

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

APPEAL NO. 111 OF 2020

Dated: 29th January, 2024

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

In the matter of:

KANCHANJUNGA POWER COMPANY PRIVATE LIMITED

Through its Authorized Representative,

B-37, 3rd Floor, Sector-1, Noida,

Gautam Budh Nagar,

Utter Pradesh - 291301

... Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION

Through its Secretary,

3rd & 4th Floor, Chanderlok Building,

36, Janpath,

New Delhi - 110001

... Respondent No.1

2. HIMACHAL PRADESH POWER TRANSMISSION CORPORATION LIMITED

Through its Managing Director,

Khalini, Shimla - 171002,

Himachal Pradesh

... Respondent No.2

3. A.D. HYDRO POWER LIMITED,

Through its Managing Director,

Bhilwara Towers, A-12,

Sector 1, Noida - 201301,

Uttar Pradesh

... Respondent No.3

4. POWER GRID CORPORATION OF INDIA LIMITED

Through its Managing Director,

Sector 29, Gurgaon,

Haryana - 122001

... Respondent No.4

5. DIRECTORATE OF ENERGY

Through its Secretary,

Government of Himachal Pradesh,

Shanti Bhawan, Phase -3,

Sector -6, New Shimla - 171009,

Himachal Pradesh

... Respondent No.5

6. GOVERNMENT OF HIMACHAL PRADESH

Through its Chief Secretary,

Armsdale Building, H.P. Secretariat,
Shimla, Himachal Pradesh - 171002

... Respondent No.6

7. HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,

Vidyut Aayog Bhawan,
Block No.37, SDA Complex,
Kasumpti, Shimla - 171009,
Himachal Pradesh, India

... Respondent No.7

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Lakshyajit Singh Bagdwal
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karan Govel For App1

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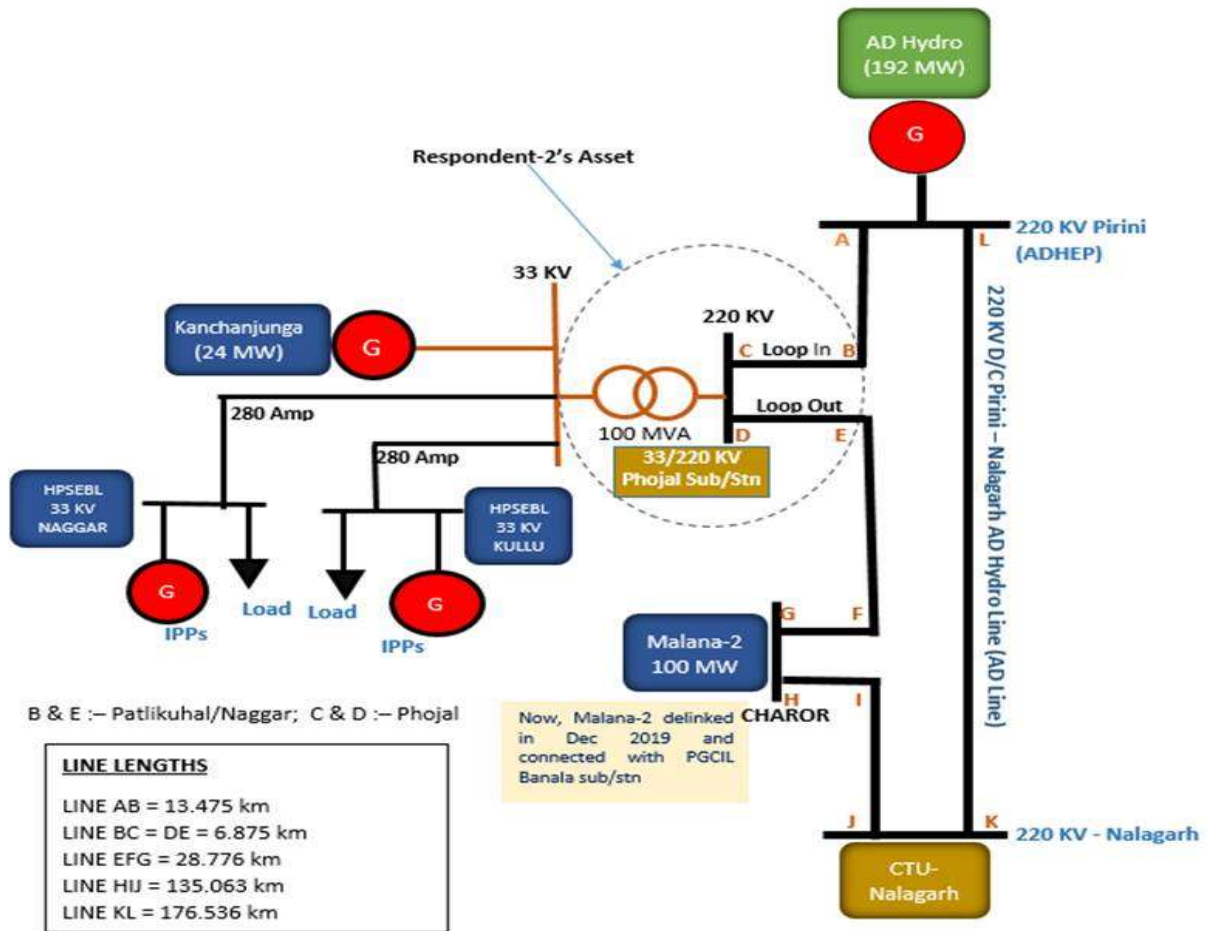
J U D G M E N T

