12.2013 well before the CGPL Mundra tripping incident in Western Region on 12.03.2014.

11.23 In light of the submissions made, it is respectfully prayed that this Tribunal may be pleased to dismiss the present Appeal.

**12. We have heard learned counsel(s) appearing for the Appellants, the learned counsel(s) appearing for the Respondents at considerable length of time and gone through their written submissions carefully. After thorough critical evaluation of the relevant material available on records, the following issue arises in the batch of Appeals for our consideration:-**

- Whether in the facts and circumstances of the case, the Central Commission is justified in imposing the penalty on the constituent Appellants of the Northern Region due to grid disturbances of 30.7.2012, 31.07.2012 & 12.03.2014?

**Our Analysis & Findings:-**

13. Learned counsel, Mr. Pradeep Misra, appearing for RRVPN Ltd. Submitted that its system has 81 Nos. UFRs with sequential circuit and 10 Nos. RLSS relays with setting to trip all feeders at 48.2 Hz and 18 df/dt relays are installed. The protection wing of RVPN has carried testing of all UFRs and df/dt relays installed in the system and the concerned officers have been asked to ensure healthiness of these relays at all times. He further submitted that the protection wing found only 4 Nos. relays defective. The Appellant has installed sufficient number of UFR and df/dt relays to provide adequate relief as recommended by NRPC. Further, the SLDC is regularly furnishing monthly reports of UFR and df/dt relays operation to

NRPC in compliance to clause No. 5.2 (n) of the Grid Code. On receipt of showcause notice, as directed by order dated 23.12.2013, the Appellant filed reply on 14.05.2014 to the showcause notice wherein it was stated that Stage-1 and Stage-2 UFRs have already been installed and also intimated to NRPC. Regarding Stage-3 and Stage-4 under “revised scheme for automatic load shedding through UFR”, proposal has been made and submitted to DISCOMs for seeking consent and it was duly informed that the Appellant has taken steps as per requirement of CERC (IEGC) Regulations, 2010 with amendment from time to time. There was large tripping in western region when entire CGPL station (Mundra) of 4000 MW (at that time running around 3500 MW) tripped. The effect of this tripping was different at different areas and also different load centres.

- 13.1 Learned counsel for RRVPNL vehemently submitted that in the absence of any data, the rate of fall in the frequency in the State of Rajasthan was observed more than 0.1 Hz/second, the penalty could not be imposed. The penalty was imposed merely on assumption that rate of fall in the entire northern region was assessed. However, as per the admitted position rate of fall in the frequency in Rajasthan and that too in different load centres was not placed before CERC. Moreover, the technology adopted by Respondent No. 2 for installation and calibration of the aforesaid UFR and df/dt relay was not foolproof and this was the reason that in the meeting held on 10.12.2015 they wanted to appoint a consultant to remove such difficulties. In such circumstances the penalty ought not to have been imposed on the Appellant.

- 13.2 Learned counsel for RRVPNL was quick to submit that there was no *mens rea*, hence the penalty ought not to have been imposed. Moreover, the Appellants have deposited the amount without prejudice to their rights in the present Appeals. Learned counsel reiterated that in view of aforesaid submissions the penalty imposed on RRVPNL be set aside.
- 13.3 Learned counsel, Mr. Anand K. Ganesan appearing for SLDC, Delhi outrightly submitted that the Central Commission while registering an independent proceeding did not array the SLDC, Delhi as Respondent. Further, the impugned order dated 09.10.2015 was also only communicated to the Managing Director of Delhi Transco Limited who was one of the Respondents in the SM/06/2014 proceedings and was not communicated to SLDC, on whom penalty has been imposed. In addition, none of the ROP's passed by the Central Commission in impugned proceedings was ever served on SLDC, Delhi and simply penalty cannot be imposed without complying with the principles of natural justice. Learned counsel further submitted that as per the settled position of law that it is mandatory to serve a show cause notice before imposing a penalty under Section 142 of the Electricity Act, 2003. This position has been upheld by this Tribunal in its judgment dated 19.04.2011 in Appeal No.183 of 2010.
- 13.4 Learned counsel for SLDC, Delhi pointed out that the Central Commission has alleged that the SLDC is under the control of State Transmission Utility, Delhi. It is submitted that as per the scheme of Electricity Act, the SLDC manages the function of scheduling, load dispatch in the National Capital Territory of Delhi whereas, the DTL is the transmission licensee within the National Capital Territory



of Delhi. Therefore, the contentions of Central Commission are wrong and baseless and cannot be countenanced in law. Further, for issuance of notice, SLDC and STU Delhi is considered as one entity then the Central Commission for imposition of penalty also ought to have followed the same and not considered them as separate entities.

13.5 Learned counsel for SLDC, Delhi further brought out that as per CERC, the SLDC has not complied with the orders of the Central Commission, this is wrong and denied. In fact, the load shedding scheme adopted during incident in Delhi has been a rotational load scheme and the feeder gets command through programmable logic controller (PLC). The healthiness of the PLC and the correctness of setting adopted were vital for providing effective load relief at the time of frequency excursion beyond the threshold limits. Learned counsel submitted that the relays are installed at 24 stations and configured to achieve the desired load relief. As such, it need not be necessary that all relays shed the load at all stations and the operation is based on the logic set in this regard. Now DTL has already installed numerical UFRs as per the revised scheme approved by NRPC. The said scheme has been integrated into main SCADA and NRLDC can also monitor the system.

13.6 Learned counsel, Mr. Altaf Mansor appearing for Uttar Pradesh Power Transmission Corporation Ltd. (UPPTCL) submitted that a bare perusal of Regulation 5.2 (n) of CERC (IEGC Regulations, 2010) would establish that the said provisions is a general provision giving responsibility to various constituents for ensuring measures for stability of the grid. The aforesaid provision not only places responsibility on the SLDC or the STU but also on the distribution

licensees as well as RLDC itself for ensuring grid stability. Further, the aforesaid provision clearly speaks about the plan to be finalized by the RPC which is also to ensure its effective application. Therefore, the UFR and df/dt schemes have to be formulated by the RPC and has to ensure the effective implementation of the scheme. Therefore, there is no specific requirement under Regulation 5.2(n) but is a general provision.

13.7 Learned counsel for the UPPTCL was quick to point out that the aforesaid reliefs of the petition nowhere shows or reflects of any proceedings having been initiated under Section 142 of the Electricity Act. He contended that in fact a bare perusal of the aforesaid reliefs would itself establish that the petition was filed to review the defense mechanism under the Grid Code for better implementation of the Regulation 5.2 (n) of the Grid Code. Therefore, no notice under Section 142 or any proceedings under Section 142 were ever initiated by the CERC. Further, the petition itself analyses the fact that the Code having come into force in 2010 and amended in 2012, therefore the 'Plan' has to be put into place. There can be no violation of Clause 5.2(n) of the Grid Code without a Plan in existence. The Respondent has wrongly alleged violation of Clause 5.2(n) of the Grid Code.

