

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO. 74 OF 2017**

**Dated : 14<sup>th</sup> September, 2019**

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

**IN THE MATTER OF :**

Power Grid Corporation of India Ltd,  
SAUDAMINI, Plot No. 2, Sector-29,  
Gurgaon - 122001 (Haryana)

....Appellant

**VERSUS**

1. Central Electricity Regulatory Commission,  
(CERC),  
3 rd & 4 th Floor, Chanderlok Building,  
36, Janpath, New Delhi- 110001
2. Karnataka Power Transmission Corporation  
Limited, (KPTCL),  
Kaveri Bhawan,  
Bangalore - 560009
3. Transmission Corporation of Andhra Pradesh  
Limited, (APTRANSCO),  
Vidyut Soudha,  
Hyderabad - 500082

4. Kerala State Electricity Board (KSEB),  
Vaidyuthi Bhavanam, Pattom,  
Thiruvananthapuram - 695004
5. Tamil Nadu Generation and Distribution  
Corporation Limited (TANGEDCO),  
NPKRR Maaligai,  
800, Anna Salai,  
Chennai - 600002
6. Electricity Department,  
Govt. of Pondicherry,  
Pondicherry - 605001
7. Eastern Power Distribution Company of  
Andhra Pradesh Limited (APEPDCL),  
P & T Colony, Seethmmadhara,  
Vishakapatnam, Andhra Pradesh - 530013
8. Southern Power Distribution Company of  
Andhra Pradesh Limited (APSPDCL),  
Srinivasasa Kalyana Mandapam Backside,  
Tiruchanoor Road,  
Kesavayana Gunta, Tirupati - 517501,  
Chittoor District, Andhra Pradesh
9. Central Power Distribution Company of Andhra  
Pradesh Limited (APCPDCL),  
Corporate Office, Mint Compound,  
Hyderabad - 500063,  
Andhra Pradesh
10. Northern Power Distribution Company of  
Andhra Pradesh Limited (APNPDCL),  
Opp. NIT Petrol Pump, Chaitanyapuri,  
Kazipet, Warangal - 506004,  
Andhra Pradesh

11. Bangalore Electricity Supply Company Ltd.  
(BESCOM),  
Corporate Office, K.R Circle,  
Bangalore - 560001,  
Karnataka
12. Gulbarga Electricity Supply Company Ltd.  
(GESCOM),  
Station Main Road,  
Gulbarga, Karnataka - 585102
13. Hubli Electricity Supply Company Ltd.  
(HESCOM),  
Navanagar, PB Road,  
Hubli, Karnataka - 580025
14. MESCOM Corporate Office,  
Paradigm Plaza, AB Shetty Circle,  
Mangalore - 575001, Karnataka
15. Chamundeswari Electricity Supply Corporation  
Ltd., (CESC),  
927, LJ Avenue, Ground Floor,  
New Kantharaj Urs Road, Saraswatipuram,  
Mysore - 570009,  
Karnataka
16. Electricity Department Govt. of Goa,  
Vidyut Bhawan, Panaji,  
Near Mandvi Hotel,  
Goa - 403001

...Respondent(s)

Counsel for the Appellant (s) : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri  
Mr. Ashwin Ramanathan  
Ms. Neha Garg

Counsel for the Respondent(s) : Mr. S. Vallinayagam for R-5

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

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

1. The present Appeal has been filed by Power Grid Corporation of India Ltd. (hereinafter referred to as the "Appellant") under Section 111 of the Electricity Act, 2003 challenging the Order dated 21/04/2016 passed by the Central Electricity Regulatory Commission (hereinafter called the '**Central Commission**') in Petition No. 53/TT/2015 in the matter truing of transmission tariff for 2009-14 tariff period and determination of transmission tariff for 2014-19 tariff period for Transmission System associated with Kudankulam Atomic Power Project in Southern Region.
2. **Brief Facts of the Case:-**
  - 2.1 The Appellant, Power Grid Corporation of India Ltd. is undertaking Inter State Transmission of Electricity in India and also discharges the functions of Central Transmission Utility as provided under the Electricity Act, 2003.
  - 2.2 The Respondents are distribution licensees, who are procuring transmission service from the Appellant, mainly beneficiaries of Southern Region.

**3. Questions of Law:-**

The Appellant has raised following questions of law:-

- 3.1** Whether the Central Commission can ignore the plain language of Regulation 8 of the 2009 Tariff Regulations?
- 3.2** Whether the Central Commission having framed the 2009 Tariff Regulations does not stand bound by the provisions thereof?
- 3.3** Whether the rationale of the judgment dated 28.11.2003 in Appeal No.165 of 2012 of this Hon'ble Tribunal is at all applicable to the aspect of determination of initial spares when the said judgment has been rendered in a completely different context?
- 4. Smt. Swapna Seshadri, learned counsel appearing for the Appellant has filed the written submissions for our consideration as under :-**
- 4.1 IMPUGNED ORDER:** Order dated 21.04.2016 in Petition No. 53/TT/2015 passed by the Central Electricity Regulatory Commission (**Central Commission**).
- 4.2 SUBJECT MATTER:** Truing up of transmission tariff for 2009-14 tariff period and determination of transmission tariff for 2014-19 tariff period for assets under Transmission System associated with Kudankulam Atomic Power Project in Southern Region.

