

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

**Appeal No. 228 of 2022 & IA No. 1962 of 2023,
IA No. 722 of 2022, IA No. 1014 of 2023**

And

**Appeal No. 391 of 2023 &
IA No. 1323 of 2022, IA No. 1025 of 2023**

Dated: 14th December, 2023

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**Appeal No. 228 of 2022 & IA No. 1962 of 2023,
IA No. 722 of 2022, IA No. 1014 of 2023**

In the matter of:

Rain CII Carbon (Vizag) Ltd.
Rain Centre, 34 Srinagar Colony,
Hyderabad, Telangana – 500073.

...Appellant(s)

Vs.

- 1) Andhra Pradesh Electricity Regulatory Commission
Through its Secretary
11-4-660, 4th Floor, Singareni Bhavan,
Red Hills, Lakdi-ka-pul, Hyderabad,
Andhra Pradesh – 500004.
- 2) Southern Power Distribution Company of
Andhra Pradesh Ltd. (APSPDCL)
Through its Chairman & Managing Director,
19-13-65/A, Vidyut Nilayam,
Srinivasapuram, Tirupati,
Andhra Pradesh – 517503.
- 3) Eastern Power Distribution Company of
Andhra Pradesh Ltd. (APEPDCL),
Through its Managing Director,

P&T Colony, Seethamadara,
Visakhapatnam, Andhra Pradesh – 530013.

- 4) Andhra Pradesh Central Power Distribution Company Ltd. (APCPDCL),
Through its Managing Director,
Corporate Office, Beside Polytechnic College,
ITI Road, Vijayawada, Krishna District,
Andhra Pradesh – 520008.
- 5) Transmission Corporation of Andhra Pradesh Ltd. (APTRANSCO)
Through its Chairman & Managing Director,
Vidyut Soudha, Gunadala, Eluru Rd.,
Vijayawada, Andhra Pradesh – 520004. ...Respondent(s)

Counsel for the Appellant(s) : Mr. P. Chidambaram, Sr. Adv.
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Ms. Poonam Verma Sengupta
Mr. Saunak Rajguru
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Ms. Gayatri Aryan
Mr. Ankitesh Ojha

Counsel for the Respondent(s) : Mr. Sridhar Potaraju
Mr. Mukund Rao Angara
Ms. Ankita Sharma
Ms. Shiwani Tushir
Mr. Yashwir Kumar
Mr. Aayush
Mr. Rajat Srivastava
Ms. Simran Gupta for R-1

Mr. Sidhant Kumar

Ms. Manya Chandok
Mr. Shivankar Rao
Mr. Gurpreet Singh Bagga
Ms. Vidhi Udyashankar for R-2 to 4

Appeal No. 391 of 2023 &
IA No. 1323 of 2022, IA No. 1025 of 2023

In the matter of:

Rain CII Carbon (Vizag) Ltd.
Through its General Manager
Rain Centre, 34 Srinagar Colony,
Hyderabad, Telangana – 500073.

...Appellant(s)

Vs.

- 1) Andhra Pradesh Electricity Regulatory Commission
Through its Secretary
11-4-660, 4th Floor, Singareni Bhavan,
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Andhra Pradesh – 500004.
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P&T Colony, Seethamadara,
Visakhapatnam, Andhra Pradesh – 530013.
- 3) Transmission Corporation of Andhra Pradesh Ltd.
(APTRANSCO)
Through its Chairman & Managing Director,
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Mr. Aayush
Mr. Rajat Srivastava
Ms. Simran Gupta for R-1

Mr. Sidhant Kumar
Ms. Manya Chandok
Mr. Shivankar Rao
Mr. Gurpreet Singh Bagga
Mr. Shivankur Rao for R-2

JUDGEMENT

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

1. The captioned Appeals have been filed by M/s. Rain CII Carbon (Vizag) Limited (in short "Appellant") against the Order dated 30.03.2022 (in short "Impugned Order") passed by the Andhra Pradesh Electricity Regulatory Commission's (in short "State Commission" or "APERC") in O.P. No. 122 of 2021 and O.P. No. 123 of 2021 (in short "APERC Petition") assailing the findings limited to the levy of Grid Support Charges on integrated waste heat recovery based co-generation power plants owned by the Appellant's Unit located in Special Economic Zone, Andhra Pradesh.

2. The Appellant, Rain CII Carbon (Vizag) Limited, is engaged in the business of manufacturing of Calcined Petroleum Coke (in short "CPC"), a

critical raw material (input material) for anode making in the Aluminium industry, through its two units located at Vishakhapatnam, Andhra Pradesh, it has setup two Co-generation plant using waste heat recovery system and having an installed capacity of 49.5 MW, with reference to the first captioned Appeal, out of which (a) 41 MW is exported to the grid i.e., sold to 5 consumers, (b) 3.6 MW is self-consumed and (c) 4.9 MW is used for auxiliary consumption and a 18 MW capacity power plant with reference to the second captioned Appeal.

3. The Respondent M/s. Andhra Pradesh Electricity Regulatory Commission is a statutory authority vested with the adjudicatory function to deal the matters including the present one and also the powers to determine the tariff for generation, supply, transmission and wheeling of electricity, within the State of Andhra Pradesh (in short “AP”) and to adjudicate upon disputes between licensees and generating companies.

4. The Respondents no. 2,3 & 4 i.e. APSPDCL, APEPDCL and APCPDCL in the first captioned Appeal and Respondent No. 2 i.e. APEPDCL in the second captioned Appeal are the distribution licensees in the State of AP in terms of Section 2(17) of the Act.

5. The Respondent No. 5 in the first captioned Appeal and Respondent No. 3 in the second captioned Appeal i.e. M/s. Transmission Corporation of Andhra Pradesh (in short “APTRANSCO”) is a company established under the provisions of the Companies Act, 1956 inter-alia engaged in the business of transmission and has also earlier engaged in the business of purchase and

sale of electricity in the State of AP being a licensee as contemplated under Section 15 of the Andhra Pradesh Electricity Reforms Act, 1998.

6. The three distribution licensees of the State of AP i.e. APSPDCL, APEPDCL and APCPDCL filed the APERC Petitions dated 13.12.2021 *inter alia* seeking tariff determination for retail supply of electricity for FY 2022-23 whereby also proposing to include co-generation power plants within the definition of Captive Power Plants (in short “CPPs”) and collect Grid Support Charges from the co-generation plants operating in parallel with the grid from FY 2002-03 onwards.

7. It is the submission of the Appellant that vide the Impugned Order dated 30.03.2022, APERC has levied Grid Support Charges for the first time on Co-generation plants, and that too on the entire installed capacity of the Plant including the capacity which is exported to the grid, further, added that such export helps and strengthens the grid without creating any disturbance to the grid.

8. Further, submitted that the earlier Order dated 24.03.2002 of APERC in OP Nos. 29-33 of 2002 (Batch), which was upheld by Supreme Court, has levied GSC on the CPPs and limited to CPP capacity which is not exported to APTRANSCO under an agreement, the relevant extract is reproduced as under:

“Persons operating Captive Power Plants (CPPs) in parallel with A.P. Grid have to pay `Grid Support Charges' on the difference between

the capacity of CPP in kVA and the contracted Maximum Demand in kVA with Licensee and all other sources of supply, at a rate equal to 50% of the prevailing demand charge for HT Consumers. In case of CPPs exporting firm power to APTRANSCO, the capacity, which is dedicated to such export, will also be additionally subtracted from the CPP capacity.”

9. It is also the submission of the Appellant that distribution companies, in the present Tariff Petition, proposed to exclude power sold to third parties while computing GSC, however, APERC ignored the prayer of the distribution companies for restricting the imposition of GSC on the self-consumed capacity and levied the GSC on the entire installed capacity, further, argued that such a decision is erroneous and is contrary to the settled position of law by the Supreme Court in ***Akella Lalitha vs. Konda Hanumantha Rao & Anr., 2022 SCC OnLine SC 928 (Paras 16-28)***, whereby it was decided that relief not claimed in the pleadings should not be granted.

10. We find merit in submission of the Appellant, thus, GSC cannot be levied on the entire installed capacity as that would mean levying GSC even for the capacity which is sold to 3rd parties.

