2026 INSC 1237

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.14780-14781 of 2025

Power Grid Corporation of India Limited

...Appellant

Versus

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) & Ors.

...Respondents

With

Civil Appeal No.13153 of 2026

J U D G M E N T

K. VINOD CHANDRAN, J.

The controversy in the above appeals is pinned on the tariff claim raised by the appellant, separately for two LILOs (Line-In Line-Out/Loop-In Loop-Out) at the two circuits of Tuticorin JV-Madurai 400kV D/C (Quad) transmission line (hereinafter 'Tuticorin JV-Madurai line') at the Tuticorin Pooling Station. The first LILO was commissioned on 04.01.2015 and the second, identically located, commissioned on 08.01.2015. That the generating company (Moxie Power Generation Limited,

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Reason:

formerly known as Coastal Energen Private Limited) produced electricity, which was transmitted through the lines of Power Grid Corporation of India Ltd. (PGCIL), the Central Transmission Utility (CTU); the Inter-State Transmission License, it's receipt and consequential supply to consumers by the distribution licensee for the State of Tamil Nadu (Tamil Nadu Generation and Distribution Corporation Limited, the TANGEDCO) are admitted. The generation, transmission, supply and end use being admitted, the issue revolves around whether the LILOs were operational, functional and used in the transmission. The generating company and TANGEDCO asserts that it was never used; the Commercial Operation Date (COD) having not been approved under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (Tariff Regulations). There could, hence, be no factoring of the LILOs in the tariff especially since the upstream transmission lines from the Tuticorin Pooling Station to the Salem Pooling Station leading up to Madhugiri having not been installed or commissioned till 01.12.2016. The period for which the claim is raised is between 04.01.2015 up to 27.10.2016; with respect to the LILOs of the first circuit and

08.01.2015 to 27.10.2016 insofar as the LILOs in the second circuit. The date 27.10.2016 is relatable to the date on which the generating company built its dedicated transmission line (DTL) directly to the Tuticorin Pooling Station.

***Arguments of the Appellant* : -**

2. Mr.Ramji Srinivasan, learned Senior Counsel appearing for the PGCIL pointed out that the two LILOs were approved by the Central Electricity Regulatory Commission (CERC) by order dated 29.07.2016, accepting the COD as proffered by the PGCIL, which was overturned by the Appellate Tribunal for Electricity (APTEL) thus denying transmission charges on that element, for the period during which the LILOs were functional and put to use for transmission of the power generated by the generating company to TANGEDCO. There being no DTL constructed by the generating company, the tariff has to be determined on a non-PoC (Point Of Connection) basis. The learned Senior Counsel specifically referred to the minutes of the 29th, 30th and 38th Meetings of the Standing Committee which comprehensively dealt with the Southern Region Transmission Scheme, finalizing the Tuticorin Pooling Station and associated evacuation lines. Reliance was also placed on the 5th Joint Co-

ordination Committee Meeting on 22.07.2011. The generating companies, two at that point, entered into Bulk Power Transmission Agreements (BPTA), undertaking to construct and commission their DTLs directly to the Tuticorin Pooling Station, simultaneous to the COD of their generating units on 24.02.2010 which stood amended on 08.09.2011. The minutes of the meetings of the Standing Committee along with the Annexures to the BPTA clearly indicate that the LILOs were a permanent infrastructure, the use of which commenced even before the upstream transmission lines, leading to Salem and Madhugiri were constructed and made operational.

