

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

**Appeal No. 385 of 2023 & IA No. 835 of 2022, IA No. 1024 of 2023,
Appeal No. 387 of 2023 & IA No. 811 of 2022, IA Nos. 1018 & 1489 of 2023,
Appeal No. 388 of 2023 & IA No. 727 of 2022 and IA No. 1017 of 2023,
Appeal No. 412 of 2023 & IA No. 1539 of 2022, IA No. 1023 of 2023,
Appeal No. 607 of 2023 & IA No. 941 of 2022, IA No. 1013 of 2023,
Appeal No. 608 of 2023 & IA No. 946 of 2022, IA No. 1012 of 2023,
Appeal No. 610 of 2023 & IA No. 1057 of 2022, IA No. 1016 of 2023,
Appeal No. 611 of 2023 & IA No. 1397 of 2022, IA No. 1015 of 2023**

Dated: 30.05.2024

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

Appeal No. 385 of 2023 & IA No. 835 of 2022, IA No. 1024 of 2023

In the matter of:

Arjas Steel (P) Ltd.

Through its Authorized representative

304-305, World Trade Centre,

Yeshwanthpur, Bengaluru,

Karnataka – 560055.

...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 – 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, Seethammadara,
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 Road, Vijayawada,
Andhra Pradesh – 520004.Respondent(s)

Counsel for the Appellant(s) : Mr. Amit Kapur
Mr. Samikrith Rao Puskuri
Ms. Poonam Verma
Mr. Malcolm Desh
Mr. Kunal Kaul

Counsel for the Respondent(s) : Mr. Sridhar Potaraju
Mr. Mukundrao Angara
Ms. Ankita Bafna
Ms. Shiwani Tushir
Mr. Yashvir Kumar
Mr. Aayush
Mr. Rajat Srivastava

Ms. Simran Gupta for R-1

Mr. Sidhant Kumar

Ms. Manyaa Chandok

Mr. Shivankar Rao

Mr. Gurpreet Singh Bagga

Ms. Vidhi Udayshankar for R-2 to 4

Appeal No. 387 of 2023 & IA No. 811 of 2022, IA Nos. 1018 & 1489 of 2023

In the matter of:

Sarda Metals & Alloys Ltd.

Mr. Prabhat,

Sr. General Manager – HR,

125, B-Wing, Mittal Court,

Nariman Point, Mumbai,

Maharashtra – 400021.

...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) Eastern Power Distribution Company of
Andhra Pradesh Ltd. (APEPDCL)
Through its Managing Director,
P&T Colony, Seethammadara,
Visakhapatnam,
Andhra Pradesh – 530013.
- (3) Transmission Corporation of Andhra Pradesh Ltd.
(APTRANSCO)
Through its Chairman & Managing Director,
Vidyut Soudha, Gunadala,

Eluru Road, Vijayawada,
Andhra Pradesh – 520004.

....Respondent(s)

Counsel for the Appellant(s) : Ms. Poonam Verma Sengupta
Mr. Saunak Rajguru
Ms. Sakshi Kapoor
Mr. Shubham Bhat
Ms. Priyakshi Bhatnagar

Counsel for the Respondent(s) : Mr. Sridhar Potaraju
Mr. Mukundrao Angara
Ms. Ankita Bafna
Ms. Shiwani Tushir
Mr. Yashvir Kumar
Mr. Aayush
Mr. Rajat Srivastava
Ms. Simran Gupta for R-1

Mr. Sidhant Kumar
Ms. Manyaa Chandok
Mr. Shivankar Rao
Mr. Gurpreet Singh Bagga
Ms. Vidhi Udayshankar for R-2

Appeal No. 388 of 2023 & IA No. 727 of 2022 and IA No. 1017 of 2023

In the matter of:

Ultra Tech Cement Ltd.
Through its Authorised Representative
B” Wing, Ahura Centre,
2nd Floor, Mahakali Caves Road,
Andheri (E), Mumbai – 400093.

...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 – 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, Seethammadara,
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 Road, Vijayawada,
Andhra Pradesh – 520004.Respondent(s)

Counsel for the Appellant(s) : Mr. Amit Kapur
Mr. Samikrith Rao Puskuri
Ms. Poonam Verma
Mr. Malcolm Desh
Mr. Kunal Kaul

Mr. Saunak Rajguru
Ms. Sakshi Kapoor
Ms. Aparajita Upadhyay
Ms. Gayatri Aryan
Mr. Ankitesh Ojha

Counsel for the Respondent(s) : Mr. Sridhar Potaraju
Mr. Mukundrao Angara
Ms. Ankita Bafna
Ms. Shiwani Tushir
Mr. Yashvir Kumar
Mr. Aayush
Mr. Rajat Srivastava
Ms. Simran Gupta for R-1

Mr. Sidhant Kumar
Ms. Manyaa Chandok
Mr. Shivankar Rao
Mr. Gurpreet Singh Bagga
Ms. Vidhi Udayshankar for R-2 to 4

Appeal No. 412 of 2023 & IA No. 1539 of 2022, IA No. 1023 of 2023,

In the matter of:

M/s. TGV SRAAC Ltd.
(Formerly known as Sree Rayalaseema Alkalies
And Allied Chemicals Ltd.)
40-304, II Floor, K.J. Complex, Bhagyanagar,
Kurnool rep. by its Authorized Signatory,
Sri Anupam Srivastav S/o Dr. Ravi Shankar
Aged about 51 years, Sr. General manager,
R/o 9-C, Pocket-V, MIG Mayur Vihar,
Phase – III, Delhi – 110096. ...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 – 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.Respondent(s)

Counsel for the Appellant(s) : Mr. Hitendra Nath Rath
Mr. Alladi Ravinder
Ms. Veronka Shikha Johnson

Counsel for the Respondent(s) : Mr. Sridhar Potaraju
Mr. Mukundrao Angara
Ms. Ankita Bafna
Ms. Shiwani Tushir
Mr. Yashvir Kumar
Mr. Aayush
Mr. Rajat Srivastava
Ms. Simran Gupta for R-1

Mr. Sidhant Kumar
Ms. Manyaa Chandok
Mr. Shivankar Rao
Mr. Gurpreet Singh Bagga
Ms. Vidhi Udayshankar for R-2

Appeal No. 607 of 2023 & IA No. 941 of 2022, IA No. 1013 of 2023

In the matter of:

Maa Mahamaya Industries Limited,
Through Vice President
Registered office :

Dhamdhari, Chhattisgarh – 493773.

...Appellant(s)

Vs.

(1) Andhra Pradesh Electricity Regulatory Commission
Rep. by its Secretary
11-4-660, 4th Floor, Singareni Bhavan,
Red Hills, Lakdi-Ka-Pul,
Hyderabad – 500004.

(2) Eastern Power Distribution Company of
Andhra Pradesh Ltd. (APEPDCL)
Represented by its Chief General Manager,
3rd Floor, Corporate Office,,
P&T Colony, Seethammadara,
Visakhapatnam,
Andhra Pradesh – 530050.

....Respondent(s)

Counsel for the Appellant(s) :

Mr. Challa Gunaranjan
Mr. Hitendra Nath Rath
Mr. Alladi Ravinder
Ms. Veronka Shikha Johnson
Mr. K. Pramod Kumar

Counsel for the Respondent(s) :

Mr. Sridhar Potaraju
Mr. Mukundrao Angara
Ms. Ankita Bafna
Ms. Shiwani Tushir
Mr. Yashvir Kumar
Mr. Aayush
Mr. Rajat Srivastava
Ms. Simran Gupta for R-1

Mr. Sidhant Kumar
Ms. Manyaa Chandok
Mr. Shivankar Rao
Mr. Gurpreet Singh Bagga

Ms. Vidhi Udayshankar
Mr. Shivankar Rao for R-2

Appeal No. 608 of 2023 & IA No. 946 of 2022, IA No. 1012 of 2023

In the matter of:

Steel Exchange India Limited
Registered Office : D. No. 1-65/K/60,
Plot No. 60, 1st Floor,
Abhi's Hiranya, Kavuri Hills,
Hyderabad – 500081.

...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) Eastern Power Distribution Company of
Andhra Pradesh Ltd. (APEPDCL)
Through its Chief General Manager,
3rd Floor, Corporate Office,
P&T Colony, Seethammadara,
Visakhapatnam,
Andhra Pradesh – 530013.

....Respondent(s)

Counsel for the Appellant(s) : Mr. Challa Gunaranjan
Mr. Hitendra Nath Rath
Mr. Alladi Ravinder
Ms. Veronka Shikha Johnson
Mr. K. Pramod Kumar

Counsel for the Respondent(s) : Mr. Sridhar Potaraju
Mr. Mukundrao Angara
Ms. Ankita Bafna

Ms. Shiwani Tushir
Mr. Yashvir Kumar
Mr. Aayush
Mr. Rajat Srivastava
Ms. Simran Gupta for R-1

Mr. Sidhant Kumar
Ms. Manyaa Chandok
Mr. Shivankar Rao
Mr. Gurpreet Singh Bagga
Ms. Vidhi Udayshankar for R-2

Appeal No. 610 of 2023 & IA No. 1057 of 2022, IA No. 1016 of 2023

In the matter of:

RVK Energy Private limited
Registered Office : 6-3-1109/A/1,
3rd Floor, Navabharatli Chambers,
Raj Bhavan Road, Somajiguda,
Hyderabad – 500082.
& Corporate Office : Plot No. 484/A,
Road No. 36, Jubilee Hills,
Hyderabad – 500033.

...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) Andhra Pradesh Central Power Distribution Corporation,
Corporate Office, Beside Polytechnic College,
ITI Road, Vijayawada,
Krishna Dist, Andhra Pradesh – 520008.

....Respondent(s)

Counsel for the Appellant(s) : Mr. Challa Gunaranjan
Mr. Hitendra Nath Rath
Mr. Alladi Ravinder
Ms. Veronka Shikha Johnson
Mr. K. Pramod Kumar
Mr. SVSS Siva Ram
Ms. Jyoti Ratna Anumolu

Counsel for the Respondent(s) : Mr. Sridhar Potaraju
Mr. Mukundrao Angara
Ms. Ankita Bafna
Ms. Shiwani Tushir
Mr. Yashvir Kumar
Mr. Aayush
Mr. Rajat Srivastava
Ms. Simran Gupta for R-1

Mr. Sidhant Kumar
Ms. Manyaa Chandok
Mr. Shivankar Rao
Mr. Gurpreet Singh Bagga
Ms. Vidhi Udayshankar for R-2

Appeal No. 611 of 2023 & IA No. 1397 of 2022, IA No. 1015 of 2023

In the matter of:

Parry Sugars Refinery India Private Limited,
Rep. By Authorized Signatory : K. Hazara, Sr. Mgr.
Registered Office : Dare House, 234,
NSC Bose Road, Parrys Corner,
Chennai, Tamil Nadu – 600001.

...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) Eastern Power Distribution Company of
Andhra Pradesh Ltd. (APEPDCL)
Through its Managing Director,
P&T Colony, Seethammadara,
Visakhapatnam,
Andhra Pradesh – 530013.Respondent(s)

Counsel for the Appellant(s) : Mr. Challa Gunaranjan
Mr. Hitendra Nath Rath
Mr. Alladi Ravinder
Ms. Veronka Shikha Johnson
Mr. K. Pramod Kumar
Mr. SVSS Siva Ram
Ms. Jyoti Ratna Anumolu

Counsel for the Respondent(s) : Mr. Sridhar Potaraju
Mr. Mukundrao Angara
Ms. Ankita Bafna
Ms. Shiwani Tushir
Mr. Yashvir Kumar
Mr. Aayush
Mr. Rajat Srivastava
Ms. Simran Gupta for R-1

Mr. Sidhant Kumar
Ms. Manyaa Chandok
Mr. Shivankar Rao
Mr. Gurpreet Singh Bagga
Ms. Vidhi Udayshankar for R-2

JUDGEMENT

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

1. The captioned batch of Appeals have been filed by various Captive Power Plant (in short “CPP”) Developers assailing the common Tariff Order dated 30.03.2022 (in short “Impugned Order”) passed by Andhra Pradesh Electricity Regulatory Commission (in short “APERC” or “State Commission”) in O.P. Nos. 122 - 124 of 2021 (in short “Tariff Petitions”), to the limited extent it imposes Grid Support Charges (in short “GSC”) / Parallel Operation Charges (in short “POC”) on the total installed capacity of all generators connected to the State Grid except those which are supplying power to the distribution licensees of the State of Andhra Pradesh.
2. The Appellants are the CPP Developers (in short “CPPDs”) inter-alia have set up industries in the State of Andhra Pradesh (in short “AP”) and are connected to the State Transmission/ Distribution grid.
3. The Respondent No. 1, APERC is the State Electricity Regulatory Commission having been the conferred powers under section 86 of the Electricity Act, 2003 (in short “2003-Act”) *inter-alia* passed the Impugned Order under the powers vested upon it.
4. The Respondent No 2 to 4 are the distribution licensees (in short “Discoms”) of the State of AP.
5. The Respondent No. 5 is the transmission licensee.

Factual Matrix

6. Considering that the issue in all the captioned batch appeals is same and also the grievance is against the same common order passed by the State Commission, the Appeal No. 388 of 2023 is considered for adjudication.