11. The Appellant placing reliance on the judgment of this Tribunal in the ***Salasar Steel and Power Ltd. v. Chhattisgarh State Power Distribution Company Ltd and ors, Apl no. 72 of 2015 dated 17.02.2016***, argued that if the percentage of self-consumption falls below 51 per cent, GSC is not payable

by the Appellant's power plants as these are non-CPP Co-generation plant because 82.8 per cent of the power is exported and sold to third parties.

12. The Appellant also pleaded that none of the judgments relied upon by the Respondents has dealt the issue of levy of GSC on the power exported to the grid i.e., sold to 3rd parties, the reliance on the judgments of this Tribunal in ***Renuka 2015 SCC Online APTEL 11*** and ***Shah Alloys 2012 SCC Online APTEL 186*** is misplaced because these judgments only dealt the issue of whether the GSC should be levied on entire installed capacity or the derated capacity and have not dealt the situation where the non-captive Power Plant was exporting power.

13. It was also argued that the imposition of GSC would amount to double Levy and as per the Impugned Order, the basis for GSC is the total generation capacity and the R&M expenses of licensees, at this stage we are restricting ourselves to whether GSC can be imposed on non-captive Cogeneration plants, if the answer to it is in affirmative then only the issue of double levying must be considered.

14. The Appellant submitted that it is a settled position of law that for the purpose of levying any charge, not only has the charge to be authorised by law, it has also to be computed, reliance was placed on ***National Mineral Development Corpn. Ltd. v. State of M.P., (2004) 6 SCC 281***, the relevant extract is quoted as under:

"23. Section 9 is not the beginning and end of the levy of royalty. The royalty has to be quantified for purpose of levy and that cannot be done unless the provisions of the Second Schedule are taken into consideration. For the purpose of levying any charge, not only has the charge to be authorised by law, it has also to be computed. The charging provision and the computation provision may be found at one place or at two different places depending on the draftsman's art of drafting and methodology employed. In the latter case, the charging provision and the computation provision, though placed in two parts of the enactment, shall have to be read together as constituting one integrated provision. The charging provision and the computation provision do differ qualitatively..."

15. It is the argument of the Appellant that the distribution companies failed to identify even one service provided by them to the Appellant for which Appellant has not made the payment, the GSC is thus in addition to actual charges to be paid by the Appellant, relying upon Section 106 of Evidence Act, 1872, it is his submission that the distribution companies are required to demonstrate 'actual expenditure' which remains unrecovered for GSC to be levied, or otherwise, levy of GSC will unjustly enrich the Respondents, reliance was also placed upon ***Indian Mica Micanite Industries v. State of Bihar (1971) 2 SCC 236 [5J]***.

16. The Appellant also brought to our notice that it has installed all necessary protective equipment and is not creating any disturbance to grid, including the requisite equipment to avoid any harmonics related disturbances, also claimed

that the reliance of the Respondents on SC Judgment and also on this Tribunal judgments in Godawari and Hindalco case is misplaced, SC Judgement is not applicable to Co-generation plants similar to that of the Appellant's power plant whereas, APERC, without any reasoning and independent application of mind, applied the said judgement to subject non-captive Co-generation plants to levy of GSC, the SC Judgment dealt with only CPPs and not to Co-generation plants, further, the agreements between generating companies and the distribution companies as considered by Supreme Court in the said judgement contained enabling provisions for distribution companies to levy GSC which is not the case here, this is a material factual difference, reliance was placed on ***Union of India & Anr. v. Major Bahadur Singh, (2006) 1 SCC 368 (paras 9 and 11)*** wherein it was settled law that even if one material fact is different, the cited case will not apply to the case on hand, clearly, neither the APERC's 2002 Tariff Order nor the SC Judgment imposed GSC on Co-generation plants, certainly, it is not open to the distribution companies to read the said judicial pronouncement beyond the explicit text of the judgement and apply it to Co-generation plants, it is a settled position of law that opaque references to other cases is impermissible, reference ***Zee Telefilms Ltd. vs. Union of India (2005) 4 SCC 649 (Para 254)***.

17. It was also argued that it is already a settled position of law that only the ratio of judgement that binds, and not what can be logically deduced therefrom, ***State of Haryana vs. Ranbir (2006) 5 SCC 167 (Para 12)***.

18. Further, submitted that the Godawari judgement relied upon by Discoms is not applicable to the facts of the present case as the issue placed before this

Tribunal was regarding a billing dispute in that case, while adjudicating, this Tribunal has made some observations how generators may take some support from the grid, but that was not the issue that was being adjudicated, nor did it was examined what support was being given by the distribution companies to non-captive Co-generation plants.

19. We shall consider and deal the aforesaid judgments appropriately in the succeeding paragraphs, if required.

20. The Respondents submitted that the Appellant has an integrated co-generating power plant which is co-located with its captive load, operating in parallel to the state grid *inter-alia* the consuming load and the generating load is interconnected through a point of common coupling, also argued that the contention of the Appellant that each of the judgments passed by this Tribunal and the Supreme Court are inapplicable to the present case since they relate to captive power plants as defined under Rule 3 of the Electricity Rules, this assertion is misconceived since the principle devised and applied by this Tribunal is that GSC is applicable where the captive load is interconnected to the utility grid at a point of common coupling and such interconnection that has been held to be parallel operation.

21. It is important to note here the meaning of captive load and whether the load of the Appellant is captive load or not, the term 'captive load' has to be construed with respect to the definition of captive user as defined under the Electricity Rules, 2005 i.e. ***“Captive User” shall mean the end user of the electricity generated in a Captive Generating Plant and the term “Captive***

Use” shall be construed accordingly, accordingly ‘captive load’ can be construed as the load of a captive user drawing power from its CPP, and where power is not drawn from a CPP, such load cannot be construed as captive load.

22. Therefore, the contention of the Respondents that the Appellant has captive load co-located with the CPP is erroneous and misconceived.

23. The Respondents 2 to 4, further, submitted that the Impugned Order was passed after inviting comments/ suggestions from the stake holders through public notice, the Appellant is challenging the order on the grounds that (i) the APERC lacks the jurisdiction to impose GSC, (ii) there is no justification for the imposition of GSC on the Appellant; (iii) the quantum of GSC has been determined without any study having conducted, argued these contentions are without merit for the reason that each of the objections raised by the Appellant have been considered and rejected by the Supreme Court in its earlier decision in SC Judgment and in a series of eight judgments' passed by this Tribunal.

24. On being asked, the Respondents agreed that the said SC Judgment was on the CPPs and the cogeneration plants of the Appellant are non-CPP, even the facts placed before us, explicitly categorize the Appellant's cogeneration plant as non-Captive Power Plants, the same cannot be disputed further.

25. Further, the Respondents submitted that as per the aforesaid SC Judgment APERC has the power to impose GSC in terms of Section 11 and Section 26 of the Andhra Pradesh Electricity Reforms Act, 1998 (the “Reforms

Act”), further argued that this Hon'ble Tribunal in several judgments has held that imposition of GSC is not inconsistent with the Electricity Act, 2003, consequently, APERC has the authority to impose GSC in terms of these judgments.

26. However, the Respondents failed to place a single judgment where decision was taken either by this Tribunal or by the Supreme Court regarding imposition of GSC on non- Captive Power Plants.

27. Further, Respondents submitted that this Tribunal in ***Chhattisgarh State Power Distribution Co. v. Godawari Power & Ispat***, has affirmatively held that several advantages are accrued to the generators connected in parallel with the grid, *inter-alia* applying this principle in five other subsequent judgments, including most recently in ***Hindalco industries Ltd. v. M.P. E.R.C.***, also, in ***Shree Renuka Sugars Limited v. Gujarat Energy Transmission Corporation Ltd***, the same principle is applied in respect of cogenerating units, further, the Impugned Order was passed after placing reliance on these judgments passed and after considering studies conducted in the States of Gujarat, Madhya Pradesh, and Chhattisgarh.