(PER HON'BLE MRS. SEEMA GUPTA, TECHNICAL MEMBER)

1. The present appeal has been preferred by Kanchanjunga Power Company Private Limited (in short "the Appellant" or "KPCPL") assailing the order passed by the Central Electricity Regulatory Commission (in short "the Respondent Commission" or "the Commission" or "CERC") in I.A. No. 14/IA/2020 in Petition No. 124/MP/2017 filed before it by the Appellant herein. In the said petition, the Appellant sought stay of NRPC minutes of meeting and a decision of the Commission on its jurisdiction to

determine tariff of the transmission assets of the Respondent No. 2 Himachal Pradesh Power Transmission Company Limited (in short “the Respondent No. 2” or “HPPTCL”). The Commission passed the order on 24.06.2020 dismissing the IA on the ground of locus standi of the Appellant.

2. The Appellant is a generating company having a 24 MW Small Hydro Electricity Plant (SHEP), at Village Hallan-II, district Kullu, in the State of Himachal Pradesh. The Appellant evacuates power through the transmission lines/ assets built by Himachal Pradesh Power Transmission Company Limited (the Respondents No. 2) and AD Hydro Power Limited (the Respondent No. 3) as depicted herein below.



3. The Respondent No.2 had filed a Petition No. 244/TT/2017 before the Commission for approval of capital cost of its 220 KV D/C transmission line from Phozal substation to LILO at Patlikul with 220 KV AD Hydro – Nalagrah Transmission line and 33/220 KV 80/100 MVA GIS substation Phozal. The Commission (CERC, Respondent No.1) dismissed the petition on 08.10.2018 on certain issues such as non-certification from Northern Region Power Committee (NRPC) that such line carries interstate power and granted liberty to HPPTCL to file fresh petition after the NRPC certificate is available. Thereafter, second respondent, HPPTCL, approached NRPC for certification of said lines as ISTS lines. However, NRPC vide its minutes of meeting dated 29.10.2018 and 30.10.2018 declined to certify the lines as carrying interstate power on the ground that the average flow of interstate power on the said lines was only 36.55 %. This was based on the letter dated 17.12.2015 of the 36th NRPC and 32nd Technical Coordination Sub-committee wherein it has been decided that **“a transmission line would be construed as inter state line only if average utilization for interstate purposes based on the studies for 2nd and 4th quarter comes out to be more than 50 %”**. As Respondent No. 2, HPPTCL could not get NRPC certification for the referred lines as inter-state, it approached HPERC for determination of tariff of its transmission assets vide Petition No 02/2020 and it also filed an IA No. 82/IA/2019 before the commission stating that it has filed a petition before HPERC since its subjects assets are allegedly intra – State in nature. The Appellant also filed an application before HPERC for dismissal of petition filed by Respondent No.2 on account of lack of Jurisdiction. However, HPERC vide public notice dated 15.2.2020 decided to proceed with conducting the public hearing of the petition filed by HPPTCL. Tariff determination of said assets by HPERC is on their file.