13.8 Learned counsel for the UPPTCL submitted that in pursuance to the request of the NRPC, Powergrid has collected field data of 175 stations where UFRs and Df/Dt relays have been installed in various States and has submitted its report to the NRPC from which it has transpired that only 19% of load relief was obtained on 30 July 2012 and 18% on 31<sup>st</sup> July 2012. Learned counsel vehemently submitted that the existing schemes of automatic load shedding through UFRs

and df/dt relays was devised based on the load pattern that existed in 2008-09. Since then, the demand has grown manifold and the interconnection size also has increased substantially. In view of the above and considering the rapid capacity addition in the power system, there is a need for immediate review of the existing scheme. Thereafter, the review should be carried out on periodic intervals so as to ensure that the system has an adequate safety net in place in the present as well as the future system. Further, in order to facilitate setting of the relays, monitoring of the performance of the relays, checking of healthiness of the relays, log keeping etc., there is a need to deploy state of the art technology in the defense mechanism through the under frequency and df/dt relays.

- 13.9 Based on the audit carried out by the Powergrid after the Grid disturbances, it was found that out of df/dt and under frequency relays at 175 sub-stations of various constituents of Northern Region, the UFRs and df/dt relays operated at 40 numbers of stations which were set as per the NRPC recommendations. Relief during the grid disturbances on 30th and 31st July 2012 came from only 23% of the total number of stations in the region. Against the total targeted load relief of 6020 MW through df/dt relays, 14% was reported on 30.7.2012 and the same was only 9 % on 31.7.2012. Learned counsel contended that it is intriguing that the constituents which provided relief now could not provide any relief during the disturbance of 12.03.2014, after the systems were further strengthened and upgraded in pursuance to the various directions of CERC. Therefore, CERC has clearly noticed in the aforesaid operations that the scheme of automatic load shedding was based on the load operation of 2008-2009 and therefore, there was a need

for review of the existing scheme. Accordingly, Powergrid has suggested various remedial measures in its report. Learned counsel further contended that it has also been noted by the CERC in para 3 of the Order that all constituents were to plan for 20% more than the agreed quantum as per the meeting and deliberations held on 03.09.2012, 14.09.2012 and 19.09.2012.

13.10 Learned counsel for the UPPTCL alleged that CERC has only in a mechanical manner held that there has been a violation of Regulation 5.2 (n) of the Grid Code without evaluating the fact that the Regulation 5.2 (n) is a general provision and its implementation is to be carried out in respect to the plan made by the RPC. Further, CERC in its order dated 23.12.2013 has also recorded the submissions of the appellant from which it can be clearly mentioned that the CERC was also conscious of the fact that the proceedings being carried out was to ensure future stability of the grid as the plan in operation was with respect to 2008-09, after which there has been numerous changes. Learned counsel for the UPPTCL further submitted that the stand of the respondent is that the penalty vide order dated 09.10.2015 has been imposed with respect to the events of grid disturbance having taken place on 30.07.2012 and 31.07.2012. However proceedings subsequent to the event of 30.07.2012 and 31.07.2012 nowhere establishes that any proceedings for imposition of penalty under Section 142 were being carried out. In fact, the relevant portion of which as quoted in the impugned order clearly establishes steps to further strengthen the grid by reviewing its functions by various constituents. However, the CERC only in a mechanical manner has passed the impugned order. It is crystal clear from the order of the CERC that it has

abruptly come to a finding that there was a violation of Regulation 5.2(n) of the Grid Code by different constituents. Therefore, a bare perusal of the aforesaid order would reveal that the CERC in its order has not only issued notices under Section 142 of the Electricity Act 2003 but has also sought compliance report from NRLDC with respect to the provisions of installation of additional UFRs and Df/Dt relays. Therefore, issuance of notice under Section 142 was mechanically done without following any proceeding as required under the provisions of Section 142. Moreover, reviewing of the Grid stability by further enhancement cannot constitute willful or deliberate violation of the regulation on its part. Therefore, the very initiation of proceeding under Section 142 was without any authority of law, and an abuse of the process of law.

13.11 Learned counsel for the UPPTCL submitted that with respect to disturbance having been taken place on 12.03.2014, CERC had given a presumptive finding of the relays not having operated without scientifically analyzing the fact that, effect of the disturbance for a mere 500 to 600 milliseconds, that even of 0.1 Hz. Learned counsel pointed out that NRLDC in the affidavit dated 14.07.2014 had admitted the fact that the UPPTCL have confirmed having 10% spare relays. A comparative view of the charts of the disturbance/load relief as provided during the disturbance of 30.07.2012-31.07.2012 and that of 12.03.2014 would itself establish that the CERC has misapplied itself to the events of 12.03.2014 since it is not possible that even after enhancing the grid stability, the relief were not provided when the same very constituents even before the enhancement of stability measures had provided at least 23% load relief. This clearly establishes that immediately after the

load relief in the State of U.P., the grid stabilized and therefore, there was no cascading effect resulting in the relays not operating.

13.12 Learned counsel submitted that the provisions of Section 142 of the Electricity Act, 2003 are punitive in nature which clearly provides that firstly, the Commission has to come to clear and specific finding of non-compliance, meaning thereby that the persons concerned has deliberately or intentionally contravened any of the provisions, Act or Rules or Regulations or any directions issued by the Commission. Secondly, the appropriate commission only after having recorded the findings will have to give opportunity of hearing. Thirdly, aforesaid provision being punitive in nature, the learned Commission will be required to confirm the relevant issues/ specific nature of charges by means of which it can be established that the persons concerned or the constituents concerned has violated the provisions of the regulations or the directions as the case may be. Learned counsel placed reliance on the judgments of this Tribunal:-

- I. *Karnataka Rare Earth & another vs. Senior Geologist, Deptt. of Mines & Geology & another* (2004) 2 SCC 783
- II. *BSES Rajdhani Power Limited v. The Secretary Delhi Electricity Regulatory Commission and others* 2017 SCC OnLine APTEL 40
- III. *B.M. Verma v. Uttarakhand Electricity Regulatory Commission* 2007 SCC OnLine APTEL 95 : [2007] APTEL 95
- IV. *BSES Rajdahani Power Limited v. Delhi Electricity Regulatory Commission* 2011 SCC OnLine APTEL 56 : [2011] APTEL 56