28. The aforesaid judgments will be considered in the succeeding paragraphs, however, the submission of the Respondents that the Impugned Order has been passed after considering the studies conducted in the States of Gujarat, Madhya Pradesh, and Chhattisgarh is misconceived and misleading, as the State Commission itself has submitted that no material facts

or data was placed before it by the distribution companies, the relevant extract is quoted as under:

*“The above judgements dispel beyond doubt the contentions of the CPPs against the levy of the Grid support charges on technical and legal grounds. **Therefore, the proposal of the DISCOMs to levy grid support charges on the CPPs which operate in parallel with the grid is justified.** At the same time, the Commission feels that confining levy of the Grid support charges to CPPs only does not provide for a level playing field as other generators connected to the grid also enjoy the same benefits as that of CPPs. Hence, the Commission decides to bring other generators, except those who have PPAS with the DISCOMs, under the ambit of Grid support charges. **The DISCOMs have not provided any substantiation to justify imposition of 50 percent of the demand charges applicable to HT consumers as Grid support charges. Hence, the Commission is inclined to fix the grid support charges for parallel operation on the basis of the data, materials and scientific inputs relating to parallel operations.** As pointed out in the Hon’ble APTEL’s judgment, the parallel operation of the generators will affect the grid equipment which in turn will affect the R&M cost of the APTransco and the DISCOMs. Therefore, based on the total generation capacity connected to AP state grid as of 31.12.2021 and R&M charges of APTransco and the DISCOMs, the Commission has determined the Grid support charges/parallel operation charges----”*

29. No documentary evidence was placed before us by the Respondents in support of the statement made by APERC in the Impugned Order regarding **“the data, materials and scientific inputs relating to parallel operations”** considered or referred by APERC, accordingly, we find no merit in the contention of the Respondents that the Impugned Order has been passed after considering various studies in the State of Gujarat, Madhya Pradesh, and Chhattisgarh

30. On 30.03.2022, APERC passed the Impugned Order allowing AP Discoms proposal to levy Grid Support Charges for the Financial Year (in short “FY”) 2022-23 on the grid connecting generating stations operating in the State of AP including the Waste Heat Recovery based co-generation plants owned by the Appellant.

31. On 08.07.2022, Appellant commissioned its two Cogeneration Plants and started power generation after obtaining synchronization approval on 17.06.2022 and 07.07.2022 and thus impacted by the said Impugned Order.

32. The Appellant is aggrieved by the limited fact that APERC imposed Grid Support Charges (GSC) on Co-generation Power Plants, including that of the Appellant, operating in parallel with the grid and such GSC be applicable on the total installed capacity of the generating stations connected to the grid.

33. Both the appeals are dealing with the same issue except that the Appellant in Appeal No. 228 of 2022 is assailing the levy of Grid Support

Charges (in short “GSC”) or “Parallel Operation Charges” (in short “POC”) for FY 2022-23 whereas in Appeal No. 391 of 2023, the Appellant is challenging the direction to give an undertaking that he will pay GSC and only then his Format A Application for sale of power though IEX will be processed.

34. Considering that the two Appeals are identical and challenging the same Impugned Order, for the sake of brevity, we are taking up Appeal No. 228 of 2022 for the purpose of factual matrix.

35. The State Commission in a Tariff Petition filed by APTRANSCO in 2001, passed an Order dated 08.02.2002 (in short “2002 APERC Order”) imposing the GSC/ POC on Captive Power Plants (in short “CPP”) operating in parallel with the State Grid, thus allowing the proposal of the APTRANSCO for such levying, however, the same was challenged before the High Court of AP.

36. The High Court of AP vide Judgment dated 02.05.2003 (in short “HC Judgment”) set aside 2002 APERC Order with respect to levy of GSC in case titled ***Vishnu Cements Limited v. Central Power Distribution Company of Andhra Pradesh Limited, Vidyut Soudha, Somajiguda, Hyderabad, 2003 SCC OnLine AP 512***, observing that the GSC cannot be levied as there is no statistical data or non-arbitrary reasoning available that justifies the levy of such charges and they only lead to double levy of charges for the same services, moreover, the High court stated that the Grid charges are levied without any sanction from State Government and charges already being paid by the generator justifies the support rendered by the grid to the generating stations.

37. Being aggrieved by the aforesaid HC Judgment, APTRANSCO approached the Supreme Court, wherein vide Judgment dated 29.11.2019 (in short "SC Judgment) in case titled ***Transmission Corpn. of A.P. Ltd. v. Rain Calcining Ltd., (2021) 13 SCC 674***, the Supreme Court set aside the HC Judgment observing that the Grid Code is the basis for levy of Grid Support Charges and since setting up additional CPPs lead to additional load on the grid, the State Commission is empowered to levy Grid Support Charges.

38. In furtherance to the SC Judgment, APEPDCL, Respondent No. 3 has asked the Appellant to pay the GSC for the period of 2002-09, accordingly, being aggrieved, the Appellant has filed the Appeal No. 228 of 2022, whereas he has filed the Appeal No. 391 of 2023 against the direction to give an undertaking that he will pay GSC as a pre-condition for processing the Format-A application submitted by the appellant for sale of power through IEX, the Appellant also challenged the Impugned Order dated 30.03.2022 whereby GSC has been levied on Co-Generation Plants including Waste Heat Recovery Plants for FY 2022-23, similar to plants owned by the Appellant.

39. It is important to note here that the State Commission has relied upon the SC Judgment observing that the State Commission has the powers to levy GSC, further, referred the earlier judgments of this Tribunal passed in in Appeal No. 99 of 2006 and Appeal No. 120 of 2009 (in short "Tribunal Judgments") for observing that the generating stations gain more from the Grid and thus is liable to pay charges for the services rendered, thereafter, mandated GSC, on the basis of R&M expenses of the distribution and transmission licensees of the State of AP and declaring GSC to be levied at the rate of Rs. 52.13 per KW

per month on the entire installed capacity of the plant, additionally, imposed the GSC on all the generators including the CPPs observing that each generating station enjoys the same benefits as CPP from parallel operation, however, exempting generating stations which have signed PPAs with DISCOMs, the relevant extract of the Impugned Order is quoted as under:

“Grid support charges, their applicability and determination in the context of Hon’ble Supreme Court Judgment:

244. The DISCOMs have proposed Grid support charges by referring to Hon’ble Supreme Court judgment dated 29.11.19. The relevant portion of the Hon’ble Supreme Court order on the grid support charges is extracted below:

“64. Any Government Order or Incentive Scheme does not govern the Grid Support Charges. Grid Code is the basis for levy of the Grid Support Charges, which came to be approved by the Commission on 26.5.2001. The same is also reflected in the impugned order. The Grid Support Charges can be levied, and the order dated 8.2.2002 of the Commission is, thus on the parity of the reasonings, has to be upheld considering the provisions of Section 21 (3) of the Reforms Act, 1998. Under section 11 read with section 26 of the Reforms Act, 1998, all fixed charges under the distribution and Grid Support Charges are leviable only at the instance of a distribution company, and because of the discussion above, the Commission has the powers to determine

it. In the agreements also there is a power where the Board could have fixed the Grid Support Charge unilaterally, but because of Reforms Act, 1998 came to be enacted, the application was filed in the Commission. After that, the Commission has passed the order in accordance with the law. We find no fault in the same”.

As can be seen from the above, the Hon’ble Supreme court clearly upheld the power of the Commission to determine grid support charges at the instance of the DISCOMs. Thus, the contention of some of the objectors that the Commission has no power to determine the grid support charges is not correct.

As regards the contention of some of the objectors that as they are paying open access charges, deviation charges, reactive power charges and penalties, etc. for over drawal of power from the DISCOMs, the proposal to levy grid support charges additionally is unjust, a perusal of the order dated 12.09.2006 of the Hon’ble APTEL on Grid support charges in Appeal No 99 of 2006, is extracted below is relevant:

“11. Next we shall take up points C & D together, as the discussions overlap each other. The parallel operation is definitely a service that the second respondent renders to all the CPPs like the appellant. It is the contention of the appellant that no charges could be levied or collected for the said service. As rightly pointed out by the Expert who appeared for the second Respondent, the parallel operation is a service which extend support to the system and at the same time it

causes voltage dip in the system, harmonics, injection, additional reactive power requirement, etc. By parallel operation the CPP gains more and hence it is liable to pay the charges for service.”

12. The contention that no charges at all are payable for parallel operation or transmission system cannot be sustained and such a claim is contrary to factual position. There is no escape for CPP to pay charges for parallel operation by which the CPP gains while the transmission system of the second respondent is affected apart from the admitted fact the transmission grid is strengthened by the power injected by CPP. Hence the contention that no charges at all are payable by CPP to the second respondent for parallel operation is not acceptable nor such a claim could be sustained.”