**4.3 REGULATIONS:** CERC (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "**2009 Tariff Regulations**") for tariff period 2009-14 and the CERC (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "**2014 Tariff Regulations**") for tariff period 2014-19.

**4.4 ISSUES TO BE DECIDED:**

- a) Whether the initial spares is to be computed as a percentage of the total project cost or of the apportioned individual Element / Asset cost ?
- b) Whether the Central Commission can ignore the plain language of Regulation 8 of the 2009 Tariff Regulations while determining the tariff / truing up ?

**5.** The key submissions of the Appellant :

**5.1** The finding of the Central Commission in the Impugned Order being challenged by the Appellant is as under –

*"20. We have considered the submission of TANGEDCO and KSEB. The petitioner has claimed the initial spares more than the norms specified in the 2009 Tariff Regulations in case of Assets 6 and 11. It is observed that the petitioner has computed the initial spares based on the overall cost of the assets. We have re-worked the initial spares*

based on the capital cost of individual asset and the same is depicted below:-

| <b>Particulars</b>   | <b>Formula</b>           | <i>(in lakh)</i> |                 |
|--|--------------------------|------------------|-----------------|
|  |                          | <b>Asset 6</b>   | <b>Asset 11</b> |
| Capital cost as on cut-off Date                              | (a)                      | 29252.87         | 25541.74        |
| Capital cost for computing initial spares                    | (b)                      | 29252.87         | 25541.74        |
| Initial spares claimed                                       | (c)                      | 324.05           | 627.43          |
| Ceiling limit as per Regulation 8 of 2009 Tariff Regulations | (d)                      | 0.75%            | 0.75%           |
| Initial spares worked out                                    | (e)= ((b-c)*(1/(1-d)- 1) | 218.61           | 188.27          |
| Excess initial spares Claimed                                | (f)=(c)-(e)              | 105.44           | 439.16          |

21. The initial spares claimed by the petitioner for all the transmission assets except Asset-6 and Asset-11 are within the normative limit. Accordingly, the capital cost as on COD allowed after deducting the excess initial spares and considered for computation of tariff are as follows:-

| <b>Assets</b>                            | <b>Capital cost on COD after disallowing IEDC/IDC</b> | <b>Excess initial spares disallowed</b> | <b>Capital cost allowed as on COD for tariff determination purpose</b> |
|--|---|---|--|
| Combined Asset 1,3,5,6                   | 49083.39  | 105.44                                  | 48977.95   |
| Combined Asset 1,3,5,6,9                 | 74906.05  | -                                       | 74906.05   |
| <b>Combined Asset 1,3,5,6,9 &amp; 10</b> | <b>76069.05</b>                                       | -                                       | <b>76069.05</b>  |
| Combined Asset 2,4 & 7                   | 6264.16   | -                                       | 6264.16  |
| Asset-8                                  | 1836.16   | -                                       | 1836.16  |

|   |  |               |                 |
|---|--|---------------|-----------------|
| Asset-11  | 25550.05                                   | <b>439.16</b> | 25110.89        |
| Combined<br>Asset 11, 12                          | 25865.03<br>(25891.36-26.33)               | -             | 25865.03        |
| <b>Combined<br/>Asset 11, 12<br/>&amp;<br/>13</b> | <b>26478.32</b><br><b>(26510.69-32.37)</b> | -             | <b>26478.32</b> |
| Asset-14  | 313.63<br>(342.34-28.71)                   | -             | 313.63          |
| Asset-15  | 28930.83                                   | -             | 28930.83        |
| Asset-16  | 6113.76                                    | -             | 6113.76         |
| Asset-17  | 689.65                                     | -             | 689.65          |
| Asset-18  | 552.14<br>(625.98-73.84)                   | -             | 552.14          |

**5.2** Initial spares are allowed as a percentage of capital cost for all projects as per Tariff Regulations notified by the Central Commission. In the case of transmission projects, there are many elements in a typical project such as transmission lines, sub-stations, ICTs etc. and the investment approval for the entire project is taken at once though the implementation and tariff determination depends on the Commercial Operation Dates of the respective elements.