3. The two LILOs were respectively commissioned in full compliance with the statutory framework but with a delay of less than nine months; the scheduled date of commission of the transmission system being 11.04.2014. The COD was approved by the CERC after verification of the Regional Load Despatch Centre (RLDC) certificate, issued on successful trial operation and the Central Electricity Authority (CEA) certificate issued under Regulation 43 of Central Electricity Authority (Measures Related to Safety & Electricity Supply) Regulations, 2010 (CEA Regulations) as also approvals obtained in the 30th Standing

Committee pursuant to Regulation 4(3) of the Tariff Regulations. The Standing Committee's decisions have a statutory binding force under Section 29(4) of the Electricity Act. Neither TANGEDCO nor the generating companies placed any material to challenge the factual commissioning of the LILOs as approved by the CERC. The CERC by its order clearly held that since the generating company delayed the construction of the mandatory DTL and utilised PGCIL's LILO lines they were liable to bear the transmission charges under Section 10 of the Electricity Act until regular commissioning of their DTLs.

4. The finding of the Appellate Tribunal for Electricity (APTEL), that the LILOs had no beneficial use runs contrary to the admitted fact of utilisation for transmission of electricity, from the generating company to the distribution licensee. The delay in the upstream transmission lines from the Tuticorin Pooling Station to Salem and Madhugiri did not at all affect the transmission of electricity from the initial date of its generation i.e. 23.12.2014. It was facilitated initially through the Tuticorin JV-Madurai line directly and from the commissioning of LILOs through the Tuticorin Pooling Station, despite the upstream transmission lines to Salem and Madhugiri having not been

commissioned. The Tuticorin JV-Madurai line was also a part of the evacuation plan, which too served as an upstream transmission line. The seamless transmission of electricity requires the LILOs to be factored in the tariff, which was rightly carried out by the CERC, erroneously reversed by the APTEL.

5. The defence taken that the Short-Term Open Access (STOA) and Medium-Term Open Access (MTOA) charges absolve the generator from paying capital cost transmission tariff, proceeds on a fundamental misconception of the tariff regulatory framework. The transmission tariff as distinguished from Open Access charges is determined by CERC under Sections 61 and 62 of the Electricity Act to service capital expenditure, return on equity, interest on loans, and depreciation broadly termed as Yearly Transmission Charges (YTC), while the open access charges are operational charges computed by the National Load Despatch Centre (NLDC). The STOA/MTOA would contain a certain portion of YTC for fixed assets for which tariff had been determined by the CERC; at which point of time the tariff for LILO assets were yet to be determined and therefore did not form part of the STOA/MTOA. The open access charges collected are adjusted against the

Point of Connection (PoC) base pool, only after commissioning of the DTL directly from the generating station to the Tuticorin Pooling Station, after which the asset charges were socialised into the PoC pool and bilateral billing was stopped on the generating company. Essentially, the subject recovery from the generating unit is for the period between the COD of the LILOs and the commissioning of the DTL. The tariff order in the disputed period was issued on 29.07.2016, when the YTC of the subject LILOs were not included in the regional PoC base pool, and was applicable only till the DTL was commissioned, which occurred on 27.10.2016.

6. In conclusion, it is submitted that paragraph 72 of the CERC order actually recorded the contention of TANGEDCO but erroneously put it forth as the CERC's opinion clearly contrary to the spirit of the order of the CERC. In fact, the CERC had in paragraph 73 specifically raised the question of the liability with respect to the transmission charges in the context of upstream/ downstream transmission system not being ready which was dealt with on a perusal of the minutes of the meetings of the Standing Committee, eventually ruling in favour of the PGCIL. The two LILOs having been put to actual commercial use

by the generating company for supply to TANGEDCO, in evacuating power, the transmission licensee cannot be denied recovery of tariff on an erroneous standard of 'beneficial use', unheard of in transmission parlance and an artificial reopening of COD.