It is also relevant to refer to the observations of the Hon’ble APTEL in its Order dated 18.02.2011 in Appeal No 120 of 2009 which are reproduced below:

“17. The parallel operation is a facility in the nature of a Grid support to the captive power plant. The Captive power plant gets the following advantages owing to the parallel operation with the Grid:

- i. The fluctuations in the load of CPP are absorbed by the utility grid in the parallel operation mode. This will reduce the stresses on the captive generator and equipment. The CPP can operate his generating units at constant power generation mode irrespective of his load cycle.*

- ii. Absorption of harmonics.*
- iii. Negative phase sequence current is generated by unbalance loads. The magnitude of negative phase sequence current is much higher at the point of common coupling than at generator output terminal. This unbalance current normally creates problem of overheating of the generators and other equipments of CPP, if not running in parallel with grid. When they are connected to the grid, the negative phase sequence current flows into the grid and reduces stress on the captive generator.*
- iv. Captive Power Plants have higher fault level support when they are running in parallel with the grid supply. Because of the higher fault level, the voltage drop at load terminal is less when connected with the grid.*
- v. The grid provides stability to the load of Captive Power Plant to start heavy loads like HT motors.*
- vi. The variation in the voltage and frequency at the time of starting large motors and heavy loads, is minimized in the industry, as the grid supply acts as an infinite bus. The active and reactive power demand due to sudden and fluctuating load is not recorded in the meter.*
- vii. The impact created by sudden load throw off and consequent tripping of CPP generator on over speeding is avoided with the grid taking care of the impact.*
- viii. The transient surges reduce the life of equipment of the CPP. In some cases, the equipment fails if transient is*

beyond a limit. If the system is connected to the grid, it absorbs the transient surges. Hence, grid enhances the life of CPP equipments.

18. In short, the gain to the Captive power plant is quite substantial in case there is grid support. Owing to the above said substantial gains to the captive power plant by operating in parallel with the grid, the parallel operation charges are levied from the captive power plant.

19. Therefore, the State Commission is empowered to deal with the question as to whether the levy of parallel operation charges is permissible or not.....”

The above judgments dispel beyond doubt the contentions of the CPPs against the levy of the Grid support charges on technical and legal grounds. Therefore, the proposal of the DISCOMs to levy grid support charges on the CPPs which operate in parallel with the grid is justified. At the same time, the Commission feels that confining levy of the Grid support charges to CPPs only does not provide for a level playing field as other generators connected to the grid also enjoy the same benefits as that of CPPs. The DISCOMs have not provided any substantiation to justify imposition of 50 percent of the demand charges applicable to HT consumers as Grid support charges. Hence, the Commission is inclined to fix the grid support charges for parallel operation on the basis of the data, materials and scientific inputs relating to parallel operations. As pointed out in the Hon'ble APTEL's judgment, the parallel operation of the generators will affect the

grid equipment which in turn will affect the R&M cost of the APTransco and the DISCOMs. Therefore, based on the total generation capacity connected to AP state grid as of 31.12.2021 and R&M charges of APTransco and the DISCOMs, the Commission has determined the Grid support charges/parallel operation charges as shown below:

<i>FY2022-23</i>		<i>Yearly charges</i>	<i>Monthly charges</i>
<i>Total installed capacity (MW)</i>	<i>16854</i>		
<i>DISCOM's R&M (Cr.)</i>	<i>830</i>	<i>492.46</i>	<i>41.04</i>
<i>Transco R&M (Cr.)</i>	<i>224.39</i>	<i>133.14</i>	<i>11.09</i>
<i>Total monthly charges Rs. per kW per month</i>			<i>52.13</i>

As can be seen from the above table, the Commission has computed charges @Rs.52.13 per kW per month. Keeping this as a reference and having regard to the submission of various stakeholders, the Commission fixes the grid support charges/parallel operation charges for FY2022-23 as described below:

- i. The parallel operation/grid support charges are to be applied to the total installed capacity of the generators connected to the Grid.*
- ii. Conventional generators shall pay Rs.50 per kW per month.*
- iii. Renewable energy plants including waste heat recovery plants, the plants based on municipal solid waste, and the co-gen plants shall pay Rs.25 kW per month.*
- iv. Rooftop solar plants under net metering/gross metering policy shall pay Rs.15 per kW per month.*
- v. Co-gen sugar mills shall pay charges of Rs. 25 per kW per month, for a period of 4 months or actual operation period, whichever is higher.*
- vi. These charges shall not be applicable when the plants are under shutdown for any reason and when such shutdown period exceeds two months.*
- vii. PPA capacities of the generators with the DISCOMs shall be exempted from payment of these charges.*

As regards the proposal of the DISCOMs to impose the grid support charges retrospectively from FY2009-10, the same lacks rationality and merit and hence it is not accepted by the Commission. However, with regard to the collection of grid support charges from FY2002-03 to FY2008-09, the DISCOMs are left free to act in accordance with law.”

40. The main issues which need to be considered are as under:

- a) Whether the State Commission is empowered to levy Grid Support Charges on non-Captive Co-generation plants.
- b) Whether the reasoning for levy of GSC is justified.
- c) Whether imposition of GSC leads to double levy on the appellant.
- d) Whether the GSC should be levied on total installed capacity of the plant.

41. The State Commission while rendering the Impugned Order has relied upon the SC Judgment and aforesaid Tribunal Judgments, it is, therefore, important to first go through these judgments including the HC Judgment to see the reasoning given by the courts of record with respect to the levy of GSC. We will get into the abovementioned four issues post analyzing the reasoning rendered therein.

42. Let us first consider the judgment rendered by the High Court of AP with respect to the limited issue of GSC in an Appeal filed against the 2002 APERC Order dated 08.02.2002, the State Commission by its said Order imposed grid support charges, on the H.T. Consumers owning the CPPs inter-alia running in parallel with State Grid, at the rate of 50% of the prevailing Demand Charges for H.T. Consumers on the difference between the total capacity of CPP in KVA and the Contracted Maximum Demand (in short "CMD") in KVA with the licensee and all other sources of supply, additionally, the capacity of firm power exported to APTRANSCO by the CPPs, shall also be additionally subtracted from the CPP capacity considered for levying of GSC, being aggrieved by such decision of APERC, APTRANSCO challenged the order before the High Court by AP by way of an Appeal titled *Vishnu Cements Limited v. Central Power*

Distribution Company of Andhra Pradesh Limited, Vidyut Soudha, Somajiguda, Hyderabad, 2003 SCC OnLine AP 512.

43. The High Court, while adjudicating the issue, examined the two acts viz, the Electricity Regulatory Commissions Act, 1998, passed by the parliament and the Andhra Pradesh Electricity Reforms Act, 1998 passed by the State legislature, which were referred as 'Central Act' and 'State Act' respectively in the judgment, the Central act mentioned hereinabove was repealed by way of enactment of Electricity Act, 2003 (in short "2003 Act"), however, the state act is still applicable to an extent that the provisions contained therein are not inconsistent with the act by way of section 185(3) of the Electricity Act, 2003.

44. While rendering the judgment, the High Court examined various issues as under:

- a. under the State Act whether the Commission is having power to levy grid supply charges,*
- b. whether the Commission is empowered to pass the impugned order,*
- c. non-consultation with the State Government and no Commission Advisory Committee has been constituted for policy decision,*
- d. whether the impugned order falls under Section 26 of the Reforms Act,*
- e. whether the reasons given by the Commission in levying grid charges are sustainable in law,*
- f. whether levy of the grid charges is reasonable and arbitrary.*

45. The High Court noted the reasons cited by the State Commission in imposing GSC that CPPs operating in parallel to the grid draws certain benefits, however, adversely impacts/ damages the grid time and again and hence the levy of Grid Support Charges, on the contrary the High Court rejected such contention observing that no expert opinion or statistical data was considered to prove such contentions, the State Commission arrived at such a conclusion without looking into the State Grid Code, the revised terms and conditions of supply, objections raised by the industrial units, and Rule 64(a)(ii) of the Indian Electricity Rule.