13.13 Learned counsel, Mr. Anand K. Ganesan appearing for Delhi Transco Limited (DTL) submitted that the Central Commission has found that on 30.07.2012 & 31.07.2012, the entire northern region grid had collapsed and the df/dt relays commissioned by the Appellant did not yield the adequate load relief. The said findings of the Central Commission are contrary to the data which had been

placed by the DTL. On both days i.e. 30.07.2012 & 31.07.2012, the actions of Under Frequency Special Protection Scheme (UFSPS) and df/dt relays gave a load relief of 1125 MW on 30.07.2012 and 953.4 MW on 31.07.2012. In fact, the NCT of Delhi is required to give load relief of 1210 MW and actual relief given was only marginally less. However, the Central Commission has simply relied on the data given by NRLDC which was not supported by any evidence to penalise the DTL. Learned counsel was quick to submit that unlike the other constituents, the DTL's action had yielded the required load relief on both days of grid disturbances. Learned counsel for DTL further brought out that the basis of the imposition of penalty by the Central Commission, namely that the df / dt relays are not functioning since the adequate relief of 250 MW was not given by Delhi during the incident of grid disturbance in the Western Region on 12.03.2014 is completely incorrect. It is on account of the fact that the load relief of 250MW in case of DTL is applicable for a peak load condition of about 5600MW for df/dt operation at 0.1Hz/sec. Since the power demand of Delhi at the time of incident on 12.03.2014 was 3028MW and corresponding relief from designated UFRs and translated down to 135MW. The actual load relief of 53 MW was given by Delhi through the State of the Art numerical under frequency relays which are installed at 33 Nos. of 220kV sub-stations. These numerical under frequency relays have been in operation since 2013 i.e. from the date of the commissioning and the regular testing/mock testing of these relays have also been carried out to ensure its healthiness. These records have been regularly submitted to the NRPC. In fact, much prior to the date of incident i.e, 12.03.2014, all the static type of relays had been replaced i.e. way back in July 2013 in compliance of NRPC

Directions. Learned counsel pointed out that the entire Indian Grid is now synchronized and the Generation loss occurred was in the Western Region so it is not necessary that same slope of 0.1 Hz./Sec may have been observed at all the locations. The entire NR regional transmission network was not subjected to uniform 0.1 df/dt and so is the case with the DTL's network. This is also corroborated from the real time data of NRLDC. Therefore, only those relays tripped where the slope was 0.1 Hz/sec.

13.14 Learned counsel for DTL further contended that the Enquiry also proceeded for the events of 30.07.2012 and 31.07.2012 and the Central Commission passed the Order dated 23.12.2012 holding that the defence mechanism was not in place as per Regulations 5.2 (n) and 5.4.2(e) of the IEGC Regulations, 2010. The notice under Section 142 was also initiated in Petition 06/SM/2014 with reference to grid incident of 30.07.2012 & 31.07.2012. However, in the Impugned Order dated 09.10.2015, the Central Commission has imposed penalty on the Appellant based on the report on the incident on 12.03.2014. Learned counsel reiterated that in view of the above, having framed one charge under Section 142, it doesn't stand to any reason that the Central Commission had thereafter imposed the penalty for quite an another. This issue has been specifically decided by this Tribunal in the Judgement dated 11.01.2010 passed in Appeal No.94 of 2009 - *Karnataka Power Transmission Corporation Ltd. v CERC & Anr.* Learned counsel accordingly contended that the Central Commission cannot mechanically hold that since 250 MW load relief was not given on 12.03.2014, the DTL has not complied with the IEGC Regulations, 2010. Being a technical body, the Central Commission should at the very least understand that the entire Delhi



Grid was not subjected to uniform fall in frequency of 0.1hz per second and as in where these frequency falls were detected, the df/dt relays operated successfully and provided the adequate load relief. In fact, the National Power Committee (NPC) in its 4<sup>th</sup> Meetings held on 10.12.2015 has also accepted the position of the DTL that the rate of frequency does not fall at the same slope throughout the grid. Therefore, the imposition of penalty under Section 142 cannot be on the basis of un-subtending allegations and there has to be an element of *mens rea* to impose a penalty under Section 142. To substantiate his arguments, learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in the cases of :-

- (i) M/s Hindustan Steel Ltd. v. State of Orissa, 1969 (2) SCC 627
- (ii) T. Ashok Pai v Comm. of Income Tax, Bangalore, (2007) 7 SCC 162
- (iii) Bharjatiya Steel Industries v. Comm., Sales Tax, (2008) 11SCC 617

Learned counsel reiterated that in view of the above submissions, the impugned order needs to be set aside on three ground namely, one charge and imposition of penalty for another incident, lack of *mens rea* and ignoring the real time data provided by the Appellant before the Central Commission.

13.15 **Per contra**, learned counsel Mr. K.S. Dhingra appearing for the Respondent Commission submitted that as the penalty has been imposed for non-compliance with the provisions of the Grid Code, these provisions need be noticed first. By virtue of power conferred under clause (h) of subsection (1) of Section 79 of the Electricity Act read with Section 178 thereof, the Central Commission has specified the Grid Code. Regulation 5.2 (n) of the Grid Code is relevant for the present case which is extracted below:

“5.2(n) *All SEBS, distribution licensees / STUs shall provide automatic under-frequency and df/dt relays for load shedding in their respective systems, to arrest frequency decline that could result in a collapse/disintegration of the grid, as per the plan separately finalized by the concerned RPC and shall ensure its effective application to prevent cascade tripping of generating units in case of any contingency. All, SEBs, distribution licensees, CTU STUs and SLDCs shall ensure that the above under-frequency and df/dt load shedding/islanding schemes are always functional. RLDC shall inform RPC Secretariat about instances when the desired load relief is not obtained through these relays in real time operation. The provisions regarding under frequency and df/dt relays of relevant CEA Regulations shall be complied with. SLDC shall furnish monthly report of UFR and df/dt relay operation in their respective system to the respective RPC.*

*RPC Secretariat shall carry out periodic inspection of the under frequency relays and maintain proper records of the inspection. RPC shall decide and intimate the action required by SEB, distribution licensee and STUs to get required load relief from Under Frequency and Df/Dt relays. All SEB, distribution licensee and STUs shall abide by these decisions. RLDC shall keep a comparative record of expected load relief and actual load relief obtained in Real time system operation. A monthly report on expected load relief vis-a-vis actual load relief shall be sent to the RPC and the CERC.”*

13.16 Learned counsel further submitted that the State-wise expected load relief from UFRs and df/dt relays at different frequencies were decided at a meeting of the OCC of NRPC held in February 2008. Subsequently based on decision of the NRPC, the constituents of Northern Region in meeting of the Operations Coordination Committee of NRPC held on 19.7.2013, agreed to the revised target of load relief for UFRs. NRLDC had filed Petition No 125/MP/2012 wherein the Appellants were impleaded as Respondent No 3 and 13, seeking certain directions to the Respondents therein. The petition was disposed of vide the Central Commission's order dated 10.7.2012, *inter alia* directing the Respondents therein to keep UFRs in service at all times and the Officers In-charge of STUs and SLDCs were made personally liable for compliance with the

directions. The Northern Regional Grid failed on 30.7.2012 at about 2:30 hours and Northern, Eastern, North-Eastern and Western (NEW) grid failed at about 13:00 hours on 31.7.2012 affecting total load of 36,000 MW and 48,000 MW respectively. As a result of grid failures, the entire Northern Region was engulfed in darkness and these failures adversely affected all sectors of economy like transport, communication, industrial production etc.