**5.3** The 2009 Tariff Regulations provides as under with regard to the treatment to be given to initial spares –

***“8. Initial Spares. Initial spares shall be capitalised as a percentage of the original project cost, subject to following ceiling norms:***

- (i) Coal-based/lignite-fired thermal generating stations - 2.5%***
- (ii) Gas Turbine/Combined Cycle thermal generating stations - 4.0%***



- (iii) **Hydro generating stations including pumped storage hydro-electric generating station - 1.5%**
- (iv) **Transmission system**
  - (a) **Transmission line - 0.75%**
  - (b) **Transmission Sub-station - 2.5%**
  - (c) **Series Compensation devices and HVDC Station - 3.5%**
  - (d) **Gas-Insulated Sub-station (GIS) – 3.5%**

Further, the Original Project Cost has been defined as per the provision of Regulation 2 (29) as follows:

***“29. original project cost' means the capital expenditure incurred by the generating company or the transmission licensee, as the case may be, within the original scope of the project up to the cut-off date as admitted by the Commission.”***

**5.4** The plain language of Regulation 8 of the 2009 Tariff Regulations provides for initial spares to be allowed as a percentage of the initial project cost, not on the basis of individual element cost. In the present case, the initial spares incurred by the Appellant for Assets 6 and 11 were higher than 0.75% of the apportioned capital cost whereas in other assets the spares claimed are less than 0.75% of the respective asset cost. In the overall scenario, the initial spares are to be allowed as 0.75% of the total project cost but individually, there can be a variation within the individual assets. This does not mean any cross subsidization among the initial spares. It is not that the cost to the

consumers by way of tariff gets increased in any manner. This has been the settled practice of tariff determination for various tariff blocks adopted by the Central Commission itself.

**5.5** The Central Commission has been allowing initial spares as a percentage of the total project cost / capital cost in all other cases also and adjusting the unutilized spares claimed with one asset of a project which have been commissioned in one tariff block with spares claimed with another asset of the same project commissioned in the subsequent tariff block.

**5.6** However, in the present case, the Central Commission wrongly restricted the initial spares as 0.75% of each individual asset cost. In view of the same, the Initial spares have been disallowed as Rs. 1.05 Crores in case of Asset - 6 and Rs 4.39 Crores in case of Asset – 11 by considering the completion cost up to the cut-off date of the individual assets and not considering the total cost of the transmission project. Further, initial spares of Tariff Block 2004 - 09 which were not allowed for the commissioned elements/assets have not been set off against the excess spares claimed in 2009 - 14 tariff block which are within the prescribed percentage of 0.75% of the overall project cost.

**5.7** The Central Commission has failed to appreciate the following salient aspects -

- (i) A transmission project consists of two parts, Transmission Line and Substation. The sub-station works may further comprise of a mix of green field sub-station and/or brown field sub-stations. The transmission project is segregated into distinct assets which are commissioned progressively in stages while the investment approval is taken for overall project.
- (ii) While planning the transmission projects, quantity estimation/ finalization of initial spares are carried out on the basis of complete project i.e. on total elements/assets of a particular project.
- (iii) Initial spares to be procured are part of the packages awarded to various agencies for execution of a particular project. Here it may be noted that packages are not awarded element wise and one package may contain many substations, transmission lines or both depending upon various factors such as amount, work etc. During execution of the projects, agencies does not supply spares element wise which sometimes lead to supplying

of major initial spares with a particular element of the project and accordingly same are booked along with that particular assets. It might lead to high booking of spares in any particular asset while less booking of spares in remaining assets. Requirement of initial spares for various assets are different and varies with the stage of implementation of that asset whether it is green field asset or extension of the existing asset.

- (iv) Further, the initial spares requirement along with an asset also varies based on the spares procured in other assets at a nearby location.
- (v) Further, the initial spares requirement along with an asset also varies based on location, service conditions etc. Keeping in view the asset-wise commissioning, the Utilities need flexibility in deciding the quantum of spares for substation portion and transmission line portion of a project along with commissioning of the particular assets so as to have better performance with high degree of reliability.
- (vi) Thus, the initial spare requirement may not be exactly in proportion to the cost of individual assets. A utility might require higher no. of spares with particular assets or

assets commissioned first based on technical requirement and lesser no. of spares or nil spares in subsequent assets of the project. All of these permutations and combinations are possible.

(vii) Thus, the break-up of initial spares for various transmission assets may be different, subject to the overall initial spares requirement in the project, within the overall limits provided in the Regulations.

(viii) This is precisely the reason why the Tariff Regulations provide for initial spares as a percentage of the total project cost and not of individual assets.

**5.8** When the above was pointed out by filing a review petition, the Central Commission erred by giving an entirely different justification in the Review Order dated 07.09.2016 as compared to the Original Order dated 21.04.2016. The Central Commission has not dealt with the aspect that the treatment given by it to the initial spares is against the provisions of the Tariff Regulations, 2009.