Arguments of the Respondents: -

7. Mr. Sajan Poovayya, learned Senior Counsel appeared for Moxie Power Generation Limited (formerly Coastal Energen Private Limited), the generating company. It was asserted on the basis of Annexure A1, pictorial depiction of the evacuation arrangement for Long Term Open Access (LTOA) projects in the Tuticorin area, that the subject LILOs, the use of which is sought to be included in the tariff, was never put to use. According to him, the LILO referred to under the Standing Committee Meetings (SCMs) is the one which connected the generating station with the Tuticorin JV-Madurai transmission line through which the energy evacuation was carried out and drawn by TANGEDCO for the purpose of supply and end use of consumers. Electricity, it is contented was transmitted seamlessly; as is wont to happen in the event of zero resistance, though the Tuticorin JV-Madurai line for onward transmission to

Trichy, where TANGEDCO received it. The DTL which was to be constructed by the generating station and the delay in such construction is immaterial insofar as the upstream infrastructure for transmission of electricity from the Tuticorin Pooling Station to the Salem Pooling Station and then to Madhugiri had not materialised till much later. The generating unit though was granted LTOA since the upstream connection had not materialised, a LILO was created in the Tuticorin JV-Madurai line through which evacuation of power was commenced on 24.10.2014 under STOA and then continued as a MTOA, paying the applicable charges for transmission of electricity. The DTL to the Tuticorin Polling Station was commissioned on 27.10.2016, well in advance of PGCIL's upstream Tuticorin-Salem Pooling Station line, which came into operation only on 13.11.2016. It was still later on 01.12.2016, the LTOA to the generating unit was operationalised. The PGCIL's LILO had started operation only after the commissioning of the PGCIL's upstream transmission system on 13.11.2016.

8. The contention also is that there can be no liability on the generating company and the subject claim is unsustainable since the statutory mandate for declaration of COD; where

there is failure of either of the contracting parties, was not followed. The LTOA having not been operationalised during the subject period, when transmission charges were levied on a STOA/MTOA basis, there could be no further claim set up by the CTU. The statutory scheme under Regulation 4(3)(ii) and Regulation 12 (2) of the Tariff Regulation mulcts liability on a generator only when the COD is declared as per the Regulations. The directions by the APTEL to get declared the COD is apt in the facts and circumstances of the case. The generating unit having commenced evacuation of power before the PGCIL's LILOs were operationalised as per the BPTA it could have continued seamlessly even without the intervention of the PGCIL LILOs; based solely on the LILO of one circuit in the Tuticorin JV-Madurai line, at the generating station. The interim arrangements continued till the upstream transmission lines were operationalised which was later to the commissioning of the DTL, thus making irrelevant the delay in commissioning of the DTL. If the CERC declares, on the remand made, that the COD of the LILOs is as claimed by PGCIL, definitely the liability would fall on the generating company. But otherwise, the end consumers would be unnecessarily

mulcted with a liability, without actual use of the subject assets, in the transmission; is the contention.

9. Ms.Vrinda Bhandari, learned Advocate on Record, appearing on behalf of the TANGEDCO adopted the arguments of the generating company and stressed upon paragraph 72 of the CERC's order which findings were in affirmation of the contention raised by TANGEDCO. It is also argued that the subject assets; being the PGCIL's LILOs were not independent transmission assets and were an integral part of the composite transmission arrangement for evacuation of power from the generating stations at Tuticorin through the Tuticorin Pooling Station and the associated 765 kV upstream transmission system. It was urged that APTEL was correct in holding that the COD does not depend upon the facility being made viable, and the liability on the generating unit could only arise if it is capable of serving its purpose; which was not possible till the upstream transmission system was established and made operational. Hence, the beneficial use as contemplated by the APTEL was perfectly in order.

<u>The Order of the CERC</u> : -

10. The CERC looked at the investment approval dated 12.12.2011 and the modified Revised Cost Estimates (RCE) dated 23.02.2015. The scope of work was indicated to be the LILO in both circuits of Tuticorin JV–Madurai line and establishment of 400kV Pooling Station at Tuticorin, initially charged at 400kV including 1x80 MVAR bus reactor. The elements covered in the scope of the project, was first claimed as a single asset for the purpose of tariff, while the LILOs in the first circuit and the second circuit of the Tuticorin JV–Madurai line, was claimed separately under various heads. TANGEDCO required the cost to be checked prudently and had challenged the claims under various heads as also assailed the specific claim with respect to the LILOs on the ground that without commissioning the other elements of the common transmission system, the LILOs cannot be practically put to use. The specific contention of TANGEDCO was that the LILOs upon which the claim was raised was redundant until the Salem and Madhugiri Pooling Stations providing upstream connectivity from the Tuticorin Pooling Station is put under Commercial Operation.