13.17 Learned counsel further submitted that an Enquiry Committee was set up by Ministry of Power under the Chairmanship of Chairman, CEA to investigate the reasons for grid failures. The Committee, in its report concluded that the relief obtained through UFRs and df/dt relay load shedding scheme in Northern Region was inadequate. The Enquiry Committee recommended the Central Commission to explore ways and means for implementation of various regulations issued under the Electricity Act, 2003. The relevant extracts from the report of the Enquiry Committee is reproduced as under:-

***“9.3 Ensuring proper functioning of defence mechanism***

*All STUs should immediately enable under frequency and df/dt based load shedding schemes. **Central Commission should explore ways and means for implementation of various regulations issued under the Electricity Act, 2003. Any violation of these regulations can prove to be costly as has been the case this time.** RPCs need to take up the matter for compliance. In case non-compliance persists, POSOCO should approach Central Commission.”*

13.18 Learned counsel further submitted that after the grid disturbances, NRPC directed Power Grid, the Central Transmission Utility to assist it in collection of information regarding UFRs and df/dt relays installed by the Northern Region constituents in their respective control areas. Power Grid conducted a survey with site visits for collection of field data of 175 substations in the States in Northern

Region, identified for installation of UFRs and df/dt relays in accordance with the decisions of NRPC. Power Grid *inter alia* pointed out that at a number of substations in Northern Region, UFRs and df/dt relays were either not installed or the settings were not as per NRPC decision. Power Grid reported that in a number of cases, UFRs and df/dt relays are not operative. Power Grid in its report pointed out that total load shedding actually obtained from UFRs was only 19% of the expected quantum on 30.7.2012 and 18% on 31.7.2012. Likewise, load shedding through df/dt relays was 14% and 9% of the expected quantum on 30.7.2012 and 31.7.2012 respectively. Learned counsel for the Commission indicated that the Central Commission issued show cause notice to the appellants, among others, vide order dated 23.12.2013 as the Central Commission was satisfied that the entities concerned had not complied with Regulation 5.2 (n) of the Grid Code. Since there was no response to the show cause notice dated 23.12.2013, another notice dated 25.4.2014 was issued in Petition No 6/SM/2014. The proceedings started vide show cause notice dated 25.4.2014 in Petition No 6/SM/2014 resulted in imposition of penalty on the Appellants, among others, vide the impugned order. Regarding installation of sufficient number of UFRs and df/dt relays to provide additional relays, as decided by NRPC, the Appellants filed affidavit dated 17.12.2012, 14.02.2013 and 23.12.2013. However, contrary to the claims of the Appellants, NRLDC in its rejoinder dated 4.1.2013 to the Appellant's reply dated 17.12.2012 disputed the correctness of the details of the relays installed in Rajasthan system furnished by the appellants in the reply and reiterated that adequate load relief was not available in Rajasthan system on 30.7.2012 and 31.7.2012. It was pointed out by NRLDC that the telemetry of the

feeders used in df/dt or UFR schemes was also unavailable with Rajasthan SLDC (except for 132 kV Bidasar-Sujangarh). After thorough consideration of the submissions of the appellants, NRLDC and NRPC, the Central Commission drew the following conclusion in the order dated 23.12.2013:

“24. We have considered the submission of the petitioner, respondents and NRPC taking into consideration the survey report conducted by POWERGRID after the grid disturbances in July, 2012. We are convinced that the constituents of the Northern Region have not provided adequate load relief. Consequently, we hold that all the constituents of the NR namely Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, UT of Chandigarh and J&K have failed to comply with the Regulation 5.2 (n) of the Grid Code.”

13.19 Learned counsel emphasised that the Central Commission in this manner charged the Appellants and other concerned entities in Northern Region with non-compliance with Regulation 5.2 (n) of the Grid Code. In that view of the matter, the Central Commission in the said order dated 23.12.2013 is directed to issue notice to the Heads of SLDCs and MDs/CMDs of the STUs to seek their explanation as to why action under Section 142 of the Electricity Act be not initiated against them for non-compliance of Regulation 5.2 (n) of the Grid Code. The direction of the Central Commission in this regard is extracted below:-

“29. We are constrained to remark that we are thoroughly dissatisfied with the defense mechanism in terms of UFR and df/dt. Hard reality which stares us on the face is that these have not been provided and maintained as per Regulation 5.2 (n) and 5.4.2 (e) of the Grid Code by NR constituents. Accordingly, we hereby direct as follows:

- (a) *Issue notices to the heads of SLDCs and MD/CMD of the STU of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Uttar Pradesh, Jammu and Kashmir and head of Electricity Department, UT of Chandigarh and to explain why action should not be initiated under Section 142 of the Electricity Act, 2003 for non-compliance of the Grid Code.”*

Learned counsel further submitted that in continuation of the notice issued under order dated 23.12.2013, to which there was no response from the appellants, another show cause notice vide order dated 25.4.2014 was issued to all concerned Heads of SLDCs and MDs/CMDs of STUs, based on the findings in the order dated 23.12.2013.