7. The Appeal No. 388 of 2023 is filed by Ultra Tech Cement Ltd. (in short "UTCL").

8. The State Commission while disposing of the Petition filed by the distribution licensees of the State has relied upon the judgment rendered by Supreme Court in case titled *AP TRANSCO v. Rain Calcining Ltd, (2021) 13 SCC 674, inter-alia*, has held that Grid Support Charges can be levied on CPPs, additionally, the State Commission also referred to this Tribunal's judgements dated 12.09.2006 in Appeal No. 99 of 2006 and judgment dated 18.02.2011 in Appeal No. 120 of 2009, wherein it was held that the CPPs gains more from parallel operation and therefore, the State Commission is empowered to deal with the question as to whether the levy of parallel operation charges is permissible or not, 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.”

9. From the above, it can be seen that the reliance of the State Commission, on the aforesaid judgments of the Supreme Court and this Tribunal, is the sole coherent basis of the Impugned Order, however, the State Commission gone beyond the said judgments by extending it to the generating companies not covered by the aforesaid judgments i.e. the non-CPPs, which *inter-alia*, is contrary to the prayers of the Distribution Licensees, as seen from the Impugned Order, the relevant part of the prayer is extracted as under:

“Grid Support Charges:

186. The DISCOMs have proposed to collect grid support charges as described below:

“Persons operating Captive Power Plants (CPPs)/**Co-Generation Plants** in parallel with A.P. Grid have to pay ‘Grid Support Charges’ on the difference between the capacity of CPP/**Co-Generation Plant** 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/**Co-Generation Plants** exporting firm power to APTransco, the capacity, which is dedicated to

such export, will also be additionally subtracted from the **CPP/Co-Generation Plant** capacity.”

They submitted that though the Commission had incorporated applicability of grid support charges in the RST orders from FY2002-03 to FY2008-09, no income had been estimated from FY2003-04 onwards in view of stay on the issue granted by Hon'ble High Court and final order of Hon'ble High court was against the collection of grid support charges by the DISCOMs. That on DISCOMs' appeal, the Hon'ble Supreme Court vide judgment dated 29.11.2019 set aside the Hon'ble High court's order and that therefore, they now proposed to collect grid support charges from the applicable consumers as described above. They have also stated that cogeneration plants are specifically included in the applicability as there is pending litigation from cogeneration plants on the definition of CPP.

The DISCOMs further proposed that the levy of Grid support charges needs to be reckoned from FY2009-10 onwards on similar lines reckoned by Hon'ble Commission while re-determining Cross Subsidy Surcharge for the period from FY2005-06 to FY2012-13 and FY2015-16 vide order dated 16-11-2016 in O.P.Nos. 16 of 2005, 13 of 2006, 5 of 2007, 73 of 2012, 74 of 2012, 75 of 2012, 76 of 2012, 77 of 2012, and 8 of 2015 pursuant to the Hon'ble APTEL and the Hon'ble Supreme Court's judgments.”

10. Being aggrieved by the said Impugned Order, the Appellants have filed the captioned batch of appeals challenging the imposition of the POC/ GSC on their Captive Generating Plants.

Submissions of Appellants (CPPDs)

11. The Appellant submitted that the State Commission, vide the Impugned Order, has held as under: -

- (a) ***APDISCOM's proposal to levy GSC on CPP's operating in parallel with the Grid is justified, inter-alia, in view of Hon'ble Supreme Court's Judgment dated 29.11.2019 in Transmission Corporation of Andhra Pradesh Ltd. v. Rain Calcining Ltd. & Ors.: 2019 SCC OnLine SC 1537 (in short "Rain Calcining Judgment")***
- (b) ***Confining levy of GSC to CPPs only does not provide for a level playing field as other generators also enjoy same benefits. Therefore, APERC decides to bring other generators, except those with power purchase agreements with DISCOMs, under the ambit of GSC.***
- (c) ***APDISCOMs have not provided any substantiation to justify imposition of 50% of demand charges applicable to HT consumers as GSC. Therefore, APERC is inclined to fix GSC for parallel operation on the basis of the data, material and scientific inputs relating to parallel operations.***

(d) *Parallel operations of generators will affect the grid equipment which in turn will affect Repair & Maintenance (R&M) costs of APTRANSCO and APDISCOMs. Therefore, GSC is determined based on the total generation capacity connected to AP State Grid as on 31.12.2021 and R&M charges of APTRANSCO and APDISCOMs.*

(e) *GSC is to be applied to the total installed capacity of the generators connected to the Grid, as under: -*

Conventional Generators	Rs. 50/kW/Month
RE plants including waste heat recovery plants, plants based on municipal solid waste, and co-gen plants	Rs. 25/kW/Month
Co-gen sugar mills	Rs. 25/kW/Month, for a period of 4 months or actual operation period, whichever is higher.
GSC shall not be applicable when the plants are under shutdown for any reason and when such shutdown period exceeds two months.	
PPA capacities of the generators with the DISCOMs shall be exempted from payment of GSC.	

12. In view of above, argued that the Impugned Order is passed: -

- (a) Without identifying APERC's power / jurisdiction to levy GSC under the provisions of the Electricity Act, 2003, and assessing any change in the statute from the Andhra Pradesh Electricity Reforms Act, 1998.
 - (b) Without any technical study being conducted or requisite data/ supporting evidence being furnished justifying the said levy, in fact, the APERC held that APDISCOMs had not provided any substantiation to justify their proposal.
 - (c) Violating the principles of natural justice since the data, material and scientific inputs relied upon by the APERC was never shared with the parties.
13. Accordingly, raised the following main issues for adjudication: -
- (a) Whether APERC had the jurisdiction/power to levy GSC under the extant provisions of the Electricity Act, 2003?
 - (b) If yes, whether APERC has exercised such jurisdiction / power correctly and lawfully, imposing GSC on all generators (captive or otherwise)?
 - (c) Whether APERC ought to have conducted a technical study to ascertain the benefits derived by generators from parallel operations and/or impact caused to the State Grid by the consumer load/ generator, prior to imposing GSC?

14. Further, submitted that the terms 'Grid Support Charges' and 'Parallel Operation Charges' seem to have been used interchangeably, however, conceptually though related, they are distinct:

(a) 'Parallel Operations' refers to a situation where a captive generating plant has co-located consumption at a load which also draws power from the grid, it has to be understood in contradistinction to isolated operation of a captive plant, *inter-alia*, an issue for the concerned SERC to examine and decide as to what are the costs imposed by parallel operations on the Discom/Transco and whether the same is covered by the tariff or any additional charge has to be imposed/recovered in this behalf, the reasons for parallel operation include:-

(i) **To export surplus power from the CPP** either to another unit or factory of the captive user located at a different location (i.e., captive use) or sale to a third party on Open Access or Sale to the Distribution Licensee. In such case, applicable Transmission and Wheeling Charges are paid for utilizing Open Access.

(ii) **To draw balance power requirement of the industrial load** (i.e., consumer) either from the Distribution Licensee (through Retail Supply) or from own captive source at a different location (mentioned above); or any other third-party source utilizing Open Access. In such case, the consumer maintains Contract Demand and pays the applicable Fixed, Energy and other charges determined by

SERC, like any other consumer. Similarly, applicable Transmission and Wheeling Charges are paid for utilizing Open Access.

(iii) **To avail start-up power from the Distribution Licensee** to restart a CPP unit on account of a total shut down. Start-up power requirement is occasional and intermittent. Tariff applicable for supply of start-up power for CPPs is separately determined by APERC. Consumers with co-located CPPs maintaining Contract Demand for continuous supply of power have been given an option qua draw power for such start-up purpose.

(iv) **To avail stand-by power supply (for industrial load) from the Distribution Licensee**, in the unforeseen event of failure of CPP unit.

(b) 'Grid Support' refers to the services/support received from the grid by a captive power plant with co-located captive use. Typically, this may be in the nature of distortions introduced into the grid at times of fluctuations in captive output, viz:

- (i) Frequency
- (ii) Voltage
- (iii) Harmonics

It is axiomatic as per applicable law of principles of electricity that grid support is premised on 'nature of load' rather than installed generation capacity.

15. The whole purpose of establishing, maintaining and operating a 'Grid', i.e., "the high voltage backbone system of inter-connected transmission lines,

sub-station and generating plants” (Section 2(32) of the Electricity Act, 2003) is to connect generation capacities with load centres /consumers, wherein, Generating plants (including CPPs) are a vital part of the ‘grid’ without which a grid would not exist, since 10.06.2003, the treatment of ‘Generation’ under the law has changed to the following:-

(a) Generation now stands delicensed with the role of ERCs limited to explicit provisions (not inferred) of the Electricity Act violating such jurisdiction. Captive generation is to be promoted. **Section 9 of the Electricity Act** gives CPPs the right to Open Access for conveying power to the destination of their own use and sell their excess / surplus power, as any other generating company with certain incentives to promote captive generation. (Ref. *Tata Power v. Reliance Energy*: (2009) 16 SCC 659 @ paras 106 to 110)

(b) **Section 25 of the Electricity Act** envisages that the Central Government may make and modify region-wise demarcation of the country as required for efficient, economical and integrated transmission and supply of electricity ***including facilitating voluntary inter-connections and co-ordination of facilities for inter-State, regional and inter-regional generation and transmission of electricity.***

(c) **Section 30 of the Electricity Act** obligates State Electricity Regulatory Commission’s (“**SERC**”) to facilitate and promote power transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilization of the electricity.

(d) **Clause 5.2.26 of the National Electricity Policy** specifically provides that “A large number of captive and standby generating stations in India have surplus capacity that could be supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. **Under the Act, captive generators have access to licensees and would get access to consumers who are allowed open access. Grid inter-connections for captive generators shall be facilitated as per section 30 of the Act.** This should be done on priority basis to enable captive generation to become available as distributed generation along the grid.”

(e) **Clause 6.3 of the Tariff Policy, 2016** provides that “Captive generation is an important means to making competitive power available. **Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.**” Furthermore, “Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access including compliance of relevant provisions of Rule 3 of the Electricity Rules, 2005.”

(f) Consumers (including captive users under Section 9) have a right to seek supply from the DISCOM. To actualize their rights under Sections 9, 25, 30 and 43 of the Electricity Act, generators may avail parallel operations with the grid. The issue is the treatment of such

parallel operation by law.

16. The Appellant contended that the APERC in the Impugned Order has failed to trace its power / jurisdiction to levy GSC under the extant provisions of the Electricity Act, 2003, a bare perusal of the Impugned Order evidences that, APDISCOM's and the APERC merely relied upon the Supreme Court's Rain Calcining Judgment (supra) upholding levy of GSC by the APERC on 08.02.2002 under the Andhra Pradesh Electricity Reforms Act, 1998 ("AP Reforms Act") to justify imposition of GSC, the APERC in the Impugned Order has failed to reproduce the portion of the Rain Calcining Judgment which states that the said finding was based on a concession, in this regard, the following is noteworthy:-

- a. In *Rain Calcining*, **Counsel for the parties conceded** that the decision qua levy of Wheeling Charges may govern GSC. Since The APERC's Order with respect to Wheeling Charges was upheld by the Hon'ble Supreme Court, the Order dated 02.05.2023 passed Hon'ble AP High Court in *Vishnu Cements Ltd. v. APCPDCL* was set aside. Being based on a concession, the said judgment is not a binding precedent qua GSC. In this regard, reliance is placed on *Municipal Corpn. Of Delhi v. Gurnam Kaur.* (1989) 1 SCC 101 (paras 10 - 12); *State of U.P. v. Synthetics & Chemicals Ltd.:* (1991) 4 SCC 139 (paras 40 - 41); *Union of India v. Dhanwanti Devi:* (1996) 6 SCC 44 (paras 9 – 11).
- b. Para 72 of *Rain Calcining Judgement* holds that GSC is leviable on

'parity of the reasonings' with the issue of Wheeling Charges. This is directly relatable to Paras 39-43 where the issue of Wheeling Charges and the provisions relating thereto have been discussed by the Hon'ble Supreme Court. It is undisputed that Para 72 of *Rain Calcining* is not a reasoned finding regarding GSC returned after evaluating the provisions of the Electricity Act, 2003 and the changes brought therein.

- c. The Tariff Order dated 08.02.2002 (which was upheld) was issued under of the AP Reforms Act, 1998 – a distinct legislative scheme from the Electricity Act, 2003. The APERC under Sections 11(e) and 26 of the AP Reforms Act could determine “revenue” as well as “tariff” for generation, unlike the Electricity Act, 2003.
- d. Hon'ble Supreme Court in *Rain Calcining* **did not examine the provisions of the Electricity Act, 2003 for levy of GSC and / or compare the two Acts to hold that GSC would be equally leviable under the Electricity Act, 2003.** It is most respectfully submitted that Sections 11 and 26 of the AP Reforms Act, forming the basis for levy of GSC are contrary to the Electricity Act 2003, and stand overridden under Sections 174 & 185(3), since:
- Pre 10.06.2003, the activity of generation (captive or otherwise) then required licensing type permission under Section 44 of the Electricity Supply Act, 1948 and was regulated by The APERC.
 - Post 10.06.2003, generation has been deregulated and does not require a license. SERC's jurisdiction is now confined to express provision of the Electricity Act, 2003 qua GENCO's and not by

inference.

17. Further, GSC / POC is in the nature of “backdoor regulation” of an activity which has been completely delicensed under the Electricity Act, 2003, i.e., generation.