46. The High Court ruled that:

“65. The Commission having noted the fact that the licensee is not unwilling to continue the facility of parallel operation but are only asking for compensation for the service rendered came to the conclusion that the Commission notes that despite the derating of the CMD, the Grid transformer and the nearby network equipment have to meet the enhanced fault duty on the network on account of the presence of the CPP in the network. The Commission also came to the conclusion that the industrial units with CPPs run in parallel with Grid derives the following benefits:

(i) The Grid provides the required fault level in the industrial plant for starting large motors in the industry, and also provides the initial active and reactive components of starting current. Without Grid Support, there will be dip in voltage, resulting in tripping of

other motors in the industry on low voltage, dip in frequency and fluctuation in power output of CPPs;

(ii) Whenever there is a large load throw-off or incidence in the industry, Grid initially absorbs the shock and minimizes the chance of tripping of CPPs;

(iii) The high fault level offered by the Grid acts as a supporting system for successful operation of CPPs in the industry in terms of electrical performance;

(iv) Grid also helps in stabilising fluctuating loads like those in steel mills and are furnaces.

66. We feel that none of the reasons are based on any statistical data or supported by expert opinion. On the other hand, the opinion of Mr. K. Balaramreddy, who is not only a technocrat, but also the former Chairman of the Electricity Board, is otherwise. But the Commission brushed aside the opinion of the former Chairman of the Board by observing that if the transient load is occasional, the Grid system might be able to tolerate such load and if the overload to persist for a considerable period of time even without the consumer exceeding the CMD may cause substantial damage to the licensee equipment (reducing its over-all life) not noticeable immediately. All these assumptions and presumptions of the Commission remained as statements only not based on any statistical data or any, legal provision. Ultimately the Commission agreed with the proposal of the licensee that the consumer can avail instantaneous demand in excess of the CMD without paying extra charges as long as such

demand is within the 15 or 30 minute integration period under the existing metering arrangements and jumped at the above conclusions.”

47. Further the judgment discussed in in detail the issue a) & b), thereafter, observed that the conclusion of the State Commission is without any justification, the High Court after noticing that Grid Code has provided for precautionary steps to be taken to tackle the power disturbance created by users connected to the grid thus affecting the power system, through various means as under:

- a) isolation of both the systems i.e. TRANSCO supply as well as company’s installation to avoid sudden load transfer in case of fault in either of the systems;*
- b) Company should also provide reverse power supply to prevent flow of power from CPPs to Grid in case load is tripped or the CPP generates excess power*
- c) all systems and circuits shall be so protected as to automatically disconnect the supply under abnormal conditions.*
- d) the inter-locks provided to lock circuit breakers or linked switches to prevent the possibility of any inadvertent paralleling or feedback when two or more supplies are not intended to be operated in parallel.*

48. The High Court also rejected the view of the State Commission regarding sudden dip in voltage due to starting of large motors, ruling that the Grid Code

specifies that the voltage dip at the nearest sub-station bus should not exceed 5% by such a phenomenon, therefore the State Commission need strict enforcement of the provisions of Grid code as well as revised terms and conditions of supply instead of seeking unwarranted and unjustified charge. the relevant extract of the HC Judgment is quoted as under:

“Ground No. 1: The Grid provides the required fault level in the industrial plant for starting large motors in the industry, and also provides the initial active and reactive components of starting current. Without Grid Support, there will be dip in voltage, resulting in tripping of other motors in the industry on low voltage, dip in frequency and fluctuation in power output of CPPs.

67. The Commission jumped at the conclusion brushing aside the objections raised by the industrial units and also without looking into the Grid Code as well as the revised terms and conditions of supply and Rule 64(a)(ii) of the Indian Electricity Rules, which were referred supra, though the licensee did not place any statistical data or evidence to show that the fluctuations in the load of the consumer due to system fault in the CPPs is being shared by the Grid and they are causing substantial damage to the licensee's equipment. On the other hand, Clause 3.5 of the Grid Code recognised that the users connected to the Grid can produce power disturbances and if these disturbances are severe, the power system of the licensee as well as other users on the system will be adversely affected. To minimise the power disturbance several precautionary steps have been taken including isolation of both the systems (i.e.,) TRANSCO supply as well

as Company's installation to avoid sudden load transfer in the event of fault in either of the systems. Apart from that Company should also provide reverse power supply to prevent flow of power from CPPs to Grid in case load is tripped or the CPP generates excess power, which would be consumed and under frequency detectors to ensure isolation of Company's generation system in the event of sudden trip-out of supply of the licensee to avoid any adverse effect on Company's installations. Likewise, under Section 64-A(2) of Indian Electricity Rules, 1956, all systems and circuits shall be so protected as to automatically disconnect the supply under abnormal conditions. The inter-locks provided to lock circuit breakers or linked switches to prevent the possibility of any inadvertent paralleling or feedback when two or more supplies are not intended to be operated in parallel.

68. The case of the Commission is not that these CPPs are not complying with these conditions but the Grid is proving the required fault level in the industrial plant for starting large motors in the industry and also provides the initial active and reactive components of starting current. Without Grid Support, there will be dip in voltage, resulting in tripping of other motors in the industry on low voltage, dip in frequency and fluctuation in power output of CPPs. The Commission reached such a conclusion without looking into Grid Code and the revised terms and conditions of supply.

69. Under Clause 3.5, 7 of the Grid Code, the electricity required to start the motors shall be 1/6th of the full-load current and if the voltage dip at the substation bus exceeds 5% two or more motors shall not be operated simultaneously or within five minutes. In clause 38.8 of the

revised terms and conditions of supply of electricity, the licensee having noticed fluctuations that takes place in the supply of the electricity at the time of starting motors directed that control gear has to be provided to the motor, so that the maximum current demand of the consumers installation does not exceed the limit given in the schedule.

*70. We are really astonished to know that how starting of large motors results in dip in voltage etc., more so, when the Grid Code specifies that the voltage dip at the nearest sub-station bus should not exceed 5% of its capacity. It is not the case of either the TRANSCO or the Commission that any appellant industry violated Clause 38.8 of the Revised terms and conditions of supply or Clause 3.7.5 of the Grid Code. **If there are any instances of that nature, the proper course for the Commission and the licensee would be to enforce those clauses, but not seeking an unwarranted and unjustified charge generalised for all cases.***

49. It was also noticed and observed by the High Court further that the Distribution Grid is connected to another Grid which is eventually connected to the National Grid, and to test the analogy given by the State Commission, then the APTRANSCO needs to pay grid charges to the National Grid as well, which is not the case.

50. The High Court further held that the explanation given by the State Commission is unreasonable and arbitrary as they have decided to charge the GSC on the basis of capacity of CPP, there is no data which shows that the

CPP is availing instantaneous load in excess of CMD within the integration period, proving that the State Commission's move to levy GSC is arbitrary and lacks any reason or statutory backing, the relevant extract of the HC Judgment is as under:

*“84. From the above it is seen that the Commission is asking the industries to pay Grid Support Charges in lakhs of rupees by contending that the Grid is absorbing the excess load over and above the maximum demand as and when the Captive Power Plant is tripped of without there being any statistical data, on undetermined and unmeasured quantity of electricity said to have been made available by the licensee. **Further, we do not really understand how the capacity of CPP is relevant and can be a basis for in arriving at the conclusion that the CPP is availing instantaneous load, unquantified and unmeasured in excess of CMD within the integration period.** It is not also their case that the entire industry runs to its full capacity throughout, at any rate at least at the time of trip of. If at all the Commission is having such a power, the superior Courts in the country repeatedly held that **uncanalised, unbridled or arbitrary exercise of power is ante-thesis to the rule of law.** Hence, we hold that the order of the Commission is vitiated by malice in law and arbitrary exercise of the alleged power vested in it.”*

51. The aforesaid HC Judgment was challenged before the Supreme Court vide case titled *Transmission Corpn. of A.P. Ltd. v. Rain Calcining Ltd.*, (2021) 13 SCC 674 wherein issue No. 2 (Whether APERC is Competent to levy Grid

Support Charges) relates to the present issue in hand that is GSC, the Supreme Court held that the State Commission has rightfully levied the 'Grid Support Charges' as Grid Code is the basis of such levy, further, deciding that the GSC is not governed by any government order or incentive scheme and is wholly within the power of the State Commission to levy the same, also there is no restriction on installation of additional new CPP but every new CPP installed put an additional load on the grid and thus corresponding GSC are justifiably levied, the Supreme Court held that:

"In re: Grid support charges

68. With respect to grid support charges, it has been conceded by the learned counsel for the parties that the decision in the aforesaid batch of matters as to wheeling charges has to govern grid support charges as we have upheld the order of the Commission with respect to wheeling charges, the order of the High Court has to be set aside.