**5.9** The Central Commission vide its Order dated 07.09.2016 has dismissed the review petition 35 / RP / 2016 holding as under –

*“13. As regards the review petitioner’s contention that initial spares was allowed as a percentage of total project cost in order dated 25.4.2013 in Petition No. 33/TT/2011, it is observed that the Commission in order dated 28.5.2012 in Petition No.136/TT/2011 restricted the capital cost to the apportioned cost of the individual assets for computation of tariff. The review petitioner filed an appeal before the Hon’ble Appellate Tribunal for Electricity. The Tribunal upheld the Commission’s order of 28.5.2011 by its judgement dated 28.11.2013 in Appeal No. 165 of 2012. As stated earlier, the Commission has adopted the said decision of the Tribunal in all subsequent applicable matters. The order relied upon by the review petitioner was issued prior to the judgement of the Tribunal. The issue raised by the review petitioner stands settled by the above judgement of the Tribunal, as such we are not inclined to accept the contention of the review petitioner.*

*14. In view of the above discussion, we do not find any error in computing initial spares of Assets 6 and 11 as a percentage of the approved apportioned cost. Accordingly, the review petition is not admitted.”*

**5.10** While rejecting review petition, CERC has relied upon the combined reading of the Regulations 4, 5 and 8 of the 2009 Tariff Regulations as follows:

*“11. The combined reading of the Regulations 4, 5 and 8 of the 2009 Tariff Regulations reveals that the review petitioner has the option to file the tariff petition for individual transmission element. In case the tariff is claimed for individual assets, the capital cost is also required to be considered individually and accordingly the initial spares should also be computed on the basis of the completion cost upto cut-off date of the individual asset.*

*.....  
In case, the initial spares are allowed as claimed by the review petitioner for the project as whole, when the tariff is worked out individually, it would amount to cross subsidization of initial spares among the different elements. The regulations do not*

*provide for such a treatment. Thus, the petitioner's contention for considering the admissible initial spares for project as a whole is not tenable. In view of the above discussion, we are of the view that the initial spares has to be computed as a percentage of admitted capital cost of the individual assets of a transmission system."*

**5.11** The Central Commission in the Review Order has sought to justify its approach by reading Regulations 4, 5 and 8 of the 2009 Tariff Regulations. Regulations 4 & 5 of the 2009 Tariff Regulations provide for an option to file tariff petitions for individual assets of a transmission project. This is obviously because the entire transmission system does not get completed on a particular date but comes at different dates. This does not, however, mean that the plain language of Regulation 8 which provides for initial spares to be a percentage of the project cost is meaningless.

**5.12** The only other aspect is that the Central Commission has erroneously relied on the Judgment dated 28.11.2013 in Appeal No. 165 of 2012 of this Tribunal which has absolutely no application in the present case. In the said case, the Appellant had not submitted the Revised Cost Estimates duly approved by its Board of Directors and was still insisting on getting the tariff at the revised costs which was rejected by this Tribunal. In fact, in the said Judgment, this Tribunal has not even dealt with spares restriction on element wise or the overall project cost

basis and it is not clear as to which portion of the Judgment is being relied on by the Central Commission.

**5.13** This Tribunal had not rendered any finding on the issue of initial spares in Judgment dated 28.11.2013 in Appeal No. 165 of 2012 and in fact had only recorded the submissions of the Central Commission that if the Appellant would approach the Central Commission with appropriate documentary evidence, the same would be considered by the Central Commission. This, by no stretch of imagination is an implied approval of the Hon'ble Tribunal to the Central Commission to deviate from its own Regulations by breaking up the project cost into different elements for the purposes of computation of initial spares.

**5.14** The Central Commission has failed to appreciate that when the settled principle of interpretation is to give effect to the plain meaning used in the statute and not to adopt any other rule / method of interpretation merely to justify its Order.

**5.15** The Central Commission has failed to appreciate that primacy has been given to the Statutory Regulations by the Hon'ble Supreme Court in **PTC India Limited** V. **Central Electricity Regulatory Commission** (2010) 4 SCC 603. Further, if the Regulations have been notified, they are binding on all including on the Central



Commission. Therefore, if the statutory Regulations provide for a particular manner of fixation of initial spares, the same should be followed and is binding on all including the Central Commission. The Regulations can be amended for the future but this cannot affect the past cases.

**5.16** Relevant extracts from the PTC Judgment are as under -

*“54. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that the Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licences, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178.*

*55. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle*

flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.

**56.** Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulations under Section 178.

**57.** One must keep in mind the dichotomy between the power to make a regulation under Section 178 on the one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a precondition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures the Central Commission takes under Section 79(1)(j) have to be in conformity with Section 178.

(Emphasis Supplied)

**5.17** The initial spares are provided for in the Tariff Regulations, 2009 in order to take care of mandatory and insurance spares requirements at the time of the commissioning of the project and not at the time of commissioning of each individual asset. The requirement of initial spares varies from asset to asset with the stage of implementation of that particular asset and the type of technology involved.

**5.18** The initial spare requirement cannot be restricted to the cost of individual asset. A utility might require higher no. of spares with particular assets or assets commissioned first based on the technicality involved. However, this does not in anyway affect the cost to the consumers by way of tariff getting increased. The initial spares requirement has always been understood and allowed by the Central Commission as a percentage of the original project cost, as stated in Regulation 8 of the Tariff Regulations, 2009. The break-up of initial spares may vary subject to the requirement of different assets.

**5.19** There is no difficulty with the proposition that Regulation 8 provides only ceiling norms for the initial spares in terms of the original project cost. However, there is no bar to use the said cost interchangeably among other assets of the same transmission system. It is therefore

provided in the Regulations that the cost of initial spares is always supposed to be seen as a percentage of the total project cost.