11. The date of Commercial Operation (COD) was accepted as 04.01.2015 and 08.01.2015 for the two LILOs termed Asset 1 and Asset 2 respectively. This was also based on the RLDC's successful trial operation certificate and the CEA Certificate, as also the implementation of 1x80 MVAR bus reactor at the Tuticorin Pooling Station. While the delay occurred was explained by PGCIL, it was found to be not substantiated with valid reasons for which liberty was left to the PGCIL to provide documentary proof at the time of truing-up. The aspect of the time over-run having not been condoned, it had a bearing in determination of the amounts to be quantified under the various heads, wherein the scheduled COD was reckoned rather than the actual COD.

12. The CERC eventually considered the question as to who would bear the transmission charges and found the minutes of the 30th SCM held on 05.05.2010 would be relevant from which the following was quoted:

> ***"5.0 Transmission System Associated with the Coastal Energen Pvt Ltd (2x660 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu:***

5.1 Chief Engineer, CEA explained that the Tuticorin Pooling Station-Tutlcorin JV Station (of NLC) 400kV D/C Quad Line was inter-alla agreed as part of the transmission system associated with the Coastal Energen Pvt Ltd (2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu. Later, NLC informed that they could spare only one bay at their Tuticorin JV station. As such, considering space constraint and better capacity utilization of the 400kV quad D/C line, it is now proposed that instead of the Tuticorin Pooling Station of Tuticorin DV Station 400kV D/C line, both the circuits of Tuticorin JV-Madurai 400kV Quad D/C line may be LILOed at Tuticorin Pooling Station.

5.2 After discussions, the above proposed modifications in the transmission system for the Coastal Energen Pvt. Ltd (2x600 MW) and IND Barath Power Ltd (2x660 MW) projects in Tuticorin area of Tamil Nadu were agreed."

13. Based on the above as per the RLDC Certificate, the LILO in one circuit was intended for the use of Coastal Energen, as a measure of extraction at the Tuticorin JV–Madurai Line, a temporary line for evacuation of power from the generating station and again LILO-ed at the Tuticorin Pooling Station on the

Tuticorin JV-Madurai Line. The LILO by Coastal Energen was found to be a temporary measure which was liable to be dismantled, according to the CERC, within six months from the date of the issue of the order; obviously on commissioning of the DTL. Reliance was placed on a connected matter and it was held that the transmission charges for the instant assets, i.e. the two LILOs termed Asset 1 and Asset 2 were to be borne by Coastal Energen and Ind-Barath Power till the commercial operation of the DTL up to the Tuticorin Pooling Station, which was the obligation of Coastal Energen and Ind-Barath were occasioned. Ind-Barath never commenced operation. Pertinently, despite being made a party, the generating company did not appear before the CERC to raise its contentions.

The Order of the APTEL: -

14. The APTEL considered the issue of Non-PoC charges of Rs.15,43,26,909/- for the period between 04.01.2015 to 27.10.2016. APTEL framed five issues and answered them in the following manner :

(i) The LILO of both circuits of the Tuticorin JV- Madurai line at Tuticorin Pooling Station was a permanent part

of the transmission plan, as approved in the 30th SCM and sanctioned by the CERC in Petition No.233 of 2009.

(ii) The decision of the CERC to grant COD of the assets under consideration is not correct since the correct procedure was not adopted; namely the procedure under Regulation 4 (3)(ii) of the Tariff Regulations, 2014.