*69. Any government order or incentive scheme does not govern the grid support charges. Grid code is the basis for levy of the grid support charges, which came to be approved by the Commission on 26-5-2001. The same is also reflected in the impugned order. **Thus, in case of installation of another CPP, that would be an additional load on the grid, and there is no embargo for setting up additional grid CPP in the form of expansion as grid acts as cushioning. The grid support charges can be levied, and the order dated 8-2-2002 of the Commission is, thus on the parity of the reasonings, has to be upheld considering the provisions of***

Section 21(3) of the Reforms Act, 1998. Under Section 11 read with Section 26 of the Reforms Act, 1998, all fixed charges under the distribution and grid support charges are leviable only at the instance of a distribution company, and because of the discussion above, the Commission has the powers to determine it. In the agreements also there is a power where the Board could have fixed the grid support charge unilaterally, but because of the Reforms Act, 1998 came to be enacted, the application was filed in the Commission. After that, the Commission has passed the order in accordance with the law. We find no fault in the same. Thus, the order of the Commission concerning the grid support charges has to be upheld. The judgment and order [RCI Power Ltd. v. Union of India, 2003 SCC OnLine AP 424 : (2003) 3 ALD 762] of the High Court are liable to be set aside concerning wheeling charges as well as grid support charges.

...

78. Resultantly, we have to allow the appeals. The judgment and order [RCI Power Ltd. v. Union of India, 2003 SCC OnLine AP 424 : (2003) 3 ALD 762] passed by the High Court relating to wheeling charges and grid support charges and that passed [Small Hydro Power Developers' Assn. v. Transmission Corpn. of A.P. Ltd., 2008 SCC OnLine APTEL 58] by the Aptel regarding continuance of incentive as per GOMs dated 18-11-1997 and 22-12-1998, are set aside. The appeals are allowed, and the orders passed by APERC are restored. No costs."

52. From the above judgments i.e. the SC Judgment and the HC Judgment, it is clear that the imposition of GSC is limited to the Captive Power Plants (CPPs), the Supreme Court after observing that the installation of CPP is an additional load on the grid, and grid acts as cushioning, thus, grid support charges can be levied considering the provisions of Section 21(3) of the Reforms Act, 1998, further, under Section 11 read with Section 26 of the Reforms Act, 1998, the grid support charges are leviable only at the instance of a distribution company.

53. The Appellant is aggrieved by the Impugned Order as the State Commission has extended the SC Judgment and made applicable on non-CPPs also., it is the submission of the appellant that the APERC Petition was filed before the State Commission under section 62 of the Electricity Act, 2003, however, there is no provision under the Act which empowers the State Commission to levy GSC, thus, the State Commission lacks jurisdiction to pass the Impugned Order with regards to GSC, further, added that the SC Judgment is not applicable in its case as its power plants are not Captive Power Plants.

54. The Respondents submitted that the Appellant has no basis for filing of this appeal since the Appellant was not a party to the suit. However, the Appellant submitted that it comes under the ambit of section 111(1) of the Electricity Act, 2003, which reads as under:

“111. Appeal to appellate Tribunal: (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under

section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity...”

55. The term ‘any person aggrieved’ has to be construed from the fact that the Appellant was one of the stakeholders who made submissions before APERC even before the Impugned Order was passed, and that since the Appellant is aggrieved by the order of APERC, it gives the Appellant the locus to file the appeal before this Tribunal under section 111 of the Electricity Act, 2003, even otherwise, it cannot be disputed that the Appellant is directly affected by the Impugned Order as the imposed GSC has to be paid by the Appellant, our attention was invited to the judgment in ***Reliance Industries Ltd. v. PNGRB, 2014 SCC Online APTEL 5***, the scope and ambit of the word “person aggrieved” would include any person whose interest may be prejudicially affected by what is taking place.

56. We decline to agree to the contentions of the Respondents, the Appellant is the party aggrieved by the Impugned Order and thus, has the right to approach this Tribunal by way of the present Appeals.

57. The Respondents further submitted that the SC Judgment has made it clear that the State Commission has the powers to levy GSC, also cited the judgment of this Tribunal in the case of ***Hindalco Industries v. MPERC, 2021 SCC Online APTEL 23***.

58. Once it is held by the Supreme Court in SC Judgment, the State Commission has power to levy and determine Grid Support Charges, however,

the said judgment refers to only CPPs and also the reasoning given therein suggests that the judgment is limited to CPPs.

59. This Tribunal vide its judgment in the case of ***Hindalco Industries Ltd. v. M.P. ERC, 2021 SCC OnLine APTEL 23*** has dealt the issue of the precedential value, it was held therein as under:

“51. Placing reliance on PTC India Ltd. v. CERC, (2010) 4 SCC 603 and Shrisht Dhawan (Smt.) v. Shaw Brothers, (1992) 1 SCC 534, it is submitted that the Electricity Act is “an exhaustive code on all matters concerning electricity”, whereby generation of electricity as an activity has been expressly de-licensed, the State Commission has been given a limited jurisdiction qua a generating company, there being no power vested to levy of a charge which is not sanctioned by the statute, there being no inherent power, it being impermissible for the SERC to assume jurisdiction if the provisions of the legislation (Electricity Act, 2003) do not provide for it. It is their plea that levy of POC is an impermissible attempt to introduce regulations through the back-door without the power to regulate generation of electricity.

52. We find no substance in above line of arguments of the appellants. In our considered opinion, the material aspects relating to the Parallel Operation Charges have been duly considered and decided by the previous decisions noted earlier, particularly the Supreme Court ruling in Transmission Corporation of Andhra Pradesh Limited v. Rain Calcining Limited (supra) and the full bench decision of this tribunal in Chhattisgarh State Power Distribution

Company Limited (supra). The power, jurisdiction and authority of law on the part of the SERC to impose parallel operation charges has never been in doubt. This is why in all the previous challenges to such levy against CPPs or CGPs or as to the rate the line of arguments taken by the appellants were never even urged. It is inconceivable that such levy would have been approved by various regulatory commissions or upheld in appeal by this tribunal or in further challenge by appeal by Hon'ble Supreme Court without being satisfied as to the legality of such levy or competence of the regulatory authority to do so.

53. It is not correct to seek the judgment of the Supreme Court in Transmission Corporation of Andhra Pradesh Limited v. Rain Calcining Limited (supra) to be ignored because there is a mention of the concession given by the party opposing such levy as to the jurisdiction of the regulatory authority to impose grid support charges. The concession is recorded with reference to the decision earlier taken on the issue of wheeling charges, both being inter-linked. The conclusions reached vis-à-vis the wheeling charges and POC based on overall scheme not only of the AP Reforms Act but also the Electricity Act, inter alia, with aid of “test of general application” applied in the case of PTC (supra) leave no doubt in our mind that the ruling in Transmission Corporation of Andhra Pradesh Limited v. Rain Calcining Limited (supra) is sufficient to reject the challenge by the appellants to the power, jurisdiction and authority of MPERC to levy POC against the CPPs.”

60. However, we are satisfied that the issue of applicability of the SC judgment has been taken up earlier, however, the scope and powers as decided by the SC Judgment are limited to CPPs, as also detailed and explained in the aforesaid judgment of this Tribunal.

61. The jurisdiction of the State Commissions was also dealt in ***Chhattisgarh State Power Distribution Co. Ltd. v. Godawari Power & Ispat Ltd., 2011 SCC Online APTEL 20*** wherein this Tribunal has held that the dispute of GSC is between the CPP, a generator as per the Electricity Act, 2003 and the distribution licensee and since the State Commission has jurisdiction to entertain a dispute between a generator and a licensee, the dispute of GSC comes rightly under the jurisdiction of the State Commission u/s 86(1)(f) of the Electricity Act, 2003, the relevant extract is quoted as under:

“SUMMARY OF OUR FINDINGS:

26. (1) The 1st Respondent, Godawari Power & Ispat Ltd. is the Captive Power Plant. This plant is being operated in parallel with the grid. The relationship in regard to the parallel operation with the grid is between the Captive Power Plant, the 1st Respondent herein and the Appellant, the Distribution Licensee. This is not a dispute between the Appellant a Distribution Licensee and the Respondent No. 1 as a consumer of the electricity. This is a dispute regarding the levy of parallel operation charges to be levied and collected by the Appellant being a Distribution Licensee from the 1st Respondent, Captive Power Plant which is a generator. Therefore,

the State Commission has got the jurisdiction to entertain and adjudicate upon this dispute under Section 86(1)(f) of the Electricity Act, 2003.”