Aggrieved by the same, the Appellant had approached High Court of Himachal Pradesh through a Writ Petition (No. CWP/1109/2020) that HPERC ought to have granted them separate time so that it can agitate the issue of jurisdiction. The said writ petition is pending adjudication before the High Court of Himachal Pradesh.

4. The Appellant had filed a Petition No 124/MP/2017 dated 28.4.2016 which was pending when Petition No 244/TT/2017 of Respondent No 2 HPPTCL was disposed of by the Commission. Aggrieved by denial of certification by NRPC, the Appellant filed IA 14/IA/2020 in still pending Petition No 124/MP/2017 and made the prayers seeking the following reliefs :

“a) Stay/ quash the NRPC minutes of meetings dated 29.10.2018 and 30.10.2018 in terms stated in the present application;

b) Hold that this Hon’ble Commission has the necessary jurisdiction for determination of tariff of the transmission assets of the Respondent No. 1, as detailed in the present application; and

c) Pass such further or other order(s) or direction(s) as this Hon’ble Commission may deem fit and proper in the facts and circumstances of the instant case as well as in the interest of justice.”

5. The Commission passed the impugned order dated 24.06.2020 dismissing the IA 14/IA/2020 filed by the Appellant on the ground of lack of locus standi and in light of the denial of ISTS status by NRPC. The relevant extract of the impugned judgment is as under:

“ 29. In the instant case, the Respondent No. 1 (HPPTCL) is the owner of the instant transmission assets. HPPTCL had filed Petition No. 244/TT/2017 before the Commission for determination of tariff for 2016-19 period for 33/220kV, 80/100 MVA GIS Sub-Station Phozal along with 220kV D/C LILO transmission line. The Commission vide order dated 08.10.2018 disposed of the Petition No. 244/TT/2017 since HPPTCL had not approached the Commission with requisite documents. In this regard, we note that in terms of order dated 14.3.2012 in petition No. 15/SM/2012 and order dated 5.9.2018 in petition No. 7/SM/2017, it is the owners of transmission assets/ State utilities that have to approach the Commission for declaration of transmission assets owned by them as ISTS and request for determination of tariff of such transmission assets. The aforesaid orders of the Commission are not applicable to entities other than owners of transmission assets. Therefore, in our considered view, the Applicant has no locus standi to contest that the instant transmission assets are ISTS. Also, in the instant matter, the owner of the transmission asset (Respondent No. 1) has decided to approach HPERC for determination of tariff based upon minutes of meetings of NRPC dated 29.10.2018 and 30.10.2018. Thus, HPPTCL has accepted decision of NRPC that instant transmission assets are not ISTS. Therefore, we find no reason to interfere with decision of NRPC.

30. In the second prayer, the Applicant has submitted that the Commission has the necessary jurisdiction for determination of tariff of the transmission assets of the Respondent No. 1, HPPTCL. It is noted that the instant transmission line was developed by HPPTCL and is located within the territory of Himachal Pradesh. It is further noted that the instant transmission assets have not been certified as ISTS by NRPC and consequent upon such decision of NRPC, HPPTCL has already approached

HPERC for determination of tariff and presently, HPERC is seized with the matter. In view of the fact that HPPTCL, accepting the decision of NRPC that the instant transmission assets are not ISTS, has already approached HPERC for determination of tariff of the instant transmission assets, any exercise of jurisdiction by this Commission to determine tariff for the instant transmission assets does not arise.”