**5.20** The Central Commission has proceeded on a misconception that the provision in the Tariff Regulations, 2009 allowing to file different tariff petitions for individual assets of a transmission project means that initial spares also should be restricted to the individual assets. The provision to file separate tariff petitions is only because the entire transmission system does not get commissioned on a particular date but each asset of the transmission system achieves commissioning periodically and therefore the liberty has been given to parties to file separate tariff petitions.

**5.21** In view of the above, the appeal needs to be allowed and the matter needs to be remanded back to the Central Commission with direction to allow initial spares as a percentage of total Original Project Cost as per the provisions of the 2009 Tariff Regulations.

**6. Shri S. Vallinayagam, learned counsel appearing for the Respondent No.5 has filed the written submissions for our consideration as under:-**

**6.1** The present appeal has been preferred by the appellant M/s PGCIL challenging the Order dated 21.04.2016, wherein truing up of the transmission tariff for 2009-14 block and transmission tariff for 2014-

19 tariff block for “Transmission System associated with Kudankulam Atomic Power project in Southern Region has been approved.

- 6.2** The contention of the Appellant in the present appeal that the Central Commission has misinterpreted the plain language of Regulation 8 the Tariff Regulations, 2009. The Commission is required to determine the tariff of a Project as a whole and not of elements of a project independently. That the Central Commission has wrongly held that the ratio of the judgment dated 28.11.2013 in appeal No.165 of 2012 is applicable to the fact of the present case.
- 6.3** CERC vide its order dated 21.04.2016 rightly rejected the request of the respondent and restricted the initial spares to the normative ceiling of the individual elements of the Project. The appellant cannot get what is not provided for in the Tariff Regulations of the Commission.
- 6.4** The initial spares have to be computed as a percentage of the cost of the project element claimed under each petition since the different types of elements in a project have different normative percentage cap, which are not interchangeable. The capping has to be as per the relevant Regulations.

- 6.5** The Central Commission has prudently checked the claim of the appellant with regard to initial spares. It is pertinent to note that initial spares are provided for up to the cut-off date and not thereafter. In the present appeal the appellant is seeking grant of initial spares at the time of true-up.
- 6.6** The project consists of 18 elements of different types and ratings like 400 kV transmission lines, substation elements like ICTs, Reactors, 220 kV bays etc. These elements were executed through different contracts and commissioned on different dates. The spares were supposed to be procured under different contracts applicable to each element. Hence, the capital cost apportioned to each element shall be the basis for computing the initial spares.
- 6.7** Further, the Regulation 8 also implies that the actual cost of initial spares incurred for the purpose of construction of the project till the commissioning of the project can be capitalized. Once the project is commissioned, there is no necessity for initial spares. Otherwise the meaning to the words “initial spares” and “till the commissioning of the project” will have no meaning.
- 6.8** The contention of the appellant in claiming 1.5% of the total project cost is illegitimate and will definitely impact the transmission cost to be

paid by the consumers. The appellant should have disclosed the actual list of spares procured for each element of the transmission system and should have de-capitalized the unused spares if any from the capital base. No such particulars are brought on record by the appellant before CERC.

**6.9** The Central Commission has restricted the initial spares to the ceiling limit. The eighteen elements of the projects were executed in different time line and corresponding initial spares were capitalised along with each element and reached finality. The issue of reopening the accounts for the purpose of approving the excess initial spares claimed by the appellant is appalling. The Central Commission has justified its findings with the Statement of reasons forming the baseline for the provision under the Regulations.

**6.10** The issue raised is whether initial spares are to be computed on the basis of total project cost or on the basis of cost of the individual elements. As per the 2009 Tariff Regulations, tariff of a transmission system may be determined for the whole of the transmission system or the transmission line or sub-station. As per the scheme of 2009 Tariff Regulations, the tariff can be claimed and allowed for individual elements of a transmission system.

**6.11** The Regulation 4 of the 2009 Tariff Regulations provides that the capital cost of the project may be broken up into stages or units or transmission line or sub-station. The said regulation provides as under:-

*"4. Tariff determination.*

*(1) Tariff in respect of a generating station may be determined for the whole of the generating station or a stage or unit or block of the generating station, and **tariff for the transmission system may be determined for the whole of the transmission system or the transmission line or sub-station.***

*(2) For the purpose of determination of tariff, the capital cost of the project may be broken up into stages and distinct units or blocks, transmission lines and subsystems forming part of the project, if required:*

*Provided that where break-up of the capital cost of the project for different stages or units or blocks and transmission lines or sub-stations is not available and in case of on-going projects, the common facilities shall be apportioned on the basis of the installed capacity of the units, line length and number of bays:*

*Provided further that in relation to multi-purpose hydro schemes, with irrigation, flood control and power components, the capital cost chargeable to the power component of the scheme only shall be considered for determination of tariff."*

**6.12** The Central Commission determined the tariff of the transmission lines separately as per Regulation 4 of Tariff Regulation 2009. The Hon'ble Supreme Court in ***PTC India Ltd. v. Central Electricity***



**Regulatory Commission, (2010) 4 SCC 603 at page 638 held**

**that:**

*“55. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.”*

**6.13** The appellant cannot plead that the Central Commission is wrong in acting in conformity with the Regulation 4 of the Tariff Regulations 2009, which specifically provides for determination of tariff of a transmission line.