62. Considering the aforesaid quoted judgments, it cannot be disputed that the State Commission has powers to determine and impose GSC on the Captive Power Plants, however, on being asked, the Respondents failed to place any judgment whereby imposition of GSC was upheld on the non-Captive Power Plants as is the case in the captioned appeals.

63. Our attention was invited to various judgments of this Tribunal as discussed in the succeeding paragraphs.

64. The Appellant argued that the Impugned Order is in violation of the principles of natural justice as it fails to provide any reasoning behind imposition of GSC, there is no statistical data available to back the determination of GSC by the State Commission, further, the SC Judgment relied on by the State Commission does not mention the imposition of GSC on co-generation plants and there is no reasoning given on how the State Commission is imposing GSC on co-generation plants when the SC Judgment only mentions regarding the imposition of GSC on Captive Power Plants (CPPs), it is the further submission that Appellant's co-generation plants cannot be classified as a CPP in every scenario since Rule 3 of Electricity Rules, 2005 requires that a CPP must consume 51% of the electricity generated by it and the Appellant's consumption is only 7.2% (3.6 MW out of 49.5 MW) of the installed capacity of the co-generation plant, reliance was placed on ***Salasar Steel and Power Ltd. v.***

Chhattisgarh State Power Distribution Company Ltd and ors, Apl no. 72 of 2015 dated 17.02.2016 wherein this tribunal held that if the power plant does not qualifies as a CPP, it is not liable to pay GSC, since the Appellant's own consumption is less than 51%, it does not qualifies as a CPP, the relevant extract of the judgment is quoted as under:

“(j) It is upto the Appellant if it considers that it would not have captive consumption to the specified threshold for meeting captive status in future it could get it generating plant categorized as non-captive generating station and in that case after obtaining the statutory clearance, it would not have to pay parallel operation charges. However, in the present Appeal, it was only after the captive consumption becoming less than the specified threshold limit for securing captive status after the period has elapsed, the Appellant during the disputed period based on actual consumption of power for captive use is claiming its plant as non-captive. Hence, it would not be entitled to the benefit of recovering POC paid by it during the period under dispute.”

65. This Tribunal in the case of **Chhattisgarh State Power Distribution Co. Ltd. v. Godawari Power & Ispat Ltd., 2011 SCC Online APTEL 20**, has categorized various support that a power plant receives from parallel operation with the grid and that can be the basis for imposition of Grid Support Charges, it was held as under:

“17. The parallel operation is a facility in the nature of a Grid support to the Captive Power Plant. The Captive Power Plant gets the following advantages owing to the parallel operation with the Grid:

(66) The fluctuations in the load of CPP are absorbed by the utility grid in the parallel operation mode. This will reduce the stresses on the captive generator and equipments. The CPP can operate his generating units at constant power generation mode irrespective of his load cycle.

(ii) Absorption of harmonics.

(iii) Negative phase sequence current is generated by unbalance loads. The magnitude of negative phase sequence current is much higher at the point of common coupling than at generator output terminal. This unbalance current normally creates problem of overheating of the generators and other equipments of CPP, if not running in parallel with grid. When they are connected to the grid, the negative phase sequence current flows into the grid and reduces stress on the captive generator.

(iv) Captive Power Plants have higher fault level support when they are running in parallel with the grid supply. Because of the higher fault level, the voltage drop at load terminal is less when connected with the grid.

(v) The grid provides stability to the load of Captive Power Plant to start heavy loads like HT motors.

(vi) The variation in the voltage and frequency at the time of starting large motors and heavy loads, is minimized in the industry, as the

grid supply acts as an infinite bus. The active and reactive power demand due to sudden and fluctuating load is not recorded in the meter.

(vii) The impact created by sudden load throw off and consequent tripping of CPP generator on over speeding is avoided with the grid taking care of the impact.

(viii) The transient surges reduce the life of equipment of the CPP. In some cases, the equipment fails if transient is beyond a limit. If the system is connected to the grid, it absorbs the transient surges. Hence, grid enhances the life of CPP equipments.

18. In short, the gain to the Captive Power Plant is quite substantial in case there is grid support. Owing to the above said substantial gains to the Captive Power Plant by operating in parallel with the grid, the parallel operation charges are levied from the Captive Power Plant.

19. Therefore, the State Commission is empowered to deal with the question as to whether the levy of parallel operation charges is permissible or not. This aspect has been dealt with by this Tribunal in judgment dated 12.9.2006 in Appeal No. 99 of 2006. In the said judgment, this Tribunal upheld the levy of parallel operation charges by the State Commission. The relevant observations of the Tribunal are as follows:

“11. Next we shall take up points C & D together, as the discussions overlap each other. The parallel operation is

definitely a service that the second respondent renders to all the CPPs like the appellant. It is the contention of the appellant that no charges could be levied or collected for the said service. As rightly pointed out by the Expert who appeared for the second Respondent, the parallel operation is a service which extend support to the system and at the same it causes voltage dip in he system, harmonics, injection, additional reactive power requirement etc. By parallel operation the CPP gains more and hence it is liable to pay the charges for the service.

12. The contention that no charges at all is payable for parallel operation or transmission system cannot be sustained and such a claim is contrary to factual position. **There is no escape for CPP to pay charges for parallel operation by which parallel operation the CPP gains while the transmission system of the second respondent is affected apart from the admitted fact the transmission grid is strengthened by the power injected by CPP.** Hence the contention that no charges at all is payable by CPP to the second respondent for parallel operation is not acceptable nor such a claim could be sustained.

13. Concedingly for the past several years, CPPs were paying at the rate of Rs. 16/= per KVA per month and in the absence any scientific data placed or objection by the appellant and other CPPs, the commission just followed the same scale and fixed the same tariff viz Rs. 16/= per KVA per month. On a review the commission has slashed the said rate and fixed it at Rs. 10/= per KVA per month. This works out approximately paisas 2 to 3 per

unit per month, a negligible rate when compared to services rendered by second respondent. The rates of parallel operation charges so fixed are till the next tariff fixation, which is under progress.

14. It is strongly contended by the learned senior counsel that in the absence of scientific data and particulars the fixation is arbitrary and on the higher side. Per contra the second respondent while contending that the appellant could have very well placed the datas to show the fair rate of charges for such parallel operation.

15. We are informed by either side that the first respondent commission is seized of the very issue and the respondent after study and sample survey has placed required datas, which will enable the Regulatory commission to fix parallel operation charges on a scientific basis and on the materials and datas placed before it.”

20. The above observations of the Tribunal would make it evident that the State Commission is empowered to fix the parallel operation charges payable. In this case, the State Commission has observed that the capacity of the Captive Power Plant is to be considered for levy of parallel operation charges as 40 MW. So, in these circumstances, we are of the view that this is not a mere dispute between the consumer and the Licensee. It is a dispute between the Generator and the Licensee with regard to the levy of parallel operation charges. Therefore,

in respect of the 1st issue, we hold that the State Commission has got jurisdiction to inquire into the dispute raised in the Petition filed by the 1st Respondent before the State Commission and as such, the finding rendered by the State Commission on the issue of jurisdiction is upheld.”

66. It is important to note here that this Tribunal has rendered the findings limited to CPPs, further, the various supports as categorized by this Tribunal including *the fluctuations in the load of CPP, absorption of harmonics, negative phase sequence current generation by unbalance loads, higher fault level support, stability to the load during start of heavy loads like HT motors also variation in the voltage and frequency, impact created by sudden load throw off, generation of transient surges* are the characteristics of loads and are created by such loads, the generating stations which are not self-consuming the power, i.e. not having the captive loads, cannot be said to be drawing such a support from the grid.