(Underline Supplied)

6. Aggrieved by the said order of the Commission, Appellant has filed present appeal and submitted that the aforesaid portion of the impugned order is wrong and contrary to the settled principles of law on the following accounts.

7. Subject transmission assets of the Respondent No. 2 are part of ISTS, and fall under Sections 2(36)(ii) and 79 (1) (c) and (d) of the Act. Section 2 (36) (ii) of the Act, states that *“the conveyance of electricity across the territory of an intervening states as well as conveyance within the state which is incidental to such interstate transmission of electricity”*. Thus, even if subject asset had 36.55 % inter state power, there is an incidence of supply of interstate power and the word incidental cannot mean above 50% of flow. Thus, the jurisdiction to decide whether an asset is inter-state or intra state still vests with CERC. The Appellant submitted that assuming NRPC certification is required, the CERC has delegated to the RPC only the procedural and computational steps of computing the power flow in the assets which are sought to be determined as inter-state assets. It is incorrect to equate such certificate with such designation. In fact, NRPC should not have applied the requirement of inter state power flow more than 50% as this express requirement was taken away by way

of 3rd amendment of CERC sharing calculation. Appellant has further submitted that as it has invoked sections 79(1)(f) and 79(1)(c) of the Act, and therefore, locus standi of the appellant cannot be questioned.

8. The Appellant further submitted that the 1st Amendment to CERC Sharing Regulations in 2011, provided that for the purpose of classifying a line built by an intra-state entity as an ISTS, the same can only be done in the event more than 50% of the power flow goes outside the State. Thereafter, in the 3rd Amendment to CERC Sharing Regulations, 2015, the aforesaid criteria of 50% power flow was “repealed” and the same was left to be decided by the Regional Power Committee (RPC). In the Statement of Reasons for the above amendment, it was held that the RPC may decide a uniform percentage below which (which could be as low as 10%) such a line would not be considered as an ISTS.

9. Therefore, from the above, it is evident that the Regulations of 2011, which provided for a classification of ISTS of a non-ISTS line based on power flow more than 50% outside the State, was expressly taken away by the amendment of 2015. This in turn streamlined the Regulations, with the provisions of the Act, especially Section 2(36) which states that an ISTS includes the conveyance of electricity across the territory of an intervening State as well as conveyance within the State, which is incidental to such inter-State transmission of electricity.

10. Hence, once the amendment has been made, the old regulation cannot be introduced through the back door, and the NRPC cannot at all take a view, which is contrary to the Statute.

11. In the present case, the Northern RPC (NRPC) (vide Minutes of Meetings dated 29.10.2018 and 30.10.2018) certified that the subject transmission assets of the Respondent No. 2 are not ISTS. For this, the NRPC wrongly relied on the repealed provision of the 1st Amendment to the CERC Sharing Regulations and held that since the power flow on the aforesaid assets outside the state is allegedly 36.55% (which is less than 50%, as was the case prior to the 3rd Amendment), the said assets cannot be classified as ISTS. The fundamental error has been committed by NRPC, is to treat the transmission line of the Respondent No. 2, in isolation. NRPC, being a technical body, was mandatorily required to take into consideration the transmission asset built by the Respondent No. 3 (termed as AD Line), while certifying the assets of the Respondent No. 2. This is because the transmission asset of the Respondent No. 2 is a LILO on the transmission line of Respondent No. 3, which has been certified as a Inter State line under the jurisdiction of the Respondent Central Commission. NRPC failed to apply Kirchhoff's law which requires that the power flow on both the above lines have to be considered together. Therefore, the inter-state power flow, when considered by clubbing both the lines of Respondent Nos. 2 and 3 would have been almost 100% (as the line of the Respondent No. 3 is already held as ISTS and the entire power from the said line is going outside the State of Himachal Pradesh). Hence, the Respondent Commission ought to have rejected the above NRPC certification while passing the impugned order.