13.20 Learned counsel for the Central Commission vehemently submitted that at this stage itself, it may be pointed out that the Appellants even in the Memo of Appeals have failed to furnish the necessary details in relation to the operation of UFRs and df/dt relays on the fateful days or contradict the findings of the Enquiry Committee and Power Grid or point out any error in the views of NRLDC and NRPC incorporated in the order dated 23.12.2013. Accordingly, on consideration of the material on record, the Central Commission in the impugned order concluded that the charge of non-compliance of the provisions of Grid Code in relation to the show cause notices was established. The conclusion arrived at by the Central Commission is recorded as under:

“19..... *As per the above provisions of the Grid Code, STUs and SLDCs are required to ensure that the above under-frequency and df/dt load shedding/islanding schemes are always functional. We are pained to remark that mechanism in terms of UFR and df/dt have not been provided and maintained by the constituents of Northern Region as per the provisions of the Grid Code.*”

13.21 Learned counsel for the Commission further submitted that the penalty was imposed primarily because of inadequate load relief achieved and status of operation of UFRs and df/dt relays during grid disturbances on 30.7.2012 and 31.7.2012 for which there was

no explanation from the appellants and conclusion in this regard has been recorded in Para 19, extracted above and not for reason of the inadequate relief achieved on 12.3.2014, the reference to the event of 12.03.2014 was just incidental and not substantive to show that till that date the settings were not provided up to the desired level and supplemented the finding on the charge of non-compliance of the provisions of the grid code as witnessed during the grid disturbances on 30.07.2012 & 31.07.2012. Learned counsel further pointed out that despite several directions, the entities did not take the adequate steps to comply with the directions of the Central Commission and it became evident from the incident of 12.3.2014. Therefore, in the interest of security and safety of the grid and overall economy, it became necessary to invoke Section 142 of the Electricity Act. Though in the Memo of Appeals, the Appellants have alleged that the rate of change of frequency can be different at different substations and that substations would have experienced less than 0.1 Hz/sec slope, they have not furnished any data or the details of substations which experienced less than 0.1 Hz/sec slope on 12.3.2014 to establish its claim that rate of fall of frequency in their control area was beyond the capability of df/dt relays.

13.22 Learned counsel further submitted that it is an established principle of law that *mens rea* is the necessary ingredient of a criminal offence it is equally well established that the statute can exclude applicability of *mens rea* either expressly or by necessary implication. The plain language of Section 142 excludes the applicability of the principle of *mens rea* to the non-compliances mentioned therein. It is, thus clear that where the Parliament intended to introduce *mens rea* as the necessary element of the offences defined in Sections 135 to 141,

it has used appropriate words to signify that intention. The nature of penalty provided under Section 142 is akin to penalty imposed consequent to departmental action against the employees for contravention of the code of conduct and contravention of traffic rules, which per se do not require proof of *mens rea*.

13.23 Further, Section 142 has been enacted to ensure compliance of the provisions of the Electricity Act, Rules, Regulations or directions to achieve the objects of the Act which is the civil obligation and is not by way of punishment for a crime. Learned counsel placed reliance on various judgments of the Apex Court which have held that *mens rea* is not an essential ingredient for punishment for breach of civil obligations, like those specified in Section 142. After referring to a series of judgments, the Apex Court in *Chairman, SEBI v. Shriram Mutual Fund (AIR 2006 SC 2287)* while considering the scope of Section 15D and 15E of the SEBI Act, which are in *pari materia* with the provision of Section 142 and 143 of the Electricity Act, has held that the requirement of *mens rea* has not been laid down in those provisions. The decision in above case was approved in *Union of India & Ors. Vs. Dharamendra Textile Processors and others [AIR 2008 SC (Supp) 668]* and recently followed in *SEBI Vs Pan Asia Advisors Ltd and another (AIR 2015 SC 2782)*. In view of these judgments, learned counsel for the Central Commission concluded that it was not necessary to separately establish *mens rea* on the part of the appellant for not acting in accordance with the statutory provisions of the Grid Code. To substantiate his contentions, learned counsel placed reliance on some other judgments of this Tribunal as well as the apex Court to contend that the proof of mens



rea is not of any relevance in the present case since the implication of the penalty is on the body corporates and not on any individual.

13.24 Learned counsel for NRLDC submitted that based on the audit report of Powergrid, out of the 175 sub-stations of various constituents of NR, the UFR and df/dt relays operated at only 40 number of stations which were set as per NRPC recommendations. The relief during the Grid Disturbances (30<sup>th</sup> and 31<sup>st</sup> July 2012) came only from 23% of the total no. of Stations in the Region. Against the total targeted load relief of 6020 MW through df/dt relays, 14% was reported on 30.07.2012 and only 9% on 31.07.2012. In view of the directions in 221/MP/2012, suo moto notices dated 25.04.2014 were issued by CERC under section 142 of the Electricity Act to the NR constituents in 06/SM/2014. Learned counsel clarified that the suo-moto notices dated 25.04.2014 issued in 06/SM/2014 were issued specifically in respect of the incidents of Grid Disturbance that occurred on 30<sup>th</sup> and 31<sup>st</sup> July 2012. It is further brought out by NRLDC that for compliance of regulation 5.4.2 (e) of IEGC, the feeders that are identified for providing the load relief through UFR and df/dt have to be mutually exclusive and cannot be used for any other kind of load shedding whatsoever as UFR and df/dt schemes are the last resort to save the grid. All of these issues which are purely technical issues have been dealt with in detail by the CERC during the hearing of petition 221/MP/2012 and vide order dated 23.12.2013 CERC issued categorical directions in this regard. Learned counsel for NRLDC also pointed out that the status of availability of real time data of df/dt relays installed on main feeders in Delhi is

only 2% even after 6 years of the order passed by learned Commission on 23.12.2013.

13.25 The Representative of NRLDC clarified that the Appeals are filed by the Appellants against the order dated 09<sup>th</sup> Oct 2015 which was passed by the CERC in 06/SM/2014 for non-compliance of the Grid Code provisions of 5.2(n) and 5.4.2(e) during the Grid Disturbances of 30<sup>th</sup> and 31<sup>st</sup> July 2012. The Appellant is mixing up the incidents of Grid Disturbance of 30<sup>th</sup> and 31<sup>st</sup> July 2012 and the incident of tripping of CGPL Mundra on 12.03.2014. Regarding various allegations made by the Appellants regarding CGPL, Mundra tripping incident of 12.03.2014, NRLDC submitted that on 12.03.2014, the load relief should have been 250 MW from Delhi. However, as per the Appellant/DTL relays out of only 13 locations at only 6 out of 13 locations operated to give a relief of 53 MW. In fact, the DTL is trying to prove that because the relays did not operate at the balance 7 locations, therefore those 7 locations did not experience the rate of fall of frequency of 0.1Hz/sec. The Appellant/DTL has erroneously relied upon the agenda before the 4<sup>th</sup> NPC meeting which was whether to have uniform df/dt settings across all regions in the country in view of different settings prevailing in different regions. In fact, there has been no decision to change the settings for Northern Region and, therefore, discussions in NPC have no bearing on the present case.