**6.14** Similarly, as per Regulation 5(2) of the 2009 Tariff Regulations, a generating company or a transmission licensee is required to make an application for tariff as per the Forms given as per Appendix I to

the 2009 Regulations. As per the Forms, a transmission licensee is required to claim **tariff for stages or units or transmission line or sub-station as provided in Regulation.** The Central Commission determined the tariff as per the forms submitted by the appellant – transmission licensee – which claimed the tariff for different transmission line as provided under the Regulation at different stages under different tariff petitions.

**6.15** Regulation 8 provides only ceiling norms for initial spares in terms of original project cost. The ceiling norms for generating stations, elements of transmission system are different and not interchangeable.

**6.16** When the appellant itself applied for determination of tariff of various elements before the Central Commission vide different petitions depending upon the date of commissioning of each of the element, and the Central Commission determined the tariff as per Regulation 4, 5 & 8 there cannot be any grievance.

**6.17** The Central Commission has followed the principle of harmonious construction of the relevant Regulations of Tariff Regulation 2009.

**6.18** A combined reading of the Regulations 4, 5 and 8 of the 2009 Tariff Regulations reveals that determination of tariff for individual transmission element is provided for under the Tariff Regulations 2009. In case the tariff is claimed for individual assets, the capital cost is also required to be considered individually and accordingly the initial spares should also be computed on the basis of the completion cost upto cut-off date of the individual asset.

**6.19** The Regulation 8 of the 2009 Tariff Regulations provides ceiling limit of individual component for the transmission system such as sub-station, transmission lines, Series Compensation devices and HVDC Station etc. In case, the initial spares are allowed as sought by the appellant for the project as whole, when the tariff is worked out individually for each element, it would amount to cross subsidization of initial spares among the different elements. The regulations do not provide for such a treatment. Thus, the appellant's contention for considering the admissible initial spares for project as a whole is not tenable. In view of the above, initial spares has to be computed as a percentage of admitted capital cost of the individual assets of a transmission system.

**6.20** Reliance is placed on the judgment of this Appellate Tribunal for Electricity dated 28.11.2013 in Appeal No. 165 of 2012, wherein the Central Commission's policy of considering the apportioned cost of the individual assets for computation of tariff was upheld. The Central Commission has adopted similar approach in its orders for working out the capital cost and computation of initial spares of individual elements in the petition filed by the appellant for determination of tariff and true-up.

**6.21** The Central Commission in order dated 28.05.2012 in Petition No.136/TT/2011 restricted the capital cost to the apportioned cost of the individual assets for computation of tariff. The appellant herein was the petitioner in 136/TT/2011 before the Central Commission and it filed an appeal before this Appellate Tribunal contending that restriction of capital cost to the apportioned cost of individual assets for computation of tariff is wrong. This Appellate Tribunal upheld the Commission's order of 28.5.2011 by its judgment dated 28.11.2013 in Appeal No. 165 of 2012.

**6.22** The Central Commission followed the said decision of this Hon'ble Tribunal in all subsequent applicable matters. The order relied upon by the appellant passed by CERC in 33/TT/2012 dated 25.04.2013,

is prior in date to the judgment dated 28.11.2013 of this Appellate Tribunal. The issue raised by the appellant stands settled by the above judgment of the Tribunal.

**6.23** In view of the above settled position of law, the appeal deserves to be dismissed.

**7. We have heard learned counsel appearing for the Appellant, learned counsel for the Respondent Commission and learned counsel for the Respondents at considerable length of time and we have gone through carefully their written submissions/arguments and also taken note of the relevant material available on records during the proceedings. On the basis of the pleadings and submissions available, the following principal issue emerges in the instant Appeal for our consideration:-**

- Whether in facts and circumstances of the matter and specific reference to the CERC Tariff Regulations 2009, the provision for initial spares are to be considered as a percentage of the total project cost or of the apportioned individual Element/Asset Cost?