12. Per Contra, Respondent no. 2 submitted that there is no infirmity in the decision of the Respondent Central commission. The Respondent No.2 (HPPTCL) is the owner of the asset. The matter was referred to NRPC for certification in accordance with Para 2.1.3 of Annexure 1 to the

Sharing Regulations, 2010 in the Tariff Petition filed by HPPTCL, being the owner of the Asset. Accepting the non-certification of the subject assets as ISTS by NRPC vide its Minutes of Meetings dated 29.10.2018 and 30.10.2018, HPPTCL approached the Himachal Pradesh Electricity Regulatory Commission (“HPERC”) for determination and recovery of the Transmission tariff, treating the transmission system as intra-state. The Nature of the line i.e., the line is intra-state or inter-state is relevant only for determination of tariff. In the said Tariff Petition, the question of jurisdiction is determined. It is open to the Appellant to raise objections on jurisdiction, which has been raised in the tariff proceedings before the HPERC. The Petition of the Appellant before CERC merely seeking declaration of the nature of the line, *de-hors* the Tariff Petition is not maintainable. Such declaration cannot be as an academic issue, without the tariff itself being determined. It further submitted that both under Sections 62 and 64 of the Electricity Act, 2003 (“Act”), and also in terms of Para 2.1.3 of Annexure 1 to the Sharing Regulations, 2010 (after certification of NRPC), it is the licensee/STU which has to file the Tariff Petition. The prayer for applicability of PoC charges in the petition of the Appellant also is not maintainable, without determination of the tariff of HPPTCL. Only after determination, charges are included in the pool and recovered through the PoC mechanism. Such recovery is based on a specific order of the CERC for inclusion and recovery from the pool.

13. Even otherwise, the challenge to either reference to NRPC or the NRPC certification before the CERC was misconceived. The NRPC is a body which functions based on consensus of its constituents as per Section 29(4) of the Act. The constituents are the persons who bear the burden on the regional pool account. If an asset, situated within one State

and established by a State Utility, was not conceived as an inter-state asset with NRPC (instant case) approval or the regulatory approval of the CERC, the only mode prescribed for inclusion as inter-state asset is by the certification of the NRPC. The Sharing Regulations, 2010 delegates the function of certification of the assets to respective RPC (NRPC in the instant case), which certification is based on load flow studies with a particular software. The further details and methodology were left to be developed by the NRPC. There is no provision for CERC to re-examine the certification once done, either in the Act or the Regulations framed.

14. The law on delegation is also that once the delegatee acts based on the powers delegated, the delegator cannot thereafter re-examine or nullify the actions of the delegatee. [Ref : **Roop Chand v. State of Punjab**, (AIR 1963 SC 1503)]. Further, the contention that 'incidental' in Section 2(36) of the Act would mean immediately connecting to an inter-state line is erroneous. By this interpretation, in a mesh network, all lines would then be connected to an inter-state line, as it would go to all the step-down lines one by one. 'Incidental' would mean the line is predominantly or primarily used to transfer inter-state power. The line of HPPTCL is different from the inter-state line of AD Hydro. The inter-state status of the AD Hydro line would not render all lines connecting to it as also being inter-state. It was submitted that the present appeal is liable to be dismissed.

Discussion and Analysis

15. We have heard the learned Counsel for the parties extensively and have gone through the impugned order as well as records of the case. We have also perused the written submissions filed by the Learned Counsel. Based on which, main questions emerge are as under:

- 1) Is NRPC correct in applying the more than 50 % inter state transmission of power criteria to certify the transmission system as ISTS and reliance of the Commission on NRPC minutes to deny ISTS status to the asset of Respondent No2 (HPPTCL) ?
- 2) Does any transmission system which is incidental to inter state transmission of electricity gets automatically classified as Inter State Transmission System (ISTS) ?
- 3) Locus standi of Appellant in asking the Inter state certification of a transmission asset of Respondent no 2 ?