18. Also contended that without prejudice to the foregoing, it is pertinent to highlight that on the one hand APDISCOMs have contended that the APERC has the power and jurisdiction to regulate transmission of electricity and as such levy GSC, on the other hand, on a specific query raised by this Tribunal admitted that GSC does not fall under any of the four activities mentioned in Section 62 of the Electricity Act, for which SERC’s determine tariff, undisputedly, the Respondents have been unable to demonstrate the statutory provision under which GSC can be levied, in fact, the statutory basis for levy of GSC under the Electricity Act, 2003 has not been established in any proceedings till date.

19. The Appellants strongly countered the reliance placed on *APTRANSCO v. Sai Renewables Power Pvt. Ltd.: 2011 (11) SCC 34*, is misplaced since:-

(a) The judgment relates to SERC’s regulating power supply by a generator to a DISCOM (para 64). In the instant case, parallel operation falls under the activity of ‘transmission’, the said Judgment does not apply to parallel operations.

(b) Power of SERCs to regulate power being supplied by a generator to the DISCOM remains the same under the AP Reforms Act, 1998 (Sections 11 and 26) and Electricity Act, 2003 (Sections 62 and 86), per contra, captive generation and consumption is completely delicensed under the Electricity Act.

(c) Hon'ble Supreme Court's reliance on the said judgment in Rain Calcining was solely in the context of promissory estoppel and had nothing to do with levy of GSC.

20. The levy and recovery of GSC was introduced in the Impugned Order based on the plenary ambit of regulatory powers of the APERC under Sections 11 and 26 of the AP Reforms Act, 1998, with no deregulation of generation, the provisions of AP Grid Code, 2014 provide various technical and operational parameters to be complied with by all grid connected Users (including CPPs) and in case, any User fails to comply with any provisions repeatedly, such User's plant/ facilities may be disconnected from the grid and may be liable for payment of damages and compensation for such violations.

21. In the present case, undisputedly UTCL, the Appellant is in compliance with the provisions of the AP Grid Code, neither APTRANSCO nor APDISCOM's have ever found or alleged any grid violation or any adverse impact on the Grid caused by UTCL, as UTCL has installed numerous equipment at its own costs at its CPP and also at consumption end to ensure safety and minimize distortions caused to grid operations, as mandated by the APERC's Code of Technical Interface, relevant Technical Details of Cement

Manufacturing Units, CPP's and the protective equipment installed therein are placed on record.

22. Further, with reference to the AP Grid Code (approved by APERC on 26.05.2001) in the *Rain Calcining Judgment*, neither the APERC nor the other Respondent Licensees have been able to provide a copy of the same, so as to demonstrate the basis of GSC under the earlier regime, even otherwise, the extant AP Grid Code, 2014 undisputedly does not contain any provision permitting levy of GSC and/ or suggests that the Grid provides additional benefits to generators, for which a separate independent charge is necessary.

23. No rationale has been provided in the Impugned Order for levy of GSC, mere reference has been made to previous decisions of this Tribunal to justify the determination and levy of GSC in the present case, the primary rationale provided by this Tribunal in the aforesaid previous judgments is that CPPs derive certain additional benefits by parallel operations with the grid and as such they must compensate the transmission licensee for the services provided, this Tribunal in *Hindalco Industries Ltd. v. Madhya Pradesh Electricity Regulatory Commission & Batch: 2021 SCC OnLine APTEL 23*, held that GSC / POC is not part of the Tariff regime, nor it is a tax on the activity of generation, POC is a payment for services rendered by the grid and since there is an alleged element of service provided by the grid, GSC / POC is meant to compensate the transmission licensee.

24. Accordingly, GSC / POC has been justified as a 'compensatory fee' for a service being rendered by the grid to generators operating in parallel with it, however, in reality GSC / POC is in the nature of a Tax with no coherent connection to the alleged advantages / services being rendered or the monies (GSC/POC) being sought for the same.

25. In this regard, it is a settled position of law that a 'Fee' is a consideration for services rendered, and there must be sufficient correlation with the expenses incurred in rendering such services, reliance is placed on *Commissioner, Hindu Religious Endowments v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005] (Paras 43-47)*, a seven (7) Judge Bench judgment.

26. A fee has been categorized into two buckets, namely: –

- (a) Regulatory or License Fee; and
- (b) Compensatory Fee.

27. A Regulatory Fee or License Fee is a fee payable to the Government for granting permission or parting with its privilege to a person to do something which otherwise the said person would not be competent to do, in other words, there is no actual service being rendered to said person, on the other hand, Compensatory Fee is a fee payable to the Government for doing some positive work for the benefit of persons and money is taken as return for the work done / services rendered, reliance placed on *Commissioner, Hindu Religious Endowments v. Lakshmindra Thirtha*

Swamiar of Sri Shirur Mutt [1954 SCR 1005] (Paras 48-49), a seven Judge Bench judgment.

28. However, the Regulatory or License Fee may not be always linked to an element of quid pro quo stricto sensu, however, the same cannot be excessive, per contra, a Compensatory Fee must be linked to the service being rendered for which fee is levied and must have sufficient quid pro quo and such quid pro quo must be demonstrated through a good and substantial portion of the fee taken, being spent towards rendering of such service, reliance placed on *Corpn. of Calcutta v. Liberty Cinema, (1965) 2 SCR 477 : AIR 1965 SC 1107, (Para 8)*, a five (5) Judge Bench judgment; *Kewal Krishan Puri v. State of Punjab, (1980) 1 SCC 416, (Paras 17 & 23)*, again a five (5) Judge Bench judgment; and *Krishi Upaj Mandi Samiti v. Orient Paper & Industries Ltd., (1995) 1 SCC 655, (Para 21)*, a two (2) Judge Bench judgment.

29. In contradistinction to the foregoing, a 'Tax' is a compulsory exaction and is a common burden in order to enable the State to raise revenue and does not compulsorily involve a service or a privilege, reliance is placed on *Commissioner, Hindu Religious Endowments v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005] (Paras 45)*, a 7 Judge Bench judgment; *Krishi Upaj Mandi Samiti v. Orient Paper & Industries Ltd., [(1995) 1 SCC 655], (Para 21)*, a 2 Judge Bench judgment.

30. Further, the correctness of the APERC's levy of GSC is to be tested in view of the ratio laid down by the Constitution Bench of the Supreme Court, then the Impugned Order deserves to be set-aside since the APERC has not: -

- (a) Identified the alleged services provided by APDISCOMs or APTRANSCO to the generators.
- (b) Recorded any reasoning as to how there is any sufficient correlation of GSC as determined and levied in the Impugned Order with the expenditure actually incurred by APDISCOM's and APTRANSCO in rendering the services.

31. It is not the Appellant's case that no 'Fees' / 'Charges' are to be paid by consumers with co-located CPPs, all necessary and applicable fees and charges determined by SERC are already being paid for the services received from the grid.

32. The advantages/ services identified by this Hon'ble Tribunal in its previous Judgments dated 12.09.2006 and 18.02.2011 can be bifurcated into the following two buckets viz., Absorption of Power Pollutants and Continuity of Supply for operations (of the industrial load/ consumer): -

S. No.	Absorption of Power Pollutants	Continuity of supply for operation
1.	Absorption of harmonics.	Availability of Start-up Power, in case of outage of CPP unit.

2.	Avoiding adverse impact of reactive power.	Continuity of power supply, in case of outage / shut down of CPP.
3.	Absorption of negative phase sequence current (generated by unbalanced loads) by the grid, reduces stress on CPP.	Improved Plant Load Factor (PLF), resulting in additional revenue by sale of surplus power.
4.	-	Absorption of fluctuating loads.

33. These alleged advantages / services for justifying levy of GSC, if at all availed, are: -

- (a) either already being specifically paid for monetarily by the CPPs / consumer in terms of the Tariff determined by APERC; or
- (b) cannot be said to be an advantage / service whatsoever, as the applicable Regulations (Grid Code & CEA Regulations) forbid grid connected entities (generators including CPPs, bulk consumers, etc.) from injecting pollutants into the grid beyond specified limits and thus, absorption of such pollutants cannot be justified as a service.

34. In the event any non-compliance qua such limits prescribed which impacts the grid equipment, there are mechanisms prescribed under the applicable Regulations to deal with such non-compliance, including disconnection from the Grid. In view of the above factors, it is evident that GSC does not satisfy the test of a 'fee' / 'compensatory fee' as is in fact a

'Tax'. Since levy of GSC is in nature of a Tax and therefore is not cost reflective, the APERC does not have any authority of law to levy the same and thus ought to be struck down by this Tribunal [Ref: Article 265 of the Constitution of India], it is reiterated that the provisions of the Electricity Act, 2003 do not permit the levy of GSC / POC.

35. While upholding levy of GSC / POC, this Tribunal:-

(a) Noted that the issue of power, jurisdiction and authority of law on part of the SERCs to impose GSC has never been urged in the earlier matters. [*Para 52 @ pg. 64 of APDISCOM's Compilation of Judgments*]

(b) Wrongly observed that the conclusions in *Rain Calcining* (supra) qua Wheeling Charges and GSC were based on overall scheme of both AP Reforms Act, 1998 and Electricity Act, 2003. [*Para 53 @ pg. 64 of APDISCOM's Compilation of Judgments*]

(c) Held that GSC / POC is not part of the tariff regime [*Para 54 @ pg. 65 of APDISCOM's Compilation of Judgments*], i.e., transmission/wheeling charges, it ought to be a separate charge.

(d) Appreciated the fact that a study had been conducted.

36. UTCL's challenge to the aforesaid Judgment dated 02.07.2021 in *Hindalco Industries* is pending before the Supreme Court in Civil Appeal No. 4784 of 2021.

37. APDISCOM's proposal to APERC was for levy of GSC on CPP's and Co-gen Plants, by subtracting the quantum of firm power exported to APTRANSCO grid from the total installed capacity while calculating the GSC payable.

38. However, by the Impugned Order, APERC has imposed GSC on all grid connected generators (CPP's, IPP's, Roof-top Solar plants et al), on their total installed capacity, irrespective of: -

- (a) Whether power is evacuated using Open Access or consumed on-site; and
- (b) Whether the consumer maintains Contract Demand with the Distribution Licensee.

39. In none of the previous Judgments passed by this Tribunal, the GSC / POC has been permitted on IPP's or the quantum of power exported into the grid through Open Access, in fact, this Tribunal in the following Judgments has held that there is no applicability of POC/ GSC in case the CPP and consumption unit are not co-located (i.e., when captive power is conveyed through the grid using Open Access): -

- (a) *Shree Renuka Sugars Limited v. GETCO & Ors.*: 2015 SCC OnLine APTEL 11 [@ pg. 104 - 117 of APDISCOMs Compilation of Judgments] - See Para 15 (a) @ Pg. 111
- (b) *HEG Limited v. MPERC & Anr.*: 2015 SCC OnLine APTEL 26 [copy tendered by UTCL during hearing on 11.08.2023] - See

Paras 13.13 – 13.16

40. Admittedly, the Impugned Order violates Sections 61, 62 and 86 of the Electricity Act since the APERC has failed to: -

(a) Analyse or undertake any independent technical and scientific study to ascertain the support/ advantages received by CPPs/ generators and/or the adverse impact of parallel operation on the grid. this fact has been candidly accepted by the Respondents.

(b) Provide any basis/ justification for quantification of the levy, neither the APERC nor the Respondent Licensees have demonstrated the actual expenditure incurred for rendering 'service' and recovering a 'Fee' for the same.

(c) Provide any data, material and scientific inputs relating to parallel operations, justifying the levy of GSC, in fact, the APERC during the hearing held on 22.08.2023 has acknowledged the fact that GSC has been determined solely considering the total generation capacity connected to the AP State Grid and the R&M charges of APTRANSCO and APDISCOMs, there was no other data either before the APERC or considered while passing the Impugned Order.

(d) Provide reasoning, for determining different rates of GSC for different types of generators within the State, the APERC has failed to demonstrate how a particular type of generator impacts the grid more than another.

41. In a similar matter where GSC/ POC was determined by Rajasthan Electricity Regulatory Commission without undertaking any study to justify the imposition and levy, this Tribunal in *Shree Cement Ltd. v. Jodhpur Vidyut Vitaran Nigam Ltd. & Ors.* (Paras 13-16), set aside the Tariff Order and remitted the matter for fresh consideration and determination in accordance with law.

42. APDISCOM's proposal and APERC's final determination levying GSC are diametrically opposite, while APDISCOMs sought GSC on the basis of 50% of Demand charges applicable to HT consumers, the APERC's final determination and levy was on the basis of R&M charges of APTRANSCO and APDISCOM, therefore, Section 86(3) of the Electricity Act which provides for transparency in SERC's functions has been violated.

43. As regards the Appellant's participation in proceedings before the APERC, it is submitted that M/s. TGV SARCC (Appellant in Appeal No. 412 of 2023) had represented before the APERC (Para 205), in any event, none of the parties could have made any meaningful submission on levy of GSC since levy on the total installed capacity of all grid connected generators was never proposed in the first place, and there was no data to justify the levy, neither APTRANSCO nor APDISCOM's have demonstrated the level of additional expenditure incurred by them in repairing and maintaining the Grid owing to parallel operations of all generators, which is over and above the tariff

determined by the APERC to justify a separate levy of GSC, there is a need for a study to ascertain the benefit / impact and the costs associated therewith.