(iii) The subject assets being not a temporary arrangement, PGCIL was not liable to bear its cost on a Non-PoC basis.

(iv) The construct of PoC transmission charges is based on usage and hence no transmission charges could be claimed by PGCIL for the assets since no power was flowing through these LILOs.

(v) The availability of Dedicated Transmission Line (DTL) of the generating company is irrelevant since upstream transmission from Tuticorin to Salem and Madhugiri Pooling Stations was not operationalized, thus disabling the full power of the generating station from being evacuated. The COD of the LILO as granted by the CERC needs to be reviewed.

Hence while finding the LILO to be a permanent structure of the evacuation arrangement, it was held that the same were not put in use. In the review filed by PGCIL the matter was remanded to the CERC for determination of the COD of the LILOs; which order is impugned in the other appeal.

***Preliminary Analysis*: -**

15. For better understanding of the controversy, we have to necessarily look at the pictorial depiction as seen at Annexure A-1 (extracted hereinbelow, a little later) which clearly indicates that the LILOs at Tuticorin Pooling Station on the Tuticorin JV–Madurai Line intercepted the two circuits of the said line. Hence, on evacuation of power, from Coastal Energen and Tuticorin JV; the two generating stations, to the Tuticorin JV–Madurai Line, it had to be necessarily intercepted at the LILO for the purpose of routing it through the Tuticorin Pooling Station and send back to the Tuticorin JV–Madurai Line for onward transmission to Madurai and its eventual receipt by the distribution licensee, TANGEDCO, at the downstream transmission lines. We would elaborate on this when we look at the statutory scheme of transmission of electricity and the

necessity of a Pooling Station. Suffice it to notice, for the present that Tuticorin JV is a generating station set up by the Neyveli Lignite Corporation (NLC) and TANGEDCO as a joint venture (JV). By the introduction of two other generating stations, as originally contemplated there were multiple sources; stations, of electricity generation.

16. The argument of the generating company that electricity moves through the path of least resistance though indubitable is fundamentally flawed on the facts herein and does not support the contention of no beneficial use of the LILOs having been made. The pictorial depiction clearly indicates that after evacuation of power through the temporary LILO put up by the Coastal Energen in the Tuticorin JV–Madurai Line, there is a diversion through the permanent LILO of the PGCIL, at the Tuticorin Pooling Station. The free flow of electricity through the path of least resistance hence supports the plea of PGCIL that on its interception at the Loop-In/Line-In, the path of least resistance is the one leading to the Tuticorin Pooling Station and from there, after stabilization, through the Loop-Out/Line-Out, back to the Tuticorin JV–Madurai Line. There cannot be two opinions on this, and the contention raised is rejected. We also

notice the specific contention taken up by the generating company, in its appeal before the APTEL, which is as under: -

> *".....It is submitted here that the Appellant has commissioned its first unit on December 23, 2014, and has been using Tuticorin Pooling Station to evacuate power under STOA/MTOA since then. Further MTOA of 558 MW has been provided by the Respondent No.2 to Appellant on the instant transmission assets (LILG) for supplying power to TANGEDCO for the period from 1.7.2015 to 30.6.2018. The MTOA stands duly operationalized and it is evident that the subject transmission system was being used. In view of this, it could be stated that the instant assets are and will be used to evacuate power for Southern Region Beneficiaries, it is therefore submitted before the Hon'ble Commission that the transmission charges for the same must be shared by all beneficiaries through the PoC mechanism."*

Hence, the use of LILOs was admitted and the contention was only of sharing, which cannot be raised without commissioning the DTL.