16. As per Electricity Act 2003, functions of Central Transmission Utility (CTU) is to undertake transmission of electricity through inter-state transmission system and CTU to discharge all functions of planning and coordination of inter-state transmission system (ISTS). ISTS so planned are implemented as ISTS after following a due planning & approval process and implemented either in Regulated Tariff Mechanism (RTM) process or Tariff Based Competitive Process (TBCB). On the other hand, State Transmission Utility (STU) is to undertake transmission of electricity through intra-state transmission system and STU to discharge all functions of planning and coordination of intra-state transmission system (ISTS). Intra State Transmission system so planned and approved are also to be implemented under RTM or TBCB route based on extent policy of the Central/State Govt. The subject Transmission assets are implemented by Himachal Pradesh Power Transmission company limited (Respondent No 2), an Intra State Transmission Utility. On a query, the Appellant could not provide any evidence/documents that the subject

transmission was approved to be implemented as Inter- State Transmission system, thus, it is clearly understood that subject assets of HPPTCL (Respondent No 2) is a Intra State Transmission system at implementation stage as also submitted by Respondent No 2. Next check would be whether it can be automatically defined as an inter-state transmission system as per section 2(36) (ii) of Electricity Act 2003 which reads that *“the conveyance of electricity across a territory of an intervening state as well as conveyance within the State which is incidental to such inter state transmission system”*, as submitted by the Appellant. Indian Power system operates as a meshed network consisting of both Intra State and Inter-state transmission system with seam less flow of electricity within a state as well as across the states. Thus, at some point or the other, an intra state transmission system/ element would be incidental to Inter State transmission system/element. If we apply the above criteria that any transmission system which is incidental to Inter state shall become inter state then hypothetically if subject assets of respondent No. 2 are declared as inter-State being incidental to a transmission system which has been declared inter- State then as a next step, the intra State transmission system connected to this asset, namely, 33 KV NAGGAR and 33 KV Kullu system (as per Diagram annexed in previous paragraphs) would then become incidental to the now declared inter-State and shall also become inter-State. Thus, all intra State transmission system would become Inter-State transmission system one after the other. There would not be any Intra State Transmission System and all would be inter State transmission system. Many a times, the Loop in loop out of Inter-State transmission system is allowed by State utilities from techno economic considerations and the intra State system so connected with inter State system may continue to retain their character

of Intra State. It is also a fact that from time to time based on system conditions some of the transmission elements which though conceived and implemented as intra-state transmission system may be used for inter-state flow of power. In this situation the methodology of sharing of transmission charges (including determination of transmission tariff for new assets) shall undergo a change. Provisions have been made in Central Electricity Regulatory Commission (sharing of inter-State transmission charges and Losses) Regulation 2010, to be called Principal Regulations. Same was amended in Nov 2011 and referred as Central Electricity Regulatory Commission (sharing of inter-State transmission charges and Losses) Regulation 2011, which incorporated the provision for certifying non-ISTS line carrying inter-State power which were not approved by the RPCs on the date of notification of the Principal Regulations i.e. Sharing Regulations, 2010. The first amendment prescribed that the ISTS certification shall be done based on the load flow studies and that results of the load flow studies, on an annual average basis, should show these lines carrying inter-State power more than 50% of the total power carried by it. The relevant portion of the 1st amendment is extracted as under:

“For certifying non-ISTS lines for carrying inter-State power, which were not approved by the RPCs on the date of notification of the Principal Regulations, this shall be determined through the process of load flow studies. The results of the load flow studies, on an annual average basis, should show these lines carrying more than 50% of the total power carried by it to be inter-State power. This shall be vetted by the NLDC in consultation with the respective RLDC on the proposal made by the respective RPC, through a common methodology to be adopted by the NLDC. The YTC for such RPC

certified non-ISTS lines which carry inter-State power, shall be approved by the Appropriate Commission.”