44. Each of the studies in Chhattisgarh (December 2008), Gujarat (2008-2009) and Madhya Pradesh (ERDA – April 2012) were specific to each State's load profile and grid realities, further, these studies were prior to the formation of the National Grid in 2013 as earlier five Regional Grids were formed by interconnecting the State grids viz., Northern, Southern, Western, Eastern and North-Eastern Regional Grid, these Regional Grids were gradually integrated to form the National Grid in the year 2013, thereby achieving the objective of 'ONE NATION' 'ONE GRID' 'ONE FREQUENCY', in the past decade, there has been vast change in technical and commercial aspects that have arisen due to advancement in technology, change in the generation and load patterns of the CPPs, availability of different fuels, RE Generation, etc., as such, it is necessary to conduct State specific studies, as there are different types of loads which may/ may not create grid disturbance.

45. Furthermore, with advancement in technology, users such as UTCL in the instant case have installed extensive protective equipment to ensure there is no adverse impact on the grid, this limitation is now stated to change drastically w.e.f. 01.10.2023 with the impending integration of Grid Operations in terms of the IEGC 2023 and CERC (Connectivity & General Network Access to the ISTS) Regulations 2022.

46. It is pertinent to note that, during FY 2022-23 the Telangana State DISCOM's (similar to the present case) proposed levy of GSC on strength of the *Rain Calcining Judgment*, on 23.03.2022 and 24.03.2023, however, the Telangana SERC directed the State 'Grid Coordination Committee' to undertake a detailed study on the issue of parallel operation of CPPs and consequent levy of GSC.

47. It is submitted that the Impugned Order be set aside and remanded the matter to the APERC for fresh consideration based on a scientific and technical study.

48. It is also most respectfully prayed that this Tribunal be pleased to direct the Central Electricity Authority (statutory technical expert) to analyse the said study report and provide its views on the applicability of GSC/ POC, considering that the Central Electricity Authority in its Report dated 12.05.2009 had, inter-alia, categorically observed that: -

(a) There is no strong technical justification for levy of parallel operation charges/ grid support charges.

(b) **Burden caused to the grid is caused by harmonic pollution causing Loads and jerk causing loads and not due to the CPP capacity**. Charges should be based on nature/ type of load.

(c) **CPP's operating in parallel share the burden of jerks and unbalance caused by other loads in the grid in their electrical vicinity. Parallel operations of CPP's helps the grid.**

49. It is submitted that recovery of GSC in addition to charges being already paid by Users, amounts to a double levy / recovery, therefore, conducting a study to ascertain the benefit / impact of parallel operations and the quantum of charges, if any leviable, is paramount, accordingly, the elements that must be examined before determining the levy of GSC are set out as under: -

- a. Elements of support that CPP units with co-located captive use operating in parallel get from the grid.
- b. Elements of support provided by such CPPs to the grid?
- c. Whether CPPs provide support of spinning reserve, frequency regulation stability and voltage regulation support to the grid?
- d. Whether load fluctuations of CPP are passed onto the grid, thereby affecting the efficiency of the grid?
- e. Whether faults in ungrounded system supply or grounded through resistance system supply result in interruption of system?
- f. Nature of load distinguishing between highly fluctuating peak loads (arc furnace, rolling mill) and others.
- g. Whether variation in reactive power requirement increases system losses and lowers voltage profile? Whether such lowered voltage profile affect service to neighboring consumers due to deterioration in quality of supply?
- h. Whether non-recording of high fluctuating / sudden active and reactive demand by the meter results in financial losses?
- i. Whether the grid absorbs harmonics and negative phase sequence

- current generated by CPPs? Whether the grid absorbs transient surges and hence enhances life of CPPs?
- j. Whether CPPs have higher fault level support when running in parallel, and whether this results in lesser voltage drop at load terminal?
 - k. Whether the grid provides stability to load of CPPs to start heavy loads by motors? Whether the grid acts as an infinite bus to minimize variation in voltage and frequency at the time of starting large motors and heavy loads? Whether active and reactive power demand due to sudden and fluctuating load is not recorded in the meter?
 - l. Whether the impact created by sudden load throw off and consequent tripping of CPP on over-speeding is avoided by grid taking care of such impact?
 - m. Whether all norms of CEA (Technical Standards for Connectivity to the Grid) Regulations, 2007 and The APERC's Code of Technical Interface as applicable stand complied with by generators operating in parallel?
 - n. Whether the levy should form part of the over-all tariff design?
 - o. Whether both the systems i.e., the Grid as well as the CPP are properly isolated to avoid sudden load transfer, in the event of any fault occurring in either of the systems?
 - p. Whether reverse power relay has been provided to prevent flow of power from CPP to the grid in case of licensee's load is tripped off or the CPP generates excess power which cannot be consumed?
 - q. Whether the company has provided under/over frequency levels to

ensure isolation of CPP in the event of sudden trip out of Grid supply, to avoid any adverse effect to the CPP.

- r. Whether interlock has been provided, so that whenever the CPP trips, to prevent load transfer on the other supply system that is being operated in parallel?

50. In the light of the foregoing, the Appellants most respectfully pray that this Tribunal set aside the Impugned Order and issue time bound directions to the APERC to: -

- (a) Identify the source for levy of GSC under the Electricity Act, 2003; and
- (b) Conduct a technical study prior to levy of any charge on generators (CPP or otherwise) operating in parallel with the grid.

Submissions of Respondent No. 1 (APERC)

51. The APERC submitted that the Supreme Court vide judgment dated 29.11.2019 (*Transmission Corporation of Andhra Pradesh Limited v. Rain Calcining Limited, 2019 SCC OnLine SC 1537 (Rain Calcining judgment)*) has decided that the State Commission, as an incidence of regulatory power exercisable by the APERC, has power to levy the Grid Support Charges (GSC)/Parallel Operation Charges (POC), *inter-alia* the order dated 08.02.2002 of the State Commission for the levy of GSC/POC at 50% of Demand Charges was upheld by the Supreme Court in the said judgment.

52. Accordingly, argued that the power of the APERC to authorize the levy of wheeling charges and GSC was an issue before the Supreme Court in the aforesaid case and the reasoning applicable for the levy of wheeling charges was held to be good reasoning for the levy of GSC also, hence, it is not an order based on concession, the relevant extract of the judgment as quoted by the Appellant is as under:

“72. 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…….”

53. Also, the rational for levying the GSC on captive power plants and the power of the SERCs on the same has also been ruled by this Tribunal in the following judgments:

- i. Hindalco Industries Limited V. MPERC & Others, 2021 SCC OnLine APTEL 23 dated 02.07.2021*
- ii. Chhattisgarh State Power Distribution Company Limited V. Godawari Power and Ispat Limited, 2011 SCC OnLine APTEL 20 dated 18.02.2011*
- iii. Indian Acrylics Limited V. PSERC, 2009 SCC OnLine APTEL 64 dated 24.04.2009.*

54. Further submitted that the APERC had determined GSC in the Retail Supply Tariff Orders from FY 2002-03 to FY 2008-09 which was challenged by certain generators before AP High Court and obtained favourable orders, however, the High Court order was challenged by APTRANSCO & DISCOMs and it was only after prolonged arguments for over 16 years, the Supreme Court was pleased to pass the judgment in CA.No.4569 of 2003 and batch on 29-11-2019 as stated supra, therefore, in the light of the said judgment of the Supreme Court, the DISCOMs have proposed to levy GSC on all Captive/Co-Generation Plants for FY 2022-23 @ 50 percent of demand charges i.e. Rs.235 per kW per month on the capacity of Captive/Co-Generation Plants excluding their CMD & PPA capacity if any with the DISCOMs.

55. However, the State Commission under the power conferred under clause 8.2 of regulation 4 of 2005 (Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity), has modified the proposal with respect to the Tariff and also the applicability to ensure that all the generators connected to the grid shall be on equal footing in so far as grid support is required (level playing field), as it is the continuation of historical charges that were in place, no fresh study was undertaken by the Commission on GSC.

56. The contentions raised by the appellants in the captioned appeals are similar to the contentions raised by some stakeholders on GSC before APERC through review petitions on RST Order for FY 2022-23 alongwith with detailed reasoning, the appeal for review on the GSC was rejected by the State Commission in its order dated 28.03.2023.

57. The Commission has given elaborate reasoning as to how the GSC were computed in RST Order for FY 2022-23 while modifying the DISCOMS proposal of 50 percent of the demand charges (Rs.235) per kW per month on the capacity of Captive/Co-Generation Plants excluding their CMD and PPA capacity if any with DISCOMS, the Commission has taken R&M charges expected to be incurred by the DISCOMS and APTRANSCO for FY2022-23 and the total installed capacity of the generation connected to DISCOMS and TRANSCO network as the basis for determination of GSC since the DISCOMS proposal was only based on the charges approved by the APERC in the earlier orders.

58. The APERC in the earlier Orders had not specified any computation methodology for GSC, hence, the Commission has arrived at GSC based on the total generation capacity excluding the capacity of Central Generating Stations (CGS) connected to the AP state grid as of 31.12.2021 (APTRANSCO statistics provided on its website) and Repairs and Maintenance (R&M) charges of APTRANSCO and the DISCOMs as approved by APERC in their MYT Orders for FY 2022-23, the Commission has determined the GSC/POC charges as was shown in the RST Order for FY 2022-23 is given below:

FY 2022-23		Yearly charges	Monthly charges
Total installed capacity (MW)	16854		
DISCOM's R&M (Cr.)	830	492.46	41.04
Transco R&M (Cr.)	224.39	133.14	11.09
Total monthly charges Rs. per kW per month			52.13

59. Also added that the total Repairs and Maintenance charges were divided by the total generation capacity connected to the Grid to arrive at yearly charges and it was further divided by 12 to arrive at the monthly charges of Rs.52.13 per kW per month, about Rs. 70 Crores worth of revenue is expected from the GSC, and the recovered amount from the generators who are availing of the Grid service and not having PPA with the DISCOMS will be accounted for at the time of true-up of the Transmission and the Distribution cost at the end of the control period.

60. The Grid support is recognized as a distinguishable service and it was determined based on the R&M only for quantification purposes but not intended to recover a part of R&M in the name of GSC, hence, it is not double charging the OA users, the GSC will be accounted for at the time of True up of distribution cost and Transmission cost as the GSC were determined after the passing of MYT Orders and therefore any gain on account of the GSC will be passed on to all retail supply consumers including the OA users and the Commission having determined GSC as above, stipulated the following conditions duly considering various objections/suggestions placed before it to balance the interests of all stakeholders:

- i. The Parallel operation/GSC 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 kW 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.*

61. It was also argued by the APERC that the factual assertions made by way of documents handed over in the course of hearing are not part of the record before this Tribunal which comprise 968 pages of documents, much less were filed before APERC at any time pursuant to public notices, however, submitted that the APERC is not questioning the authenticity or credibility of the documents supplied during the course of hearing but the point being that the APERC orders cannot be faulted on the basis of documents handed over in the present proceeding as they were not placed before the Commission, the factual veracity of the contents of the documents has to be established in a manner by following procedure known to law.

62. **On being questioned whether, the State Commission would like to examine the documents before making further submission the reply was negative.**

Submissions of Respondent Discoms

63. The AP Southern Power Distribution Company, AP Eastern Power Distribution Company, and AP Central Power Distribution Company, the three AP DISCOMS filed the common written submissions.

64. The Discoms submitted that the Appellants in the said appeals are undisputedly co-located Captive Power Plants operating in parallel to the State Grid, therefore, these appeals give rise to common questions of law since the Appellants are identically placed, thus the common written submissions.

65. The Impugned was passed by the State Commission against the petition filed by the APDISCOMS for levy of GSC relying on the judgment of the Supreme Court in *Transmission Corporation of Andhra Pradesh v. Rain Calcining*, as required, a public notice was issued on 23.12.2021 and accordingly objections were invited from all the stakeholders in respect of the levy of the GSC, thereafter, the APERC after considering objections and holding detailed public hearing has issued the Impugned Order.

66. The Appellants have assailed the Impugned Order principally on the grounds that (i) the APERC lacks the jurisdiction to impose GSC, (ii) there is no justification for the imposition of GSC on CPPs; (iii) the quantum of GSC has been determined without any study having conducted, however, countered that these contentions are without merit for the reason that each of the objections raised by the Appellants have been considered and rejected by the Supreme Court in its decision in *Rain Calcining* and in a series of seven judgments passed by this Tribunal.

67. Argued, that the Supreme Court in *Rain Calcining* has categorically held that the 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'), and therefore, submitted by the APERC that the Reforms Act continues to be in force in terms of Section 185(3) of the Electricity Act (the '2003 Act') as long it is not inconsistent with the 2003 Act, further, the Supreme Court has in *A.P Transco v. Sai Renewables Power* has specifically held that the APERC discharges its functions both under the Reforms Act and the 2003 Act.

68. Further, added that this Tribunal in several judgments has held that imposition of GSC is not inconsistent with the 2003 Act, consequently, the APERC has the authority to impose GSC in terms of the judgment of the Supreme Court in *Rain Calcining* specifically finding this power to be vested under the Section 11 and Section 26 of the Reforms Act.

69. The Respondents contended that the said Supreme Court judgment is not a precedent since it is granted on a concession, however, this Tribunal in case titled *Hindalco Industries v. MPERC* has considered each of these objections regarding the applicability of the judgment in *Rain Calcining* *inter-alia*, rejected these submissions and found the decision in *Rain Calcining* to be applicable and to be binding on this Tribunal on the question of the authority to impose GSC.