**8. OUR ANALYSIS AND FINDINGS:**

**8.1** Learned counsel for the Appellant submitted that as per the Tariff Regulations notified by the Central Commission, initial spares are

allowed as a percentage of capital cost for all projects. In the case of transmission projects, there are many elements in a typical project such as transmission lines, sub-stations, ICTs, bus/line reactors etc. and the investment approval for the entire project is taken at once though the implementation and tariff determination depends on the COD of the respective elements/ assets. Learned counsel quoted that 2009 Tariff Regulations with regard to the initial spares relating to transmission system as under:-

**“8. Initial Spares. Initial spares shall be capitalised as a percentage of the original project cost, subject to following ceiling norms:**

***Transmission system***

***(a) Transmission line - 0.75%***

***(b) Transmission Sub-station - 2.5%***

***(c) Series Compensation devices and HVDC Station - 3.5%***

***(d) Gas-Insulated Sub-station (GIS) – 3.5%***

**8.2** Learned counsel vehemently submitted that the plain reading of Regulation 8 of the 2009 Tariff Regulations for initial spares provide that initial spares are to be allowed as a percentage of the initial project cost and not on the basis of individual element cost as has been decided by the Central Commission. In the present case, the cost of initial spares incurred by the Appellant for Asset No.6 & 11 is above 0.75% of the original capital cost for these elements whereas

in other assets, the spares claimed are less than the prescribed limit of 0.75% of the respective asset cost. Learned counsel was quick to point out that in the overall scenario, the initial spares are to be allowed as 0.75% of the total project cost since individually there can be variations within the individual asset.

**8.3** Learned counsel further submitted that while planning the transmission projects, quantity estimation/ finalization of initial spares are carried out on the basis of complete project. Further, the packages are not awarded element wise and one package may contain many substations, many transmission lines or both depending upon various factors such as amount, work etc.. In addition, during execution of the projects, the supplying agencies do not supply spares element wise which sometimes lead to supplying of major initial spares with a particular element of the project and accordingly same are booked along with that particular assets. As such, keeping in view the asset-wise commissioning, the utilities need flexibility in deciding the quantum of spares for substation portion and transmission line portion of a project along with commissioning of the particular assets so as to have better performance with high degree of reliability. Learned counsel emphasised that thus, the initial spares requirement may not be exactly in proportion to the cost of individual

assets which is due to the fact that utility might require higher no. of spares with a particular asset or assets commissioned first based on technical requirement and lesser no. of spares or nil spares in subsequent assets of the project. As such, the Appellant has to make several permutations and combinations while deciding the quantum of initial spares.

**8.4** Learned counsel for the Appellant submitted that the Central Commission has erroneously relied on the Judgment dated 28.11.2013 in Appeal No. 165 of 2012 of this Tribunal which has absolutely no application in the present case. In fact, in the said case, the Appellant had not submitted the Revised Cost Estimates duly approved by its Board of Directors but was still insisting on getting the tariff at the revised costs which was rejected by this Tribunal. It is evident that, in the said Judgment, this Tribunal has not even dealt with the restriction of spares on element wise or the overall project cost basis and it is not clear as to which portion of the Judgment is being relied upon by the Central Commission. Learned counsel further contended that primacy has been given to the Statutory Regulation by the Hon'ble Supreme Court in **PTC India Limited V. Central Electricity Regulatory Commission** (2010) 4 SCC 603 wherein it has categorically held, if the statutory Regulations provide



for a particular manner of fixation of initial spares, the same should be done in the same manner and none-else.

**8.5** Learned counsel highlighted that the initial spares are provided for in the Tariff Regulations, 2009 in order to take care of contingency requirements at the time of the commissioning of the project and not at the time of commissioning of each individual asset. In fact, there is no difficulty with the proposition that Regulation 8 provides only ceiling norms for the initial spares in terms of the original project cost but there is no bar to use the said spares interchangeably among other assets of the same transmission system. It is, therefore, a misconception that the provision in the Tariff Regulations, 2009 allowing to file different tariff petitions for individual assets of a transmission project means that initial spares also should be restricted to the individual assets. Admittedly, the entire transmission system does not get commissioned on a particular date and each asset of the transmission system achieves commissioning periodically and therefore the liberty has been given to parties to file separate tariff petitions.

**8.6** Learned counsel alleged that the Central Commission has acted in violation of its own Regulations in not allowing initial spares as a

percentage of total Original Project Cost as per the provisions of the 2009 Tariff Regulations.

**8.7** *Per contra*, learned counsel for Respondent No.5 submitted that the Central Commission vide its Order dated 21.04.2016 has rightly rejected the claim of the Appellant and restricted the initial spares to the normative ceiling of the individual elements of the Project. The appellant cannot get what is not provided for in the Tariff Regulations and as such the capping has to be as per the relevant Regulations of the Commission. Learned counsel vehemently submitted that the project consists of 18 elements of different types and ratings such as 400 kV transmission lines, substation elements like ICTs, Reactors, 220 kV bays etc. which are executed through different contracts and commissioned on different dates. Accordingly, the spares were supposed to be procured under different contracts applicable to each element which shall be the basis for computing the initial spares.