17. The third amendment of sharing above regulations dated 01.04.2015 removed the condition of flow of more than 50% of total power carried by the line and vested the power of certification exclusively on RPCs:

“Certification of non-ISTS lines carrying inter-State power, which were not approved by the RPCs on the date of notification of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2009, shall be done on the basis of load flow studies. For this purpose, STU shall put up proposal to the respective RPC Secretariat for approval. STU shall put up proposal to the respective RPC Secretariat for approval. RPC Secretariat, in consultation with RLDC, using WebNet Software would examine the proposal. The results of the load flow studies and participation factor indicating flow of Inter State power on these lines shall be used to compute the percentage of usage of these lines as inter State transmission. The software in the considered scenario will give percentage of usage of these lines by home State and other than home State. For testing the usage, tariff of similar ISTS line may be used. The tariff of the line will also be allocated by software to the home State and other than home State. Based on percentage usage of ISTS in base case, RPC will approve whether the particular State line is being used as ISTS or not. Concerned STU will submit asset-wise tariff. If asset wise tariff is not available, STU will file petition before the Commission for approval of tariff of such lines. The tariff in respect of these lines shall be computed based on Approved ARR and it shall be allocated to lines of different voltage levels and configurations on the basis of methodology which is being done for ISTS lines.”

18. The justification for the aforesaid amendment (3rd) in Sharing Regulations provided by the Commission in its SOR would clarify that the

interpretation of the Appellant with regards to removal of the condition of 50% of inter-State power which could not have brought back by NRPC was totally misconceived. It was the conscious decision of the Commission to empower the RPCs to decide the percentage of flow for certification of lines as ISTS. The Commission realised that the states being aware that they are using each other's lines would judiciously decide a percentage below which a line would not be considered for ISTS status. The relevant portion of the SOR is extracted as under

"A question arises for consideration is whether to fix a minimum percentage figure to consider a STU line as an ISTS line or not. As per Electricity Act and Tariff Policy, all lines which are incidental to Inter-state flow of power are to be considered as ISTS. In a meshed transmission system, many intra-State transmission lines carry inter-State power and therefore become incidental to inter-State transmission system. However, as Electricity Grid is being operated in a cooperative manner, for a minor fraction of ISTS power, it is expected that STU would not insist on considering its line(s) to be inter-State as on the one hand it will receive payment for its own lines, on the other it has to pay for usage of other States' lines. If a STU puts up a proposal for considering its line as ISTS and it is found that it is being utilized to a large extent by its own drawee nodes, then it would be merely an academic exercise as major part of tariff would be allocated to home State only. So keeping in view the regulatory process involved in getting a line certified as carrying ISTS power, getting its tariff approved and then adjustment from STU's ARR, it is expected that this claim will be raised judiciously. An interesting situation happened during 2011 when in Eastern and Northern Regions, many lines were submitted to RPCs for approval as ISTS, Southern States realizing that they all are using each other State's line, decided that they will not put up any line for certification by RPC as ISTS. While Commission wants to consider legitimate claims but

this must not result in making process too complex. The RPC may therefore uniformly decide a percentage below which (say 10%) such a line would not be considered as an ISTS. Further, it is intended that for assessment of a particular line being used for carrying inter-State power, technical knowhow and tools will be provided by Secretariat of RPCs and NLDC/ RLDCs shall provide all necessary support to States in this regard.

19. It is apparent that there was no restriction on the percentage to be decided by RPCs. Therefore, the contention of the Appellant that the RPCs could not consider a limit of minimum 50% of power flow is devoid of merit. Contrary to Appellant's submission, the intent behind removal of the condition of 50% was to provide more flexibility to the states with regards to sharing of transmission charges of intra-State lines carrying Inter State power.

20. Thus, in line with sharing regulations amendment 3, NRPC made detailed procedure and criteria to certify non ISTS line as ISTS and was applied uniformly to all such intra state lines seeking certification. On the basis of such criteria, the subject assets were not certified as ISTS lines as decided in the Minutes of meeting held on 29.10.2018 and 30.10.2018. Thus, non certification of subject lines as ISTS is in line with regulations and there could not be automatic declaration of non ISTS line as ISTS line as per section 2(36) (ii) of Electricity Act 2003.