70. The Supreme Court passed the judgment in *Rain Calcining* after considering the 2003 Act and the principles applicable to the 2003 Act as declared by the Supreme Court in *PTC (India) Ltd. v. CERC*, this contention was accepted by this Tribunal in *Hindalco* and the Division Bench of the High

Court of Chhattisgarh in *S K S Ispat And Power Ltd vs Chhattisgarh State Electricity Regulatory Commission & Ors.*

71. Also added that the Supreme Court found that the APERC had jurisdiction since 'transmission' is regulated under the Reforms Act which position has not been altered by the 2003 Act, also the power is rooted in Section 26 of the Reforms Act which is materially similar to the regime under Section 61-64 of the 2003 Act, this contention of the Appellant also therefore merits rejection as the basis of the judgment in *Rain Calcining* being unaltered the law declared applies even in this case governed by the 2003 Act.

72. The contention of the Appellant that the judgment in *Rain Calcining* is not a binding precedent since it is rendered on a concession is unfounded, the concession is limited to the parity of reasoning that applies on the question regarding the authority to impose wheeling charges and GSC, the Supreme Court having considered rival contentions has found that the authority to make such levies exist and the Supreme Court further clearly finds that the power to impose GSC is vested in the APERC and restores the order of the APERC, further, these submissions have been accepted in *Hindalco* case where this Tribunal applied the judgment in *Rain Calcining*.

73. The Respondents placed the full bench judgment of this Tribunal passed in *Chhattisgarh State Power Distribution Co. v. Godawari Power & Ispat*, subsequently considered by this Tribunal in *Hindalco Industries Ltd. v. MP ERC* and in *Shree Renuka Sugars Limited v. Gujarat Energy Transmission*

Corporation Ltd and has held that a number of advantages are accrued to the CPPs because of its parallel operation with the grid, the Impugned Order also relies on these judgments passed by this Tribunal after considering studies conducted in the States of Gujarat, Madhya Pradesh, and Chhattisgarh.

74. The advantages of grid support and the benefit to CPPs having been conclusively adjudicated by this Tribunal there is no requirement to conduct a new study for this purpose, the Appellants have not demonstrated that the studies considered by this Tribunal in its judgments are outdated or inconsistent with prevailing practices.

75. These objections raised in the appeal are beyond the scope of the present proceedings as no contrary data was furnished by any of the Appellants to controvert the conclusion arrived at by the APERC in its Impugned Order, this Tribunal has non-suited such objectors in Hindalco on the basis that no inputs were furnished before the State Commission in the course of determination of GSC.

76. The Appellant relies on the decision of this Tribunal in *Shree Cement Limited v. Jodhpur Vidyut Vitaran Nigam Ltd* to contend that a study is a mandatory pre-requisite to the imposition of GSC, the Appellant's reliance on the decision in *Shree Cements* is misplaced since this question was not adjudicated by this Tribunal, the imposition of GSC in that case was set aside only due to violation of principles of natural justice and also the levy of GSC in that was undertaken without a proposal from the distribution or transmission

utility and therefore without inviting public objections, none of those circumstances exist in the present case.

77. The Appellant object to the basis of the levy of GSC on the following basis: (a) cost of repair and maintenance of transmission assets are recovered through other charges; (b) levy must on the actual usage instead of the installed capacity of the CPP; (c) the levy is excessive; and (d) the Impugned Order imposes a uniform charge without considering the peculiarities of each generator.

78. The purpose of imposition of GSC is distinct from transmission, wheeling charges and demand charges paid by the Appellant, none of these charges are consideration for grid support that inures to the benefit of the Appellant, therefore, there is no duplicate levy on the Appellants, a similar contention was raised before this Tribunal in Hindalco and was negated by this Tribunal.

79. Further, the repair and maintenance expenses incurred by the transmission and distribution utility have been used only as a basis to determine the quantum of GSC, the actual impact of the Appellants' parallel operation is reflected in this expenditure, this finds basis in *Rain Calcining* as well, where impact on the equipment's of Transmission and Distribution Companies on account of parallel operation with grid has been considered as the basis for GSC.

80. Further, the contention of the Appellants that the GSC cannot be linked to installed capacity of the CPPs has been rejected by in as many as four rulings of this Tribunal.

81. Further, as to levy being excessive, the Gujarat and Chhattisgarh State Commissions rely on the Base MVA method for calculation of the POC/GSC, the Base MVA method takes into consideration the total fixed cost incurred on transmission and distribution, however, in contrast, the APERC has based the computation on the R&M charges, which on comparison are much lesser than the fixed cost incurred on transmission and distribution, even by the formula upheld in *Rain Calcining* based on demand charges is substantially lower than the charges imposed by the Impugned Order.

82. Also countered the Appellant's contention that the APERC ought to have relied upon a study on the peculiar circumstances in which each generator receives grid support, thus, the Appellant essentially seeks to assail the Impugned Order imposing the GSC on uniform basis, however, this approach has been held to be unquestionable by this Tribunal in *Hindalco*, there is further no scientific or other input furnished by the Appellant before the APERC to justify or to even seek differential treatment.

83. Thus, in light of the various rulings of this Tribunal and the judgment of the Supreme Court in the *Rain Calcining*, the levy of the GSC on the Appellants is justifiable and in accordance with law.

Our Observations and Conclusion

84. The present case has a checkered history since 2001 when APTRANSCO filed a tariff petition dated 17.01.2001 being OP No. 01 of 1999 for the year 2001-02 and the State Commission vide order dated 08.02.2002 disposed of the petition *inter-alia* allowing levy of GSC/ POC on CPPs operating in parallel to the AP Grid.

85. Subsequently, the decision of the State Commission was challenged by the CPPDs before the High of Andhra Pradesh which resulted into setting aside of the State Commission's Order.

86. However, the decision of the High Court was set aside by the Supreme Court while disposing of the appeals filed by the State Utilities i.e. APTRANSCO/ distribution companies and also upholding the decision of the State Commission.

87. Separately, many appeals were filed before this Tribunal on the issue of levy of GSC/ POC on CPPs and some of the judgments of this Tribunal are sub-judice in the Supreme Court, as submitted by the contesting parties herein.

88. It is, therefore, important to note the various judgments of this Tribunal by which the CPPs were brought under the ambit of the POC/ GSC and also

the judgment of the High Court of AP and the Supreme Court and the chronology.

89. The State Commission by its said Order dated 08.02.2002 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, the CPPDs challenged the order before the High Court 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*.

90. **It is important to note here that the GSC/ POC charges were levied on the HT Consumers having CPPs and the methodology for determination was limited to the categories of HT Consumers in terms of contract demand etc.**

91. It is also important to note here that the said Appeal before the High Court was filed under ***Section 39 of the Electricity Reform Act, 1998*** (hereinafter referred as ‘Reforms Act’).

92. 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 2003 Act by way of section 185(3) of the 2003 Act.

93. 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.*

94. The High Court after taking note of all the legal propositions ruled as under:

*“35. Since we have already held that the functions of the Commission under the Reforms Act are only adjudicatory one and akin to Civil Court under common law, **the action of the Commission in directing the licensee to send proposals to levy Grid Support Charges will lead to the irresistible conclusion that the Commission with a view to reimburse the losses incurred by the licensee pre-determined the issue and went on issuing the practice directions to acquire jurisdiction over the issue and ultimately stuck to its view. Hence, the impugned order is vitiated by malice in law.***

37. -----As far as CPPs are concerned, the State Governments are directed to encourage Co-Generation Plants with the dual objective of higher efficiency in the fuel use in the industry as well as the availability of the surplus electricity to the State Grid by combining the power and heat generation for industrial use.

38. From the above it is seen that levy of Grid Support Charges is a policy matter not only in the realm of the State Government, but it relates to the whole of the country. Hence, the State Government has to take a policy decision with regard to levy of Grid Support Charges in consultation with the Central

Government and the Central Electricity Authority and the Commission on its own cannot levy Grid Support Charges.

39. *Likewise under Section 32, an Advisory Committee has to be constituted to advise the Commission on major questions of policy relating to the electricity industry in the State. Though regulations were framed for establishment of the Commission Advisory Committee balancing various interests, groups enumerated in Regulation-2, it is not known whether any Advisory Committee was constituted or not. **At any rate, the action of the Commission in not consulting the State Government and the Advisory Committee suffers from serious infirmity since collection of Grid Support Charges from the H.T. Consumers with Captive Power Plants (CPP) running in parallel with A.P. TRANSCO Grid was thought of for the first time in 2002 though these plants are functioning from 1995 onwards pursuant to the orders issued by the Government in G.O.Ms. No. 150, dated 15.11.1995 in conformity with the D.O. letter of Secretary, Ministry of Power.***

95. Further, the High Court after considering the grid protection and security aspects *inter-alia* the regulatory provisions and compliance of such provisions by the CPPDs has observed that:

“59. To sum up the safety arrangements that are to be taken by the HT consumers with captive power plants running in parallel with A.P.

TRANSCO's Grid to withstand the maximum fault currents that may occur are:

- 1. Both the systems i.e., the Grid and as well as the CPP should be properly isolated to avoid sudden load transfer, in the event of any fault occurring in either of the systems.*
- 2. The Company should provide reverse power relay, to prevent flow of power from CPP to Grid in case licensee's load is tripped off or the CPP generates excess power which cannot be consumed.*
- 3. Likewise, the Company should provide under/over frequency levels to ensure isolation of CPP in the event of sudden trip out of Grid supply from A.P. TRANSCO, to avoid any adverse affect to Company's CPP.*
- 4. Interlock should be provided, so that whenever the CPP trips, to prevent load transfer on the other supply system that is being operated in parallel.*

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.

71. The issue can be viewed from other angle also. The trip of is taking place at the DISCOM Grid level, which is connected to Grid (B), which in its turn connected to the National Grid (A). If we extend the same analogy the licensee (i.e.,) TRANSCO has to pay Grid Support Charges to the National Grid for the ultimate transmission of the entire over load it was forced shed due to system fault of all the CPPs in the State. When the TRANSCO is not paying any Grid Support Charges to the National Power Grid Corporation it is not known under what justification the Commission can permit the licensee to collect Grid Support Charges. Hence, we do not find any

justification on the conclusions reached by the Commission.

72. Further, it is not the case of either the licensee or the Commission that the transient load on the Grid system is occurring at the time of starting of the motors. The specific case of the licensee is that as and when there is a system failure in the Captive Power Plants, the industry is taking the required power load over and above CMD from the Grid operated by the licensee and the same is not being recorded till the integrating time of 15 or 30 minutes as the case may be is completed.

73. This very fact proves that the Commission was passing orders indiscriminately without knowing what it is doing. It started on the presumption that as and when the CPP trips off, the industry is taking power load over and above the CMD from the Grid. But, now, in the order, it states that if the motors are started without the Grid support, there will be dip in voltage, resulting in tripping of other motors in the industry, so on and so forth.”

96. Further, the High Court in para 81 ruled that “*All these actions can be termed as a camouflage to give effect to the predetermined decision of the Commission even before the licensee came up with the proposal. **In fact, we have already held that it is at the instigation of the Commission, the licensee simply filed a letter not even in the prescribed format with***

necessary particulars as required under the Regulations and the Commission strived hard to give effect to its predetermined decision.”

97. The High Court after noting 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, however, 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, the relevant extract is quoted as under:

“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.

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.

85. At the same time, we are not for a moment holding that at the time of tripping of the system in the consumer's premises that no extra load is being taken from the Grid and in the event if the Commission is conferred with such a power under the Reforms Act, the same has to be exercised reasonably, objectively duly keeping the social objective of ensuring a fair deal to the consumer, if possible, by framing the Regulations for quantification of the extra load the Grid is taking in the event of any fault occurring in the Captive Power System industry, but not at the whims and fancies of either the licensee or the Commission.

87. In the result, viewed from any angle, the order of the Commission in O.P. No. 1 of 1999, dated 8th February, 2002 cannot be sustained in law, since it suffers from serious infirmities noted above. Accordingly, the impugned order of the Commission is set aside and the appeals are allowed. But in the circumstances, no order as to costs.”

98. We find that the High Court while passing the above judgment has considered all the technical effects of a CPP operating in parallel to the grid versus the legal provisions and compliances by the industries, as also submitted by the Appellants herein, further, noticed and observed 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.

99. 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."

100. It is important to note here that the Supreme Court has rendered the judgment in the light of (i) "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", (ii) "**Grid code is the basis for levy of the grid support charges, which came to be approved by the Commission on 26-5-2001**", and (iii) *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.*

101. While passing the judgment, Supreme Court has considered the earlier State Grid Code 2001 and the provisions under AP Reforms Act.

102. Since then, the State Grid Code notified in 2001 has been replaced by the State Grid Code, 2014, the State and the Central Regulations have also been replaced by new Regulations, incorporating new provisions in respect of new advanced technologies, security and safety considering one national grid and protection systems.

103. Thus, the levy and recovery of GSC was introduced on the plenary ambit of regulatory powers of the APERC under Sections 11 and 26 of the AP Reforms Act, 1998, as submitted by the Appellants, and also with no deregulation of generation, the provisions of AP Grid Code, 2014 provide various technical and operational parameters to be complied with by all grid connected Users (including CPPs) and in case, any User fails to comply with any provisions repeatedly, such User's plant/ facilities may be disconnected from the grid and may be liable for payment of damages and compensation for such violations.