67. This Tribunal vide judgment in *HEG Ltd. v. MPERC, Apl no. 167 of 2014 dated 08.10.2015*, has held that the concerned plant is not liable to pay GSC/Parallel Operation Charges as it is not located at the site of Captive user and hence does not and cannot be connected in parallel grid and thus there is no possibility of injecting the harmonics into the grid and therefore is not liable to pay GSC, the relevant extract of the judgment is reproduced as under:

*“13.13 The evidence on record clearly establishes that Appellant’s Tawa Plant is not located at the site of the captive user/load and, hence, does not and cannot be connected in parallel to the grid along with its captive load and, therefore, there is no possibility of injecting the harmonics into the grid. **Thus, there is no adverse effect on the grid on account of Tawa Plant’s connection to the grid like any other generators of IPPs. Further, since, the Tawa plant does not have any load, it is not required to maintain any demand and in this respect, it is identical to an IPP. The material on record, further, clarifies the situation that since the total power generated by Tawa Plant, at any given point, is exported completely to the grid and since, the Tawa Plant has no contracted demand, the POCs, if any, payable by the Appellant for its Tawa Plant amounts to zero.***

13.14 Further, it is clear from the record that the basic condition for levy of POC is that the Captive Power Plant as well as the power consuming units/load are co-located in the same place will create harmonics due to sudden fluctuation of load.

13.15 We have cautiously and carefully gone through the reasoning recorded by the Gujarat Electricity Regulatory Commission, in its order, dated 1.6.2011, in Petition No. 256 of 2003 and 867 of 2006 where the Gujarat Commission has dealt with the issue of applicability of POCs. According to the Gujarat Commission, if the CPPs are situated at different places and part load of the consumer is connected

at the place of CPP and part load receiving power through open access from it is situated at a different place, the part load which is situated at the CPP premises is only eligible for levy of parallel operation charges as they receive services from the grid. **While the load/consuming unit situated at another place and getting power generated from CPP by wheeling/transmission through open access is equated with a consumer without CPP. Hence, for such quantity of power wheeled from CPP, no POC is leviable.**

13.16 Considering the aforementioned reasons and further considering the reasoning recorded by the Gujarat Commission in its order, dated 1.6.2011, and also considering the facts that pre-condition for levy of POC is the co-location of the CPP and load and **if the CPP and load are at different places, there is no grid support and hence, there is no question of levy of POC on such kind of CPP like Tawa Plant of the Appellant.** The Appellant's Tawa Plant is a CPP which is not co-located with the consuming facilities/load. Further, the Tawa Power Plant is injecting its total power generated to the grid system and the open access consumer situated 100 Kms distance from the generating plant is drawing the power from the same grid system, like any other consumer and hence, creation of harmonics by Tawa Plant to disturb the grid does not arise. Hence, levying parallel operation charges is not justifiable. In fact, even auxiliary power for start-up of the Tawa plant is obtained from a separate connection from the distribution system of the licensee for which charges are paid separately by the Appellant. We

find that in these circumstances, levying parallel operation charges to the Appellant/petitioner is not justifiable.”

68. Additionally, in the case of ***Shree Renuka Sugars Ltd. v. Gujarat Energy Transmission Corporation Ltd., 2015 SCC Online APTEL 11***, this tribunal has held that GSC/POC can be charged from co-generation plants, relevant extract is quoted as under:

“15 (a)Parallel Operation Charges (POC) for Cogeneration plant

viii) It is also an established fact that the Cogeneration plant though different from CPP so far as the operation is concerned but not different on the aspect of operation in parallel with the Grid.

The impugned order dated 08.08.2013 rejecting the claim of the Appellant and holding that the facilities of the Appellant of Cogeneration plant are operating in parallel and hence liable to pay the charges is correct and is being upheld by this Tribunal.”

69. However, the issue which was dealt in the case was with reference to CPPs and a cogeneration plant can also be a CPP, the judgment was silent where a non-captive Cogeneration Plant is connected to the grid, every reference made therein and similarities placed are with respect to CPPs.

70. From the above, it cannot be disputed that the Grid Support Charges should be levied on the Captive Power Plants, it is the contention of the Appellant that in case where the total self-consumption of the power plant is below 51% then as per Salasar Case (Supra), the Appellant cannot be made liable to pay Grid Support Charges.

71. On the contrary, the Respondents have argued that the levy of Grid Support Charge is not based on self-consumption but on the basis of co-location of the power plant operating in parallel to the grid.

72. We disagree with the submission of the Respondents, it has to be understood that the pre-condition of co-location of the plant cannot substitute the condition for the Appellant to be a CPP in order to be liable to pay GSC, as per the above cited judgments, any power plant to become a CPP which is operating parallel to the grid in order to pay GSC, the CPP should be co-located with the grid and must be consuming at least 51% of its power generated.

73. Further, the State Commission vide the Impugned Order has held that all the generators, including CPP, who are taking grid support are liable to pay grid support charges, however, excluding the generators from the paying the GSC who have signed PPAs with the DISCOMs but no reasoning has been given for such a conclusion.

74. We fail to understand how a generating station connected to the grid can be different in case no PPA is signed with the distribution company, it is necessary at this point to explain the difference between a Captive Power Plant (CPP) and an Independent Power Producer (IPP), a CPP is defined under section 2(8) of the Electricity Act, 2003 as under:

“(8) ‘Captive generating plant’ means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;”

75. Additionally, as per rule 3(1)(a)(ii) of the Electricity Rules, 2005, in order to be a captive power plant, the generator is required to consume at least 51% of the aggregate electricity generated, the rule is quoted as under:

“3. Requirements of Captive Generating Plant. - (1) No power plant shall qualify as a ‘captive generating plant’ under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of a power plant –

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use.”

76. Therefore, an IPP can be categorized as CPP only if the generating station is self-consuming more than 51% of what it generates, in case the IPP is consuming less than 51% of energy, it cannot be termed as a CPP and thus will not be liable to pay GSC as held in the preceding paragraphs.

77. Similarly, a Co-generation is defined under section 2(12) of the Electricity Act, 2003 as under:

“(12) “Cogeneration” means a process which simultaneously produces two or more forms of useful energy (including electricity);”

78. From the above, co-generation is process and any plant which operates with such process i.e. produces two or more forms of useful energy simultaneously is a Co-generation Plant, therefore, can be categorized as a CPP if it qualifies the conditions as stipulated under rule 3(1)(a)(ii) of the Electricity Rules, 2005, failing which it remains as an IPP, thus a Co-generation Plant, operating parallel to the grid, can be levied with GSC only when it is a CPP and consuming more than 51% of the energy produced by such plant.

79. Every Co-generation Plant cannot be termed to be a CPP, the Supreme Court in the case of SC Judgment has considered only CPPs to be liable for payment of GSC, therefore, in case a power plant is not a CPP, such power plants cannot be made liable to pay GSC.

80. Even the case of Shree Renuka Sagars (Supra) does not considered the aspect where a Co-generation plant does not qualify as a CPP, in order to be liable for payment of GSC, an IPP must be co-located with the grid and should be categorized as CPP, these two conditions are necessary for imposition of GSC and absence of any one of them will exempt a plant from payment of GSC.

81. As seen from above, the State Commission passed the Impugned Order relying upon the SC Judgment and the Tribunal Judgments which are rendered in respect of CPPs having captive loads, however, extended the same by including the IPPs and non-captive Cogeneration Plants, further, excluded the IPPs which have signed PPAs with the distribution licensees, without having any statistical data or study carried out and without providing reasons and justification.

82. The Appellant's power plants are cogeneration based plants, utilising waste heat for the generation of electricity, and are not falling under the category of CPPs, the fact which is not disputed by the Respondents also.

83. We are satisfied that none of the judgments as afore-quoted, including the SC Judgment and the Tribunal Judgments, are applicable in the instant appeals, the imposition of GSC on these non-captive co-generation plants of the Appellant on the basis of such judgments is arbitrary, unjust and unreasonable and accordingly, deserves to be set-aside limited to its applicability on the Appellant.

84. The Appellant, however, submitted that the GSC levied on the capacity exported is misconceived, and, if at all any GSC has to be levied, can be to the limited to co-located load.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. Appeal No. 228 of 2022 and Appeal No. 391 of 2023 have merit and allowed, the levy of Grid Support Charges on the Appellant's non-captive power plant shall be limited to only the power consumed by the co-located load, also the direction to give an undertaking that he will pay GSC and only then his Format A Application for sale of power through IEX will be processed is also set-aside.

Accordingly, the Impugned Order is set-aside to the limited extent.

The pending IAs, if any shall stand disposed of accordingly.

PRONOUNCED IN THE OPEN COURT ON THIS 14th DAY OF DECEMBER, 2023.

(Sandesh Kumar Sharma)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

pr/mkj