21. Further, the powers of Delegatee and Delegators are dealt in the *Ishwar Singh v. State of Rajasthan*, ((2005) 2 SCC 334 : 2005 SCC (L&S) 260 : 2005 SCC OnLine SC 28). The relevant portion reads as under:

“ 13. As was observed by this Court in State of Orissa v. Commr. of Land Records & Settlement [(1998) 7 SCC 162] and in OCL India Ltd. v. State of Orissa [(2003) 2 SCC 101] , if an authority delegates the power to act, it shall be deemed to be an act of the delegator. In such a situation there is no scope for revision of the order of the delegate by the delegator. In Commr. of Land Records & Settlement case [(1998) 7 SCC 162] it was noted that the delegator (also described as the principal) cannot review an order of the delegate “

22. Thus the Commission has rightly relied upon the certification of NRPC for certifying non ISTS lines as ISTS, and for the subject assets, NRPC did not certify them as ISTS.

23. Further, it is noteworthy that the Commission sought certification of NRPC from the Appellant only in terms of 3rd amendment of Sharing Regulations. These Regulations are statutory in character, constitute law, and are binding on all the regulated entities including the Appellant herein (as well as the CERC and even this Tribunal). Thus, the Appellant has in effect sought indulgence of this Tribunal to declare the sub-ordinate legislation, i.e. Sharing Regulations, ultra vires. The Electricity Act, 2003 does not confer the power of judicial review of the validity of the Regulations made by the CERC under Section 178 of the Act on the Appellate Tribunal for Electricity. Such Regulations are made under the authority of delegated legislation, they are in the nature of subordinate legislation, and have general application. Consequently, its validity can be tested only in judicial review proceedings before Courts, and not by way of an appeal before the Appellate Tribunal for Electricity under Section 111 of the Act.

24. Regarding the Jurisdiction of the commission in determining the transmission tariff of transmission assets of Respondent No 2, the question of jurisdiction of the commission would come if the assets are of inter state in nature as per section 79 of Electricity Act 2003. For Intra State transmission assets, jurisdiction would be of respective State commissions as per Section 86 of Electricity Act 2003. We find no infirmity in the decision of the Commission, since the subjects assets were not found to be inter state and certification of that affect was not granted by CERC, a requirement which has been stipulated in the third amendment of sharing regulations dated 01.04.2015, jurisdiction of determining the tariff would be that of respective commission and in the instant case by HPERC.

25. CERC denied the locus standi of the Appellant in the impugned order relying on its order dated 14.3.2012 in petition No. 15/SM/2012 and order dated 5.9.2018 in petition No. 7/SM/2017. In terms of the said order, it is the owners of transmission assets/ State utilities that are required to approach the Commission for declaration of transmission assets owned by them as ISTS and request for determination of tariff of such transmission assets. The Commission stated in the impugned order that the aforesaid orders of the Commission are not applicable to entities other than owners of transmission assets i.e. the Appellant generator. Accordingly, the IA filed by the Appellant was dismissed due to lack of locus Standi. However, the Petition No 124/MP/2017 remains pending before the Commission even today.

26. The Appellant, vide its IA 40/2020, had disputed the findings of the NRPC with regard to denial of ISTS status to HPPTCL's assets. As noted

hereinabove, in **Ishwar Singh vs. State of Rajasthan [(2005) 2 SCC 334]** the Supreme Court held that if an authority delegates the power to act, the power exercised by the delegate shall be deemed to be the exercise of power on behalf of the delegator. In such a situation, there is no scope for revision of the order of the delegate by the delegator. In the present case also, the CERC has delegated the power conferred on it to the NRPC, and consequently the power exercised by NRPC, as a delegate of the CERC, cannot be the subject matter of enquiry in proceedings before the CERC. The Appellant, therefore, lacks locus standi to invoke the jurisdiction of the CERC against the exercise undertaken by the NRPC as a delegate of the CERC.

27. For the afore-said reasons, the appeal fails and is, accordingly, dismissed.

28. There shall be no order as to costs. All the pending IAs, if any, shall stand disposed of.

29. Pronounced in the open court on this the **29th day of January, 2024.**

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~