104. Further, neither the APERC nor the other Respondent could place a copy of the Grid Code 2001 as considered by the Supreme Court in *Rain Calcining judgment*, so as to demonstrate the basis of GSC under the earlier regime, we even otherwise, we find merit in the submission of the Appellants that the extant AP Grid Code, 2014 undisputedly does not contain any provision permitting levy of GSC and/ or suggests that the Grid provides additional benefits to generators, for which a separate independent charge is necessary.

105.

106. It can also be seen, from the judgments rendered by the Supreme Court, the High Court and the order dated 08.02.2002 passed by the State Commission, the GSC/ POC charges were limited to Captive Power Plants having co-located loads i.e. operating in parallel to the State Transmission/ Distribution Grid, therefore, the applicability of the

aforsaid judgment of the Supreme Court is in respect to Captive Power Plants having co-located captive loads.

107. In the light of above, it is concluded that the State Commission, placing reliance upon the judgment *dated 29.11.2019 rendered by the Supreme Court in "Rain Calcining Judgment"* and judgment dated 12.09.2006 in Appeal No. 99 of 2006 and judgment dated 18.02.2011 in Appeal No. 120 of 2009 has justified the levying of GSC/ POC on all the CPPs and extended the same on IPPs (non-CPPs), *except those with power purchase agreements with DISCOMs*, stating that **"confining levy of GSC to CPPs only does not provide for a level playing field as other generators also enjoy same benefits."**

108. Further, after observing that the APDISCOMs have not prayed for levying of GSC/ POC on the IPPs and have also not provided any substantiation to justify imposition of 50% of demand charges applicable to HT consumers as GSC, indicated determination and levying of the GSC/ POC charges on the IPPs inter-alia on the basis of the data, material and scientific inputs relating to parallel operations.

109. The Appellant raised the issue of (a) identifying APERC's power / jurisdiction to levy GSC under the provisions of the Electricity Act, 2003, (b) need for detailed technical study to be conducted alongwith the requisite data/ supporting evidence justifying the said levy, (c) the principles of natural justice since the data, material and scientific inputs relied upon by the APERC was never shared with the parties.

110. Undisputedly, the aforesaid judgment of the Supreme Court, various judgments rendered by this Tribunal are limited to the Captive Power Plants (CPPs), it will, therefore, be important to consider the applicability of the aforesaid judgments before deciding the matter.

111. It also cannot be disputed that the CPPs are set up primarily for their own consumption and therefore, cannot be equated with IPPs, thus the observation of the State Commission “need for level playing field” is totally irrational and unjustified.

112. Further, the observation of the State Commission that the determination of GSC/ POC charges on *the basis of **the data, material and scientific inputs** relating to parallel operations*, is contrary to its own submission before us that no fresh study was undertaken by the Commission on GSC as it is the continuation of historical charges that were in place, thus no data, material and scientific inputs have been taken except the arbitrarily taking the R&M charges.

113. The Appellant submitted that ‘Parallel Operations’ refers to a situation where a captive generating plant has co-located consumption at a load which also draws power from the grid, it has to be understood in contradistinction to isolated operation of a captive plant, *inter-alia*, an issue for the concerned SERC to examine and decide as to what are the costs imposed by parallel operations on the Discom/Transco and whether the same is covered by the tariff or any additional charge has to be imposed/recovered in this behalf.

114. We find merit in the submission of the Appellant that the State Commission is bound to determine the impact of support, in terms of technical and commercial terms, required by the CPP/ Captive User before imposing any cost on the CPP/ Captive User in terms of GSC/ POC *inter-alia* in case of CPP having co-located captive load or distantly located captive load connected through the State Grid.

115. **As already observed, the legal/ regulatory environment is dynamic, the statutory provisions are changing with time as per need of the power sector, Clause 6.3 of the Tariff Policy, 2016 provides that “Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.”**

116. Thus, the need of a regulatory regime based on scientific studies.

117. We are inclined to accept the contention of the Appellants that the APERC in the Impugned Order has failed to trace its power / jurisdiction to levy GSC/ POC under the extant provisions of the Electricity Act, 2003, it is only the reliance upon the Supreme Court’s Rain Calcining Judgment upholding levy of GSC by the APERC on 08.02.2002 under the AP Reforms Act and State Grid Code of 2001 to justify imposition of GSC.

118. The Appellants also challenged the Impugned Order that the *Rain Calcining Judgment* was based on a concession as argued by the

Respondents, however, on being asked, the APDISCOMs replied that the APERC has the power and jurisdiction to regulate transmission of electricity and as such levy of GSC, however, under which provision of the Act *inter-alia* under which activity prescribed in Section 62 of the Act for which SERC's determine tariff, it can be levied, the Respondents failed to reply the statutory provision under which GSC can be levied.

119. The Appellant also contended that according to the judgment of this Tribunal in *Hindalco Industries vs. MPERC*, it is clear that GSC / POC has been justified as a 'compensatory fee' for a service being rendered by the grid to generators operating in parallel with it, however, in reality GSC / POC, as imposed, is in the nature of a Tax with no coherent connection to the alleged advantages / services being rendered or the monies (GSC/POC) being sought for the same, further, it is a settled position of law that a 'Fee' is a consideration for services rendered, and there must be sufficient correlation with the expenses incurred in rendering such services, reliance is placed on *Commissioner, Hindu Religious Endowments v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005]* (Paras 43-47), a seven (7) Judge Bench judgment.

120. However, at this stage, we are not going to examine such contentions, in case the issues raised in these batch of appeals are covered by the aforesaid Supreme Court judgment, then issue stand settled.

121. On the contrary, the Respondents placed strong reliance on the *Supreme Court Rain Calcining judgment* and the following judgments of this Tribunal:

- i. Hindalco Industries Limited V. MPERC & Others, 2021 SCC OnLine APTEL 23 dated 02.07.2021*
- ii. Chhattisgarh State Power Distribution Company Limited V. Godawari Power and Ispat Limited, 2011 SCC OnLine APTEL 20 dated 18.02.2011*
- iii. Indian Acrylics Limited V. PSERC, 2009 SCC OnLine APTEL 64 dated 24.04.2009.*

122. We shall be discussing all these judgments in the succeeding paragraphs.

123. The State Commission also argued that it has decided the matter under the power conferred under clause 8.2 of regulation 4 of 2005 (Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity) *inter-alia* has modified the proposal with respect to the Tariff and also the applicability to ensure that all the generators connected to the grid shall be on equal footing in so far as grid support is required (level playing field), as it is the continuation of historical charges that were in place, no fresh study was undertaken by the Commission on GSC.

124. As already aforesaid, the State Commission has failed to place on record any provision of the Act, specifically with reference to section 62 of Act, under

which it has determined the GSC/ POC charges and also the powers to modify, suo-moto, the prayers of the petitioners made before it, and granting favourable order beyond what has been prayed.

125. It is settled principle of law that no court can grant to an appellant more than what has been prayed.

126. We also find it difficult to accept the submission of the State Commission that there are elaborate reasoning given regarding determination of POC in the Impugned Order, there has been no study carried out and also recording that the Discoms have not provided any data/ information in this regard, except considering the R&M charges expected to be incurred by the DISCOMS and APTRANSCO for FY2022-23, which is certainly the part of determination of transmission and wheeling charges, the State Commission has failed to provide any data/ information on whether such charges are not recovered as part of Transmission & Distribution charges, except that it will be considered at the time of true up.

127. Further, we find the contention of the APERC as totally arbitrary that it has determined GSC/ POC based on the total generation capacity excluding the capacity of Central Generating Stations (CGS) connected to the AP state grid and Repairs and Maintenance (R&M) charges of APTRANSCO and the DISCOMs because in the earlier Orders it had not specified any computation methodology for GSC, it cannot be any reason to decide a methodology which has no justification or reasonableness.

128. On being asked, the State Commission could not provide any reply to the question about the additional services alongwith cost justification provided by the Discoms for which they have not recovered the cost in their determined tariff, it is their submission that the Grid support is recognized as a distinguishable service and it was determined based on the R&M only for quantification purposes but not intended to recover a part of R&M in the name of GSC, hence, it is not double charging the OA users, however, what cost has been incurred for such a distinguishable service, we again find no reply.

129. The Respondent Discoms added that all the Appellants in this batch of appeals have co-located captive loads and thus covered by the Supreme Court Rain Calcining Judgment.

130. It is Respondents' argument that the *Supreme Court Rain Calcining Judgment* has considered the State Act and after examining the Section 11 and Section 26 of the Andhra Pradesh Electricity Reforms Act, 1998 *inter-alia* gave the ruling in favour of the State Commission that it has powers to levy GSC and therefore, considering the judgment alongwith section 185 (the savings clause) of the Electricity Act, 2003, the Reforms Act continues to be in force in terms of Section 185(3) of the Electricity Act (the '2003 Act') as long it is not inconsistent with the 2003 Act, also relied upon the Supreme Court judgment in *A.P Transco v. Sai Renewable Power* wherein it has been held that the APERC discharges its functions both under the Reforms Act and the 2003 Act.

131. The Appellants strongly countered the reliance placed on *APTRANSCO v. Sai Renewables Power Pvt. Ltd.: 2011 (11) SCC 34*, stating that it is misplaced since: -

(a) The judgment relates to SERC's regulating power supply by a generator to a DISCOM (para 64). In the instant case, parallel operation falls under the activity of 'transmission', the said Judgment does not apply to parallel operations.

(b) Power of SERCs to regulate power being supplied by a generator to the DISCOM remains the same under the AP Reforms Act, 1998 (Sections 11 and 26) and Electricity Act, 2003 (Sections 62 and 86), per contra, captive generation and consumption is completely delicensed under the Electricity Act.

(c) Hon'ble Supreme Court's reliance on the said judgment in *Rain Calcining* was solely in the context of promissory estoppel and had nothing to do with levy of GSC.

132. We agree with the submission of the Appellants.

133. Further, we agree with the contentions of the Appellants that the APDISCOM's proposal and APERC's final determination levying GSC are diametrically opposite, the Discoms prayed for determination of GSC/ POC on the basis of 50% of Demand charges applicable to **HT consumers**, whereas,

the APERC decision is on the basis of R&M charges of APTRANSCO and APDISCOM.

134. Additionally, it is the submission of the Appellants which need consideration that with the introduction of new technologies and integration of the power system into one national grid, many regulatory reforms have been brought into and includes installation of advanced protective and security equipment at the consumer levels, thus minimising any disturbance to the grid.

135. Also, the various supports drawn by a CPP/ Captive User is based on the characteristics of the captive load as such the determination as contended by the Appellants has merit, thus, determination should be on the basis of load characteristics, and therefore, after a detailed study is taken up which *inter-alia* conclusively provide basis for such charges.

136. On the contrary the Respondents has argued that the advantages of grid support and the benefit to CPPs having been conclusively adjudicated by this Tribunal there is no requirement to conduct a new study for this purpose, the Appellants have not demonstrated that the studies considered by this Tribunal in its judgments are outdated or inconsistent with prevailing practices.

137. The Appellants submitted that the AP Grid Code, 2014 provide various technical and operational parameters to be complied with by all grid connected Users (including CPPs) and in case, any User fails to comply with any provisions repeatedly, such User's plant/ facilities may be disconnected from

the grid and may be liable for payment of damages and compensation for such violations, further, UTCL, the Appellant is in compliance with the provisions of the AP Grid Code, neither APTRANSCO nor APDISCOM's have ever found or alleged any grid violation or any adverse impact on the Grid caused by UTCL, as UTCL has installed numerous equipment at its own costs at its CPP and also at consumption end to ensure safety and minimize distortions caused to grid operations, as mandated by the APERC's Code of Technical Interface, relevant Technical Details of Cement Manufacturing Units, CPP's and the protective equipment installed therein are placed on record.

138. We are satisfied that the above contention of the Respondents is totally unfounded, the power sector has grown leap and bounds and also the technology, the system needs advanced protection/ safety and security equipment which can only be introduced through detailed technical studies only, grid support charge determination methodology does need all these details.

139. We are also not inclined to accept the contention of the Respondents that the Appellants have not placed any contrary data to controvert the conclusion arrived at by the APERC in its Impugned Order, this Tribunal has non-suited such objectors in Hindalco on the basis that no inputs were furnished before the State Commission in the course of determination of GSC, however, the Appellants (UTCL) have categorically furnished detailed schemes with protective equipment lists which ensures zero disturbance to the grid or drawing any such support as indicated by this Tribunal in earlier judgments.

140. The counter by the Respondents to the reliance of the Appellants on the decision of this Tribunal in *Shree Cement Limited v. Jodhpur Vidyut Vitaran Nigam Ltd* ruling mandatory study as pre-requisite to the imposition of GSC, further the Respondents submitted that the imposition of GSC in that case was set aside only due to violation of principles of natural justice and also the levy of GSC in that was undertaken without a proposal from the distribution or transmission utility and therefore without inviting public objections, none of those circumstances exist in the present case, even if we agree, the State Commission has not accepted the prayer in the present case and modified it in terms of its imposition and quantum that to against the IPPs which were not included as part of the prayer.

141. An elaborate submission was placed on record and argued by the Appellants, we are satisfied that with the legal mandate specified, the grid support to such consumers is minimal and cannot be of the order of the GSC/ POC determined by the State Commission.