**8.8** Learned counsel contended that the claim of the Appellant to allow admissible percentage for initial spares of the total project cost is against the Regulations and will definitely impact the transmission cost to be paid by the consumers. The issue raised is whether the initial spares ought to be computed on the basis of total project cost

or on the basis of cost of the individual elements. He further submitted that as per the Tariff Regulations, 2009, the tariff can be claimed and allowed for individual elements of a transmission system and the Regulation 4 of the Tariff Regulations, 2009 provides that the capital cost of the project may be broken into the stages or units or units of transmission lines or sub-station for the purpose of tariff determination. The Central Commission determined the tariff of the transmission lines separately as per Regulation 4 and the Appellant cannot plea to the Central Commission for going beyond its own regulations as held by the apex court in ***PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603 at page 638, cited supra.***

**8.9** Learned counsel further invited reference to Regulation 5(2) of the 2009 Tariff Regulations under which forms are prescribed for the licensee to submit the tariff petitions for stages or units or transmission line or sub-stations provided in Regulation and the Central Commission has determined the tariff as per the forms submitted by the appellant. It is thus clear that in case the tariff is claimed by the Appellant for individual assets, the capital cost is also required to be considered individually and accordingly the initial

spares also be computed on the basis of the completion cost up to cut of date of the individual asset.

**8.10** To substantiate his submissions, learned counsel placed reliance on the judgment of this Tribunal dated 28.11.2013 in Appeal No. 165 of 2012. Learned counsel emphasised that the Central Commission has followed the said judgment of this Tribunal in all subsequent applicable matters. While summing up his arguments, learned counsel for Respondent No.5 contended that there is no infirmity or ambiguity in the impugned order as the issue raised by the Appellant stands settled by the judgment dated 28.11.2013, stated supra of the Tribunal. In view of these facts, the appeal deserves to be dismissed.

**Our Findings:-**

**8.11** We have carefully analyzed the rival contentions of the learned counsel for the Appellant and learned counsel for the Respondent beneficiary (Respondent No.5) and also taken note of the judgment relied upon by the parties. What thus transpires is that the Appellant contends that the initial spares should be computed as prescribed percentage of the total project cost as per the Tariff Regulations and on the other hand, Respondent is of the opinion that the same should be provided elementwise for which individual

tariff petitions are filed by the Appellant before the Central Commission. It is the contentions of the Respondent that when as per Tariff Regulations, tariff petitions for individual element/asset is permitted for getting tariff determined by the Central Commission, it is logical that the initial spares are also provided for the individual element / asset based on the completed cost of that package. We have referred the Tariff Regulations, 2009 of the Central Commission vide which tariff petitions are decided especially the Regulation 8 which provides that the initial spares for a particular project are to be allowed on the total project cost. To provide flexibility to the transmission licensee, the Central Commission has specified that the whole transmission project may be broken in distinguished elements/assets and file the tariff petitions element/asset wise so that the license, for filing the tariff petition, does not wait for the complete project to be commissioned.

**8.12** In view of these facts, it is relevant to note that the transmission projects due to their inherent nature are segregated into different assets or elements which are executed and commissioned progressively in stages. Keeping this in view, developer / licensee while planning estimates finalises, the requirement of spares on the basis of complete project which requires flexibility in deciding

quantum of spares for different type of elements of a project along with commissioning of the particular asset so as to have better performance with high degree of reliability. The requirement of spares as such, may not be exactly in proportion to the cost of individual assets. In other words, a licensee might require large number of spares with a particular asset or assets Commissioned first based on technical requirement and lesser number of spares or nil spares in subsequent assets/ elements of similar nature. Admittedly, the break-up of initial spares for various assets may be percentage wise different subject to the overall initial spares requirement of the project within the overall limits / percentage provided in the Regulations.

**8.13** We have gone through the judgment of this Tribunal dated 28.11.2013 relied upon by the parties based on which the Central Commission is said to have decided the matter considering the apportioned cost of individual assets. We notice that the said judgment of this Tribunal is distinguishable from the present case in hand as this Tribunal had not rendered any finding on the issue of apportionment of cost of the assets vis-a-vis, the spares but had only recorded that since the Central Commission restricted the cost of the project to the original approved, in the absence of approved

revised cost estimates, the cost of initial spares which is allowed at certain percentage of the project cost would also get reduced correspondingly. It is also pertinent to note that out of the 18 assets, the ceiling limit of 0.75% for initial spares has crossed only in two elements namely Asset No.6 & 11 and in all other assets, the expenditure to this account is less than 0.75%. We do not agree with this methodology of restricting initial spares asset / element wise as adopted by the Central Commission. The Central Commission to have a prudence check on the initial spares, being restricted based on the individual asset wise cost initially, but subsequently ought to have allowed as per the ceiling limits on the overall project cost basis during the true- up.

**8.14** In the light of above, we are of the considered opinion that the Appeal deserves to be allowed and impugned order is liable to be set aside to the extent challenged in the Appeal.

### **ORDER**

For the forgoing reasons, we are of the considered opinion that issues raised in the present appeal being Appeal No . 74 of 2017 have merits and hence appeal is allowed.

The impugned order dated 21.04.2016 passed by Central Electricity Regulatory Commission in Petition No. 53/TT/2015 2018 is hereby set aside to the extent challenged in the Appeal.

The matter is remitted back to the Central Electricity Regulatory Commission with a direction to allow initial spares as a percentage of total project cost in accordance with the tariff regulations.

No order as to costs.

Pronounced in the Open Court on this 14<sup>th</sup> day of September, 2019.

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

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

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

Pr