13.26 Regarding contentions of the Appellant/DTL on fixation of targets for the Load relief to be given by the Appellant on the basis of peak load are raised by the appellant only after it could not provide the desired

load relief during the tripping incident of CGPL Mundra on 12.03.2014. It is important to note that NRPC fixes the targets in consultation with the respective states and the Appellant never raised any objections regarding fixation of target load relief not to be based on Peak Load of the State. Learned counsel for NRLDC reiterated that in view of the above submissions, the tribunal may be pleased to dismiss the present appeals.

**Our Findings:-**

13.27 We have heard the arguments advanced by learned counsel for the Appellants and the learned counsel for the Respondents in detail over several hearings and also carefully gone through written submissions as well as other relevant materials placed before us. The core issue before us is that whether after grid disturbances in Northern Region and Western Region, actions taken by NR constituents were in compliance with the directions issued by the Central Commission or otherwise in violation of the Grid code notified by the Central Commission. The Appellants have submitted in unison that the adequate number of UFRs & df/dt relays to provide adequate relief, as recommended by NRPC have already been installed by them and regular reports are being submitted to the concerned. It was only on 25.04.2014 that the Central Commission issued notice to the heads of SLDC & MD/CMDs of STUs of NR constituents to explain as to why actions should not be initiated under Section 142 of the Electricity Act, 2003 for non-compliance of grid code. The Appellants herein vide their affidavits submitted the compliance of the directions issued by Central Commission on 15.01.2013. It is also contended by the learned counsel for the Appellants that besides grid disturbances on 30.07.2012 &

31.07.2012, there was a large tripping in Western Region on 12.03.2014 when entire CGPL Plant (Mundra) of 4000 MW tripped. The effect of this tripping was different at different areas and also at different load centres. The Appellants also contend that as relays were calibrated that if the frequency will be 49.9 Hz and rate would be 0.1 Hz/second, then the relay will operate automatically. However, since the effect of tripping was only for 800 millisecond i.e. 0.8 second hence the relays were not operated because of calibration. The Central Commission vide its order dated 09.10.2015 has erroneously imposed a penalty of Rs.1 lakh on each of the constituents of Northern Region and it is the main grievance of the Appellants herein.

13.28 Learned counsel for the Appellants contended that the penalty under Section 142 of the Electricity Act, 2003 pre-supposes intentional disobedience of the orders. If such intentional disobedience is not present penalty should not have been imposed. Moreover, the relays could not be operated because of calibration which was done as per the directions of Respondent No. 2. As such, there was no ill intention on behalf of Appellants for not operating the relays. Hence, penalty ought not to have been imposed. The Appellants reiterate that there was no *mens rea*, hence there should not have been any question of penalty. The Appellants have deposited the amount without prejudice to their rights in the present Appeals.

13.29 Learned counsel for the Appellants further submitted that a bare perusal of the Regulation 5.2(n) of CERC) (IEGC) Regulations, 2010 would reveal that the said provisions are general in nature giving responsibility to various constituents for ensuring measures

for stability of the grid. Further, the UFR & df/dt schemes have to be formulated by the RPC and who has to ensure the effective implementation of the scheme. Learned counsel also pointed out that there is no specific requirement under Regulation 5.2(n) but is a general provision under which a plan has to be finalized by the RPC which has to be implemented by all the constituents. The Appellants also contend that the reliefs sought in the petition nowhere reflect of any proceedings having been initiated under Section 142 of the Act. In fact, the petition was filed to review the defence mechanism under grid code for better implementation of Regulation 5.2 (n) of the grid code. Therefore, no notice under Section 142 or any proceedings under Section 142 wherever initiated by the Central Commission. Learned counsel for the Appellants further submitted that the existing schemes of automatic load shedding through UFRs and df/dt relays were devised based on the load pattern that existed in 2008-09. Since then, the demand has grown manifold and the interconnection size also has increased substantially. Therefore, in order to facilitate setting of the relays, monitoring of the performance of the relays, checking of healthiness of the relays, log keeping etc., there is a need to deploy state of the art technology in the defense mechanism through the under frequency and df/dt relays. Other contentions of the Appellants is that it is intriguing that the constituents which provided relief now could not provide any relief during the disturbance of 12.03.2014, after the systems were further strengthened and upgraded in pursuance to the various directions of CERC. They bring out that the Central Commission has clearly noticed in the aforesaid operations that the scheme of automatic load shedding was based on the load operation of 2008-2009 and therefore, there was a need

for review of the existing scheme. Accordingly, power grid has suggested remedial measures in its report.

13.30 The findings of the Central Commission in its order dated 23.12.2013 in respect of the Appellants also clearly establish that the CERC has only in a mechanical manner held that there has been a violation of Regulation 5.2 (n) of the Grid Code. Besides, the Order dated 23.12.2013 has also recorded the submissions of the Appellants from which it can be clearly mentioned that the CERC was also conscious of the fact that the proceedings being carried out was to ensure future stability of the grid as the plan in operation was with respect to 2008-09, after which there has been numerous changes. Learned counsel for the Appellants also pointed out that that the penalty vide order dated 09.10.2015 has been imposed with respect to the events of grid disturbance having taken place on 30.07.2012 and 31.07.2012. However, proceedings subsequent to the event of 30.07.2012 and 31.07.2012 nowhere establishes that any proceedings for imposition of penalty under Section 142 were being carried out.

13.31 Learned counsel for the Appellants vehemently submitted that the Central Commission only in a mechanical manner has passed the impugned order by abruptly come to a finding that there was a violation of Regulation 5.2(n) of the Grid Code by different constituents. Further, by the impugned order, the Appellants have been held guilty of having violated the provisions of Regulation 5.2 (n) of the CERC Regulation 2010 with respect to grid disturbances having taken place on 12.03.2014. In fact, the CERC has given a presumptive finding of the relays not having operated without scientifically analyzing the fact that, effect of the disturbance for a

mere 500 to 600 milliseconds, that even a slope of 0.1 Hz/second. Learned counsel for the Appellants highlighted that the provisions of Section 142 of the Electricity Act clearly prescribes the punishment for non-compliance of directions by the appropriate commission. Therefore, the provisions of Section 142 of the Electricity Act 2003 are punitive in nature which clearly provides that *firstly*, the Commission has to come to clear and specific finding of non-compliance, meaning thereby that the persons concerned has deliberately or intentionally contravened any of the provisions, Act or Rules or Regulations or any directions issued by the commission. *Secondly*, the appropriate commission only after having recorded the findings will have to give opportunity of hearing. *Thirdly*, aforesaid provision being punitive in nature, the Commission will be required to confirm the relevant issues/ specific nature of charges by means of which it can be established that the persons concerned or the constituents concerned has violated the provisions of the regulations or the directions as the case may be. To substantiate their contentions, learned counsel for the Appellants placed reliance on various judgments :-