142. It is also the argument of the Appellants that the purpose of imposition of GSC is distinct from transmission, wheeling charges and demand charges paid by the Appellant, none of these charges are consideration for grid support that inures to the benefit of the Appellant, therefore, there is no duplicate levy on the Appellants, a similar contention was raised before this Tribunal in *Hindalco* case and was negated by this Tribunal.

143. The Appellants submission that during FY 2022-23, the Telangana State DISCOM's also proposed levy of GSC on the basis of the *Rain Calcining Judgment*, however, the Telangana SERC directed the State 'Grid Coordination Committee' to undertake a detailed study on the issue of parallel operation of CPPs and consequent levy of GSC, has merit and need to be followed by the other SERCs.

144. Even the Central Electricity Authority, the statutory technical organisation, responsible for notifying the Technical Regulations for the Power Sector, has in its Report dated 12.05.2009, categorically observed that: -

- (a) There is no strong technical justification for levy of parallel operation charges/ grid support charges.
- (b) **Burden caused to the grid is caused by harmonic pollution causing loads and jerk causing loads and not due to the CPP capacity**. Charges should be based on nature/ type of load.
- (c) **CPP's operating in parallel share the burden of jerks and unbalance caused by other loads in the grid** in their electrical vicinity. **Parallel operations of CPP's helps the grid.**

145. Further, this Tribunal has passed various judgments in respect of levy of GSC/ POC on CPPs, in its judgment dated 18.02.2011 in Appeal titled *Chhattisgarh State Power Distribution Co. Ltd. v. Godawari Power & Ispat Ltd. (2011 SCC OnLine APTEL 20 : [2011] APTEL 20)*, this Tribunal has 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:

- (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 equipments. The CPP can operate his generating units at constant power generation mode irrespective of his load cycle.*
- (i) Absorption of harmonics.*
- (ii) 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.*
- (iii) 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.*
- (iv) The grid provides stability to the load of Captive Power Plant to start heavy loads like HT motors.*

- (v) *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.*
- (vi) *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.*
- (vii) *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.”

146. While rendering the judgment, this Tribunal referred the judgment dated 12.9.2006 in Appeal No. 99 of 2006 passed by this Tribunal as also relied upon by the State Commission.

147. The findings in the above judgment are with respect to “Captive Loads” and not with respect to CPP, however, after considering that the CPP operating in parallel to the Grid, has allowed levying of POC/ GSC charges.

148. Also, it cannot be disputed that the above judgment has upheld levying of POC for the reason that “***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.***”

149. **Therefore, it is important to examine the grid support drawn by the CPPs or provided by the Transmission/ Distribution Grid to the CPP, which can only be determined through a detailed study to be carried out.**

150. Further, this Tribunal vide judgment dated October 8, 2015 in Appeal No. 167 of 2014 titled HEG Limited v. Madhya Pradesh Electricity Regulatory Commission has decided as under:

“9. The following issues arise for our consideration in the instant Appeal:

(A) Whether the impugned petition being petition no. 52/2013 seeking clarification of the State Commission's order, dated 31.12.2012, amounts to review petition and the same can

be summarily dismissed as the review petition being time barred?

(B) Whether the parallel operation charges could only be levied on CPPs which were inter-alia interconnected with its load and the utility grid by a point of common coupling?

(C) Whether the State Commission's order, dated 31.12.2012, levying POCs to all CPPs connected to the grid in the state of Madhya Pradesh is applicable to the Appellant's Tawa project?

13. Our consideration and conclusion:

13.20 *In view of the above discussion and the reasoning, we hold that the impugned petition, being Petition No. 52/2013, does not amount to a review petition from any angle as the contents provided for the review petition are absolutely lacking therefrom. The said petition is really a clarificatory petition as the same is evident from the perusal of the contents or facts mentioned in the aforesaid petition. **The Appellant/petitioner had given the peculiar facts and circumstances of its Tawa Plant submitting that its Tawa Captive Power Plant and its load are not co-located at the same premises but are located at a distance of more than 100 Kms. Thus, the Tawa Captive Power Plant and its load are not co-located and the POCs***

on the said Tawa Plant of the Appellant are not leviable by any interpretation of legal juris prudence.

13.21 We further hold that the impugned petition, being Petition No. 52/2013, is in reality, and letter and spirit, a clarificatory petition which cannot be said to be time barred. We further hold that the POCs can only be levied on the CPPs which are inter-connected with their load and the utility grid by a point of common coupling. Since, the Tawa Plant of the Appellant/petitioner is not inter-connected with its load/consumer and the utility grid by a point of common coupling, and hence, the POCs cannot be levied on the Tawa Plant of the Appellant. We, further, clarify that the main order, dated 31.12.2012, passed by the State Commission levying POCs to all the CPPs connected to the grid in the state of Madhya Pradesh, is not at all applicable to the Tawa Captive Power Plant of the Appellant/petitioner. In this way, all these three issues are accordingly decided.”

151. From the above quoted judgment any CPP having captive load connected distantly using the State Grid i.e. not having co-located captive load cannot be levied with POC charges.

152. As already observed in the preceding paragraphs, the *Supreme Court Rain Calcining Judgment* is also limited to CPPs having co-located captive

loads as the contesting parties therein had co-located captive loads as submitted by the Appellants herein.

153. This Tribunal, in its judgment dated 29.09.2015 in Appeal No. 39 of 2014 titled *Shree Renuka Sugars Limited vs Gujarat Energy Transmission Corporation Ltd. (2015 SCC OnLine APTEL 11)* has framed the following issues while rendering the judgment:

“7. The following issues would arise for consideration in this Appeal: -

- a) Whether the State Commission erred in imposing Parallel Operation Charges to the Cogeneration Plant of the Appellant?*
- b) Even if it is found that POC is applicable, whether the State Commission erred in imposing POC to the entire installed capacity of the Power Plant in the Cogeneration Plant of the Appellant?*
- c) Whether the State Commission erred in denying the 3 Minute Integration facility to the Appellant?*
- d) Whether the State Transmission Utility (GETCO) erred in getting the Undertaking executed by the Appellant for payment of POC?”*

“15. The above 4 aspects raised by the Appellant in light of the submissions made are being considered.

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

i) *In so far as the levy of Parallel Operation Charges for Cogeneration plant is concerned, the order dated 01.06.2011 passed by the GERC had decided as under:-“23.13 In view of the above observations, we decide that the consumers having CPPs and connected with the grid shall have to pay POC. At present the consumers and open access users connected to the grid, consisting of interconnected transmission lines, S/S generating system, bear the transmission charges. The CPPs with connected load also enjoy the benefits of services of system operation from transmission licensees and distribution licensees. Hence, CPPs should pay POC, which would be shared by the STU and the distribution licensee concerned.*

23.14 Now we deal with the issue of applicability of parallel operation charges. The load connected with CPPs is situated in the following manner.

- (1)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.*
- (2)CPPs and load connected with it are situated at the same place and connected with grid.*
- (3)CPPs and load connected with it are having reverse flow relay provided at their end and power flow is possible only from CPP to grid.*

23.15 In case of the first situation, 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 as stated in earlier para No. 23.13 above. While the load which is 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.

23.16 In case of the second situation, the load of the consumer connected with CPP at the same premises is fully receiving support from the grid as stated in para 23.13, shall have to pay POC as decided in this order.

23.17 In case of the third situation, whenever the load of the consumer connected with CPP falls instantaneously due to failure of equipment of the consumer's machine etc. in such a situation, the excess generation of CPP will affect CPP adversely. It might lead to tripping of the CPP, and a transient effect on it. In such eventuality, the excess power of the CPP will be injected to the grid and avoid tripping and other adverse effect on the CPP. Moreover, they are benefited by way of injecting harmonics into the grid, increase in fault level etc. Hence, for the load of the consumer of CPP with reverse flow relay, it is desirable to apply POC as decided in this order.”

- ii) Thus, in terms of the order dated 01.06.2011 of the GERC, there is no applicability of Parallel Operation Charges in case of the captive power unit and the consumption unit are not co-located and it applies only when both are at the same premises integrated to one another.
- iii) The GERC order dated 01.06.2011 was challenged before this Tribunal in Appeal no. 65 of 2012 and the decision of the GERC was upheld in Shah Alloys Ltd. case by Tribunal's order dated 05.11.2012.
- iv) A Full Bench of the Tribunal in Appeal no. 120 of 2009 relating to Parallel Operation Charges in Chattisgarh by order dated 18.02.2011 has 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:
- (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 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:*

”

v) Earlier to above, the levy of Parallel Operation Charges was held to be valid in two decisions of the Tribunal; in the decision dated 12.09.2006 in Appeal no. 99 of 2006 - Urla Industries Association v. CSERC and dated 24.04.2009 in Appeal no. 86 of 2008 - Indian Acrylics Ltd. v. PSERC. And the relevant portions are reproduced below:

“I) Urla Industries Association v. Chhatisgarh State Electricity Regulatory Commission (Division Bench Judgment dated 12.09.2006 in Appeal No. 99 of 2006)

“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 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 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. Conceedingly 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.”

II. Indian Acrylics Ltd. v. PSERC (Division Bench Judgment dated 24.04.2009 in appeal No. 86 of 2008)

“5) Before us it is submitted by Mr. Deepak Sabharwal that the respondent No. 2 had requested the Commission to withdraw the parallel operation charges on the ground, inter alia, that levy of these charges is against the provisions of the Electricity Act, 2003. It is contended by Mr. Sabharwal that if the respondent No. 2 itself says that the levy of these charges is against law then the same must have been against law from the very beginning and therefore the review petition should have been allowed. Having carefully considered the submissions we find that there is no merit in the same. Mr. Sabharwal could not explain to us how the parallel operation charges are against the provisions of the Electricity Act 2003. It may be that the Board submitted a proposal to the Commission to discontinue the levy of parallel operation charges. It is also correct that the Board in its representation submitted inter alia, that levy of these charges were against provisions of the Electricity Act, 2003 (as can be seen from Chapter 6 of the public notice issued by the Commission for

determination of ARR and tariff for the year 2006-07 in respect of Punjab State Electricity Board). This, however, does not mean that the Commission or the respondent No. 2 become bound by such a statement in respect of the legal position. Neither the Commission nor the Board is estopped from charging parallel operation charges simply because the Board expressed such an opinion about the legal position of parallel operation charges. The appellant had failed to make out any ground for review. Nor is there any ground to interfere with the impugned order. Accordingly, we have dismissed the appeal.”

vi) The Appellant's captive power Plant is co-located with the Sugar Refinery and therefore covered by the decision dated 01.06.2011 of the GERC on levy of Parallel Operation Charges. It cannot be denied that the Appellant Captive Power Plant/co-located units are in operation in parallel with the Grid. The other aspect in the contention raised by the Appellant to be considered is the issue of Captive Power Plant being cogeneration and nature of steam availability and generation in a sugar refinery. The Appellant's submission on the nature of utilisation of steam generated power in Sugar Industry is being different from the other Captive Power Plan and even other types of cogeneration cannot be disputed. The quantum of power generated due to

higher quantum of steam required in the Sugar Industry is significantly higher and much in excess of the quantum required for the consuming unit in the Sugar Industry, hence there will be surplus availability of electricity generated. This, however, would not make it outside the Grid support through the parallel operation. The various supports which the unit would derive are listed in the Full Bench decision in Godawari Appeal no. 120 of 2009 which substantially applies to the Appellant.

vii) The Appellant had itself applied for Grid support and had given an unconditional undertaking to pay the Parallel Operation Charges as per the GERC order dated 01.06.2011 and implemented the scheme after the order dated 01.06.2011 of the GERC. The Appellant did not raise any such aspect at that point of time. If there is no Grid support derived by the Appellant it is open to the Appellant to isolate its facilities from getting support and opt for other means to export power to the Grid.

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.”

154. Further this Tribunal in the aforesaid judgment dated 29.09.2015 has also ruled that:

“16. The Appellant is a commercial entity and is at liberty to run on its own without any grid support and in such an event, no POC would be applicable. The various provisions of the Undertaking were explicitly clear and unambiguous and the Appellant while executing the said Undertaking must have thoroughly understood its implications. After going through all the provisions, this Tribunal finds that the Undertaking executed by the Appellant would remain in force and upholds the order of the State Commission.”

155. From the above judgment, it can again be concluded that the issue before the Tribunal was whether a cogeneration based CPP can be directed to pay POC charges, this Tribunal held in affirmative but again applicable to a CPP only as the disputed Cogeneration plant was also a CPP having co-located load.

156. In another judgment dated 17.02.2016 in Appeal No. 72 of 2015 titled *Salasar Steel & Power Ltd. vs. Chhattisgarh State Power Distribution Company Ltd.*, this Tribunal rendered the following findings and the decision:

“20. After looking into all the issues put forth by the rival parties before us, our conclusion is as follows: —

(a) The Appellant conceived the generating station as CPP and had supplied electricity to its captive load, licensee of the State and for consumption outside the State.

(b) During the period under dispute, the Appellant could not qualify as CPP since the captive consumption reduced from threshold limit of not less than 51% of the total generation on annualised basis.

(c) It is also noticed that the Appellant has been paying cross subsidy surcharge for availing open access of the Chhattisgarh State as well as outside the State through inter-state open access, in accordance with the applicable Regulations of the Appropriate Commission.

(d) For drawing the Grid Support of the Respondent No. 1 for generation in parallel mode, POC is payable as per the prevailing rates to compensate the utility for the disturbance, shocks, distortion etc. caused to its system by virtue of CPP operating in parallel with the system of the utility.

(e) In a situation that in a given year a CPP which is running in parallel with the grid of the Respondent No. 1 is found at the end of that year to have failed to qualify as a CPP in term of the applicable rules of the Electricity Act, 2003 then it becomes liable to pay cross subsidy surcharge to the Respondent No. 1 since the generating plant as in any case operated in parallel with the

system of the Respondent No. 1 and in such a situation, the generator would be liable to pay both cross subsidy surcharge as also POC to the Respondent No. 1 since both these charges are for the different purposes.

(f) As alleged by the Appellant that there could be no levy of POC at all on the Appellant as the Appellant was not a captive power plant during the relevant period of January, 2009 to May, 2013 since the Appellant did not qualify to attain captive status as the captive consumption during this period was less than 51% of the total generation on annualised basis, this argument is not acceptable as the Appellant was having the captive status right from the beginning and was maintaining its captive power plant even during the period under dispute since it was only at the end of the year it was ascertained that based on its captive consumption, it could not qualify as CPP and hence, would still have to pay the POC since the grid of the Respondent No. 1 did provide it the requisite technical support for the various operational benefits drawn by the Appellant by generating in parallel with the States system.

(g) POC and cross subsidy surcharge are for different purpose and as such could be recovered at the same time for the same period, if the CPP is not fulfilling the criteria to qualify for captive status.

(h) Appellant's arguments on the question of recovery of POC and cross subsidy surcharge relying upon this Tribunal's

Judgment dated 09.02.2010 in Appeal No. 119 of 2009 and Appeal No. 125 of 2009 has been examined and the relevant portion of the Judgment dealing with the issue has been reproduced below:—

“33. It has been argued by the learned counsel for the Appellant in Appeal No. 119 of 2009 that the parallel operation charges can not be directed to be adjusted towards cross subsidy charges since the Aryan Plant had already paid parallel operation charges after having availed of the parallel operation facilities, the subsequent finding that it is not a captive generating plant can not alter the fact that it had used the parallel operation facilities provided by the Distribution Licensee after payment of parallel operation charges and therefore the order ordering for adjustment of parallel operation charges toward cross subsidy charges is wrong. This contention in our view is misconceived. Once it is found out that the generating plant who claimed as a captive generating plant did not consume 51% of the energy generated by it, it was never a captive generating plant then the Appellant namely Power Distribution Company Limited can not claim that they are entitled to collect parallel operation charges. Therefore, the order impugned had been correctly passed by the State Commission holding

that the Aryan Plant could never be a captive power plant and therefore, there was no liability to pay parallel operation charges. Consequently, the State Commission held that the charges which were paid earlier as parallel operation charges have to be adjusted as cross subsidy charges for the past use. There is no illegality in this order. Further, no prejudice can be attributed to the Power distribution license especially when the amount of cross subsidy surcharge which the power distribution company is entitled to claim is much higher than the parallel operation charges which were paid earlier.

34. The learned counsel for the Distribution Licensee submits that his client does not want cross subsidy charges, merely because it is higher than the parallel operation charges. This submission is quite strange. It is not open to the distribution licensee to contend that it does not want cross subsidy charges even through it is higher than the parallel operation charges. This stand of the distribution licensee is not only against the interest of the consumers, but also contrary to the provisions of the Electricity Act. 2003.”

In above case, the main contention urged by the Learned Counsel for the Aryan Plant that it being generator which has

not been qualified as a captive generating plant could transfer power generated by it for its own use to its own coal washeries through its own dedicated transmission line. The Judgment of this Tribunal is on the premise that the Aryan Plant has been declared as non-captive generating plant, hence the direction was given to adjust the POC paid by it shall be adjusted towards the cross subsidy charges payable by Aryan. This decision was based on the information of the Chief Electrical Inspector certifying that Aryan plant did not qualify to be captive plant. However, the present Appeal of the Appellant is different on the sole premise that it conceived its generating plant as captive from inception and had been availing the benefits of captive status from beginning and it is only in the period under dispute that it was not considered 'captive plant' since it could not fulfill the criteria of captive consumption of "not less than 51% of the total generation on annualized basis".

(i) It is not open to the Appellant that on its requirement of attaining captive status by meeting the specified criteria which has been granted since the time it was sought, but due to annualized captive consumption being less than that specified for meeting the captive status for some period, it should not be considered captive for that period and POC paid by it for that period should be refunded. This plea of the Appellant is not acceptable since the Respondents' system did take into consideration even during the period under dispute for catering

to the requisite grid support to the generating station of the Appellant considering it as captive plant as has been considered for the prior period of operation of the Appellant. As even during the period under dispute, the Appellant's plant has in any case run in parallel with the system of the Respondent No. 1, the Appellant is liable to pay POC for period under question to the Respondent No. 1.

(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 its 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.

(k) As regards the issue regarding the recovery of POC as well as cross subsidy surcharge from the same generating source during the same period, we are of the considered opinion that since POC and cross subsidy surcharge are for different reasons, the same could be recovered at the same

time if such situation warrants so. In the present case, recovery on account of POC as well as cross subsidy surcharge under the period in question has been rightly done so and the State Commission in the Impugned Order has dealt with all these aspects in the proper perspective in detail and has come to its correct conclusion.

ORDER

We do not find any infirmity which warrants interference of the Impugned Order. Hence, This Appeal is dismissed as devoid of merits. No order as to costs.”

157. In the latest judgment rendered by this Tribunal in case of Cogeneration based non-CPP, this Tribunal has held as under:

“77. 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.

78. 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.

79. 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.

80. 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.

81. 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.

82. *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.*

83. *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 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."

158. From the above, it is concluded that the various judgments passed by this Tribunal and the afore-mentioned judgment of the High and the Supreme Court are limited to CPPs only and cannot be applied to non-CPPs.

159. Further, the POC/ GSC charges cannot be levied on a CPP having captive load located distantly and connected through the State Grid i.e. does not have co-located load.

160. We also find absolute requirement of a technical study to be carried out for ascertaining the factual position regarding the support provided by the State Grid to the captive users/ load.

161. Therefore, the only issue left for decision is a CPP having co-located load in the light of the afore-mentioned judgment of the Supreme Court.

162. As already noted the Supreme Court rendered the judgment in the light of (i) “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”, (ii) “**Grid code is the basis for levy of the grid support charges, which came to be approved by the Commission on 26-5-2001**”, and (iii) *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.*

163. With reference to point (ii), the Grid Code 2001 has already been substituted by State Grid Code, 2014, therefore, the State Commission is bound to examine whether, the new Grid Code is *pari-materia* as far as levying

of GSC/ POC with the Grid Code 2001, it is important to note here that the CPP has become de-licenced activity in terms of 2003 Act and thus Grid Code 2014 also have to similar provisions.

164. Secondly, reason as mentioned as (iii), above, i.e. “*the provisions of Section 21(3) of the Reforms Act, 1998. Under Section 11 read with Section 26 of the Reforms Act, 1998*” also need to be examined in the context of whether these are consistent with the Act 2003 as are related to transmission/ wheeling and generation is no more a licenced business/ activity.

165. While we find considerable force in the submission, urged on behalf of the appellants, that several aspects (detailed earlier in this Judgement) were not brought to the notice of the Supreme Court in **Transmission Corpn. of A.P. Ltd. v. Rain Calcining Ltd., (2021) 13 SCC 674**, we must bear in mind that the law declared by the Supreme Court binds Courts (and Statutory Tribunals) in India (**Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887**). It is the duty of all Courts (and statutory tribunals), whatever be its view, to act in accordance with Article 141 of the Constitution of India and to apply the law laid down by the Supreme Court. Judicial discipline to abide by the declaration of law, of the Supreme Court, cannot be forsaken by any Court or Tribunal oblivious of Article 141 of the Constitution of India. (**Chandra Prakash v. State of UP, (2002) 4 SCC 234; State of Punjab v. Bhag Singh, (2004) 1 SCC 547 : 2004 AILD 204 (SC); and State of Orissa v. DhaniramLuhar, (2004) 5 SCC 568 : 2004 AILD 277 (SC)). 838**). It is impermissible for us, therefore, to take a view different from

that of the Supreme Court in **Transmission Corpn. of A.P. Ltd. v. Rain Calcining Ltd., (2021) 13 SCC 674.**

166. As noted hereinabove, the submission urged on behalf of the appellant is that the Judgement of the Supreme Court, in **Transmission Corpn. of A.P. Ltd. v. Rain Calcining Ltd., (2021) 13 SCC 674**, is based on a concession made by the Counsel and does not, therefore, constitute a precedent binding on this Tribunal. In examining this contention, it is useful to take note of the relevant paragraphs of the said judgement. To quote:-

“65. Coming to merits of fixation of charges, while passing the order, the Commission has fixed the wheeling charges thus:

“9.12. The wheeling charge leviabale from 1-4-2002 for FY 2002-2003 is accordingly worked out as below.

Calculation of Wheeling Charges for 2002-03:

(a) In cash:

<i>Particulars of expenditure</i>	<i>Amt. Rs cr.</i>
<i>Wages and salaries</i>	<i>490.65</i>
<i>Administration and general expenses</i>	<i>105.20</i>
<i>Repairs and maintenance</i>	<i>185.66</i>
<i>Rent rates and taxes</i>	<i>5.13</i>

<i>Approved loan interest</i>	<i>5609.31</i>
<i>Security deposit interest</i>	<i>31.37</i>
<i>Legal charges</i>	<i>0.97</i>
<i>Audit and other fees</i>	<i>2.23</i>
<i>Depreciation</i>	<i>508.59</i>
<i>Other expenses</i>	<i>39.30</i>
<i>Contribution to staff pension and gratuity</i>	<i>64.95</i>
<i>Contribution to contingency reserve</i>	<i>21.45</i>
<i>Sub-total of expenditure</i>	<i>2015.81</i>

<i>Reasonable return</i>	<i>82.37</i>
<i>Total gross revenue required</i>	<i>2098.18</i>
<i>Less non-tariff income</i>	<i>529.86</i>
<i>Net revenue requirement</i>	<i>1568.32</i>
<i>Million units (Gross)</i>	<i>41954</i>

<i>Network charges including reasonable 37 ps/kwh return</i>	<i>(1568.32 crs 41,954 MU)</i>
<i>Wheeling charges (external) 3 ps/kwh</i>	<i>(Based on Information)</i>
<i>Balancing and ancillary charges</i>	<i>10 ps/kwh</i>
<i>Total Wheeling Charges in ps/unit</i>	<i>50 ps/kwh (Total of above three charges)</i>

(b) In-kind:

In addition, wheeling charges in kind of 28.4 % of energy input by the project developer into the licensee's grid being the system loss are leviable."

66. *The High Court could not have interfered with the findings on merits taken by the experts without entering into the various aspects considered by the Commission. Thus, the finding on merits as to the determination of charges being illegal and improper in any manner, cannot be said to be sustainable. The High Court has not gone into various reasons, and the details considered by the Commission and once the expert body has determined specific tariffs, it is not for the courts to interfere ordinarily in such matters. We find the determination to be proper and do not suffer from any infirmity or illegality. The Commission has made an elaborate discussion for arriving at the figure mentioned above. The recovery network charges, tariff structure, and the question of wheeling charges in cash or kind have also been considered. Various relevant factors have been taken into consideration. The nature of the arrangement*

between Aptransco and Discoms and inter se Discoms has been considered while deciding Issue 4.

67. *The use of the system cannot be isolated from losses in the system as they form an integral part of the system. All persons using the system should bear the system losses, whether technical or non-technical. Incidentally, the terms of a licence issued by Aptransco and Discoms specifically refer to deliver such electricity, adjust losses of electricity to a designated point. Technical losses in the system to be taken into account as these are also an integral part of the system. It is an integrated system where the electricity is supplied on displacement basis rather than direct conveyance of the particular electricity which is generated, the technical losses up to the voltage level at which the electricity is delivered along cannot be measured. The technical losses of the total system need to be taken into account as it is impossible to determine from which source electricity is being supplied to which particular customer. The electricity from all sources gets combined in the system and loses its identity. As investment in the system has also been made, it was evident that requisite charges have to be paid “*

167. After considering the merits of fixation of wheeling charges, the Supreme Court then considered the issue of Grid Support charges, and observed thus:-

“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”.

168. While the aforesaid para of the judgement does record the concession of the learned counsel for the parties that the decision as to wheeling charges would govern grid support charges also, the Supreme Court went on to observe as under;-

“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.”

169. It is evident, from the afore-extracted para of the Judgement, that the Supreme Court had also independently considered the issue, albeit in brief. It may not be possible for us, therefore, to ignore the said Judgement or to take a view different from that of the Supreme Court, in **Transmission Corpn. of A.P. Ltd. v. Rain Calcining Ltd., (2021) 13 SCC 674**, on this score.

ORDER

Following the judgement of the Supreme Court, in **Transmission Corpn. of A.P. Ltd. v. Rain Calcining Ltd., (2021) 13 SCC 674**, all these Appeals are dismissed.

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

PRONOUNCED IN THE OPEN COURT ON THIS 30th DAY OF MAY, 2024.

(Sandesh Kumar Sharma)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

pr/mkj