- I. *Karnataka Rare Earth & another vs. Senior Geologist, Deptt. of Mines & Geology & another* (2004) 2 SCC 783
- II. *BSES Rajdhani Power Limited v. The Secretary Delhi Electricity Regulatory Commission and others* 2017 SCC OnLine APTEL 40
- III. *B.M. Verma v. Uttarakhand Electricity Regulatory Commission* 2007 SCC OnLine APTEL 95 : [2007] APTEL 95
- IV. *BSES Rajdahani Power Limited v. Delhi Electricity Regulatory Commission* 2011 SCC OnLine APTEL 56 : [2011] APTEL 56

13.32 Learned counsel for SLDC and DTL, Delhi submitted that though SLDC was not informed of any proceedings undertaken by the Central Commission, however, penalty has been imposed on SLDC,

Delhi along with DTL (STU). He submitted that whatever directions have been given by the concerned authorities, the same have been complied with in its entirety by the SLDC/STU. Further, having framed one charge under Section 142, it doesn't stand to any reason that the Central Commission had thereafter imposed the penalty for quite an another. This issue has been specifically decided by this Tribunal in the Judgement dated 11.01.2010 passed in Appeal No.94 of 2009 - *Karnataka Power Transmission Corporation Ltd. v CERC & Anr.* Learned counsel further submitted that the National Power Committee(NPC) in its 4<sup>th</sup>Meetings held on 10.12.2015 has also accepted the position of the Appellant that the rate of frequency does not fall at the same slope throughout the grid. Learned counsel for SLDC/DTL reiterated that the impugned order needs to be set aside on all three grounds, namely, one charge and imposition of penalty for another incident, lack of mens rea and ignoring the real time data provided by the Appellant before the Central Commission on the actual load relief given by it.

13.33 Learned counsel for the Central Commission has submitted that the penalty has been imposed for non-compliance with the provisions of the Grid Code which have been notified by the Central Commission under Section 178 of the Electricity Act, 2003. Learned counsel for the Commission while giving the background of the grid disturbances of setting up Enquiry of Committee under the Chairmanship of Chairman, CEA to investigate the reasons for grid failures etc., the Central Commission issued show cause notice to the Appellants vide order dated 23.12.2013 as the Central Commission was satisfied that the entities concerned had not complied with Regulation 5.2 (n) of the Grid Code. Since there was



no response to the show cause notice dated 23.12.2013, another notice dated 25.4.2014 was issued in Petition No 6/SM/2014 which resulted in imposition of penalty on the appellants, among others, vide the impugned order. Learned counsel for the Commission pointed out that the data and details submitted by the Appellants vide their affidavits dated 17.12.2012, 14.2.2013 and 9.4.2013 were not found correct by NRLDC as is evident from rejoinder dated 4.1.2013 to the replies submitted by the Respondents. After ascertaining factual matrix of the replies and rejoinders, the Central Commission charged the Appellants and other concerned entities with Northern Region with non-compliance of the Regulation 142 of the Grid Code.

13.34 Learned counsel for the Respondent Commission further submitted that the Appellants did not traverse the findings recorded in the survey report of Power Grid and also did not context the correctness of the findings of the Enquiry Committee. The Appellants also did not dispute the correctness of the discrepancies pointed out by the NRLDC and NRPC. The cognizance of which was duly taken by the Central Commission in the order dated 23.12.2013 which was the first show cause notice. Learned counsel for the Central Commission further contended that the non-submission of data by the appellants leads one to conclude that the relays were not properly maintained and were not functional, because of which adequate relief was not available to respond to the situation that developed on 12.3.2014. The load relief on 12.3.2014 communicated by NRLDC based on information received from various constitutes of Northern Region has been taken note of in the impugned order by the Central Commission.

13.35 Learned counsel for the Commission further submitted that the reference to the event of 12.3.2014 was just incidental and non-substantive, to show that till that date the settings were not provided up to the desired level and thus supplemented the findings on the charge of the non-compliance of the provisions of the grid code as witnessed during the grid disturbances of July, 2012. Therefore, the penalty has been imposed after failure of the entities to comply with the Regulation 5.2(n) of the grid code despite repeated directions by the Central Commission to remedy the situation and not as a kneejerk reaction, but was the outcome of deep thought and deliberations.

13.36 Learned counsel for the Respondent Commission emphasized that though it is an established principle of law that *mens rea* is the necessary ingredient of a criminal offence it is equally well established that the statute can exclude applicability of *mens rea* either expressly or by necessary implications. The plain language of Section 142 excludes the applicability of the principle of *mens rea* to the non-compliances mentioned therein. In fact, Section 142 has been enacted to ensure compliance of the provisions of the Act, Rules, Regulations or directions to achieve objects of the Act which is the civil obligation and is not by way of punishment for a crime. Learned counsel further submitted that the Hon'ble Supreme Court in a series of judgments, the reference to which is being made below, has held that *mens rea* is not an essential ingredient for punishment for breach of civil obligations, like those specified in Section 142. To substantiate his contentions, learned counsel placed reliance on several judgments passed by the Apex Court as stated supra.

13.37 Learned counsel/Representative appearing for NRLDC drew our attention towards the grid disturbances of July, 2012 as well as March, 2014 & also the contents of Enquiry Committee Report as well as the audit report of Powergrid conducted for establishing the installation/operation of UFR and df/dt relays. The NRLDC has broadly adopted the submissions of the Central Commission and has given technical interpretations to the impacts of grid disturbances and the non-availability of requisite load sheddings because of non-availability of requisite relays and their real time operations. NRLDC has also emphasized that the status of df/dt relays installed on main feeders in Delhi is only 2% even after 6 years of the order passed by Commission on 23.12.2013. NRLDC also clarified that agenda (as relied upon) by the learned counsel for SLDC/DTL, Delhi was before the 4<sup>th</sup> NPC meeting was whether to have UFR and df/dt settings across all regions of the country in view of the different settings prevailing in different regions. The NPC only decided that the settings across of regions of the country in view of the different settings prevailing in different regions. The NPC only decided that the settings of df/dt relays may not be uniformed across the country and each RPCs may have a different settings of these relays depending upon the like contingencies in the respective region. However, there has been no decision to change the settings in the Northern Region. Therefore, discussions on NPC has no bearing on the present case. NRLDC also submitted that rate of change of frequency are different at different locations such as Western Region has a rate of change of frequency as high as 0.3 Hz/second whereas Northern Region had the rate of change of frequency above 0.1 Hz/sec during the tripping of CGPL Mundra at 19.21 hrs on 12.03.2014. The representative of NRLDC further

submitted that the contentions regarding fixations of targets for the loads reliefs to be given by the Appellants on the basis of peak load are only after they could not provide desired relief CGPL Mundra on 12.3.2014. It is important to note that the targets are fixed in consultation with the respective states and the Appellant never raised any objections regarding fixation of target load relief not to be based on Peak Load of the State. The Representative of NRLDC submitted that there is no merit in the instant appeal and the appeals may be dismissed by this Tribunal.

13.38 Having regard to the arguments / submissions of both the parties, it is relevant to note that the IEGC Regulations 2010 (as amended from time to time) have been notified by the Central Commission with an objective of efficient, secured and stable grid operation which are to be mandatorily complied with by all the constituents scrupulously. Regulation 5.2 (n) of the Grid Code is relevant for the present case which is extracted below:

*“5.2(n) All SEBS, distribution licensees / STUs shall provide automatic under-frequency and df/dt relays for load shedding in their respective systems, to arrest frequency decline that could result in a collapse/disintegration of the grid, as per the plan separately finalized by the concerned RPC and shall ensure its effective application to prevent cascade tripping of generating units in case of any contingency. All, SEBs, distribution licensees, CTU STUs and SLDCs shall ensure that the above under-frequency and df/dt load shedding/islanding schemes are always functional. RLDC shall inform RPC Secretariat about instances when the desired load relief is not obtained through these relays in real time operation. The provisions regarding under frequency and df/dt relays of relevant CEA Regulations shall be complied with. SLDC shall furnish monthly report of UFR and df/dt relay operation in their respective system to the respective RPC.*

*RPC Secretariat shall carry out periodic inspection of the under frequency relays and maintain proper records of the inspection. RPC shall decide and intimate the action required by SEB, distribution licensee and STUs to get required load relief from Under Frequency*

*and Df/Dt relays. All SEB, distribution licensee and STUs shall abide by these decisions. RLDC shall keep a comparative record of expected load relief and actual load relief obtained in Real time system operation. A monthly report on expected load relief vis-a-vis actual load relief shall be sent to the RPC and the CERC.”*

13.39 In the instant case in hand, admittedly, the provision, operation and maintenance of UFR & df/dt relays by the constituents to provide desired level of load relief have not been established. The Central Commission issued directions vide its order dated 23.12.2013 to all constituents to comply with its directions regarding ensuring adequate provisions of UFR & df/dt relays, monitoring their healthiness etc.. However, the same could not be achieved up to desired level and based on the other instance of 12.03.2014 after tripping of CGPL, Mundra, the same was established beyond doubt. In the circumstances, Central Commission concluded that the constituents are not complying with the provisions of grid code in true spirit and in other words, they are violating the statutory provisions / directions. Accordingly, the Central Commission just for making the constituents more accountable and disciplined, imposed a penalty of Rs. 1 lakh on each of the constituents of Northern Region.

13.40 We have gone through the provisions under Section 142 of the Electricity Act vis-à-vis *mens rea* as settled by the Hon'ble Supreme Court in their various judgments. Based on the rulings of the Apex Court, it is crystal clear that non-compliance or contravention adverted to in Section 142 does not constitute an offence or, if at all, the non-compliance or contravention is only a civil offence and for all these reasons, proof of *mens rea* is not necessary for award of punishment by the Central Commission under Section 142. On

facts, the case of B.M. Verma (supra) is distinguishable. In B.M. Verma case, the penalty was imposed on Appellant herein in individual capacity whereas in the case on hand, the penalty has been imposed on Heads of SLDC/STU, the body corporates in their official capacity. The present appeals have been filed by the Appellants in their official capacity, which shows that in the Appellants' own understanding the penalty has been imposed on the body corporates.

13.41 Further, Hon'ble High Court, Rajasthan in *P. R. Maheshwari and another vs Municipal Council Alwar (1978 Cr LJ 1594)* has held that when an offence is committed by a corporate body, the question of *mens rea* is not of much relevance. The relevant para from the judgment of Rajasthan High Court reads as under:

"7. When a Company commits an offence, the question of knowledge or mens rea cannot be said to be of much significance. Adulteration of food stuff is so rampant and the evil has become so widespread and persistent that nothing short of a somewhat drastic remedy provided in the Act can change the situation. Only a concerted and determined onslaught on this most anti-social behaviour can bring relief to the nation: vide Statements of Objects and Reasons of the Act. Public Welfare offences are to be essentially standardised. Criminal law used as means of securing the social standard of correct trading and social welfare behaviour necessarily has to enforce the principle of vicarious liability. Emphasis is laid on the importance of not doing what is prohibited and the method of business must be arranged on individual alertness in trade or calling. Rescoe Pound has made the following observations:-

"The good sense of courts has introduced a doctrine of acting at one's peril with respect to statutory crimes which expresses the need of society. Such statutes are not meant to punish the vicious will but to put pressure on the thoughtless and inefficient to do their whole duty in the interest of public health or safety or morals."

13.42 The Hon'ble Supreme Court in *Union of India Vs J Ahmed (AIR 1979 SC 1022)* has held that though gross or habitual negligence constitutes misconduct but does not involve the element of *mens*

rea. The Hon'ble Supreme Court expressed its opinion in the following words:

*“12. The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.”*

13.43 The operation of the grid in an efficient, secured and stable manner is of utmost importance to not only the power sector but also to other sectors who are dependent on the power supply from the Electricity sector. Any failure or disturbance in the grid affects the national economy to a great extent and, therefore, it is the scrupulous responsibility of all the constituents connected with the grid to ensure the adequate provision and upkeep of the safety & protections measures evolved by the concerned authorities at behest of the Central Commission. After critical evaluation of the material placed before us, we are of the opinion that the Central Commission has analysed the facts and circumstances leading to reference grid disturbances in NR/WR stated supra and passed a well-reasoned order.

13.44 In view of these facts, we are of considered opinion that the penalty imposed by the Central Commission is in accordance with law and we do not notice any infirmity of perversity in the findings of the Central Commission in the impugned order.

### **ORDER**

For the foregoing reasons, we are of the considered view that issues raised in the instant batch of Appeals are devoid of merits and hence

appeals are dismissed. The impugned order dated 09.10.2015 passed by Central Electricity Regulatory Commission in Petition No.06/MP/2014 is hereby upheld.

Needless to mention, pending IAs, if any, stand disposed of.

No order as to costs.

Pronounced in the Virtual Court on this **09<sup>th</sup> day of November, 2020.**

**(S.D. Dubey)**  
**Technical Member**

**(Justice Manjula Chellur)**  
**Chairperson**

**REPORTABLE / ~~NON-REPORTABLE~~**

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