17. At the risk of repetition, it cannot but be observed that admittedly the generation commenced on 23.12.2014 upon which the power was evacuated through the Tuticorin JV-

Madurai 400/220 kV lines by creating a LILO on one of the circuits of the said lines which continued seamlessly during the disputed subject period also. Hence, generation, transmission, supply and consumption are clearly admitted and there arose no situation where the generating station held its horses, after it become operational and ready for generation of power; thus, creating a liability on the CTU which had the responsibility and obligation to transmit electricity on its generation. The issue is only as to whether the two LILOs created as intervention to the two circuits on the Tuticorin JV-Madurai line was used or not; which on its commissioning is a foregone conclusion.

18. The PGCIL categorically asserted that the two LILOs were made operational on 04.01.2015 and 08.01.2015 respectively. We will deal with the issue of COD a little later; which we have to merely notice now, as having been found by the CERC to be on the dates projected. While according to the generating unit, the Tuticorin Pooling Station could be operated only on the upstream connection established, the contention of the appellant is that the power generated and evacuated from the generating unit had to be first brought to the Pooling Station through the Line-In (Loop-In) from the Tuticorin JV-Madurai line

and then pooled out from the Line-Out (Loop-Out) back to the Tuticorin JV-Madurai line which was a part of the plan contemplated for evacuation of power from the generating units in the Tuticorin area, strengthening the Southern Region Transmission. Hence, the upstream transmission lines from the Tuticorin Pooling Station to Salem Pooling Station, though delayed did not cause any hindrance to the power generated by the generating unit and the same was transmitted to the purchaser, the distribution licensee, who had supplied it to the end consumers, *de hors* the upstream line to Salem not being established.

19. In fact, the plan comprehensively contemplated the LILOs as an integral part of the composite transmission agreement as admitted by TANGEDCO. The situation of the creation and operation of the LILO of the PGCIL, puts in place the evacuation arrangement of power in the Tuticorin area. This makes relevant the delay in establishment of the DTL directly to the Tuticorin Pooling Station, which was the obligation of the generating company. The claim raised by the appellant is not from the date of generation which is 23.12.2014 and does not extend after the DTL was established by the generating

company, which was on 27.10.2016. The claim is within the period of the operation of the LILOs on 04.01.2015 and 08.01.2015 up to 27.10.2016 when the DTL was established and made operational.

Questions of Law **-**

20. The questions of law, hence arising from the orders challenged; one in original and the other in review are the following: -

I. Whether the transmission licensee, the appellant PGCIL, is entitled to transmission tariff, including the element of the two LILOs spanning over 10 kms, bringing in the power generated to the Tuticorin Polling Station and then transmitting it further through the Tuticorin JV–Madurai line especially since the LILOs were a part of the statutory planning under Section 29(4) of the Electricity Act, 2003 and the BPTA ?

II. Whether the Appellate Tribunal was right in law in its interpretation of Regulation 4(3)(ii) of the Tariff Regulations in directing the CERC to consider the COD of the LILOs when already it has been approved by the CERC ?

III. Whether the delay in construction of the DTL would enable the liability for the period between 04.01.2015/08.01.2015 and 27.10.2016 to be mulcted on the generating company ?

The Statutory Scheme **-**

21. While the appellant, PGCIL banks on the delay in establishing and operationalisation of the DTL by the generating company, the generating company and the distribution licensee; TANGEDCO, projects the delay in establishing and operationalisation of the upstream transmission lines between Tuticorin and Salem Pooling Stations to be determinative of the absence of any liability on the generating company or the distribution licensee. The upstream transmission lines and the downstream transmission system referred to in Regulation 4(3)(ii) having not been defined in the statute, we have to look at the statutory scheme to better understand the rival contentions of the parties.

22. Generation of Electricity is dealt with in Part III of the Electricity Act, 2003. A generating company is entitled to establish, operate and maintain a generating station without

obtaining a licence under the Act, if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of Section 73. A generating station also includes a hydro-electric generation and captive generating station, which has additional requirements to be satisfied under Sections 8 and 9; which we are not concerned with. Section 10 stipulates the duties of the generating companies, which are; to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines (DTL) connected therewith in accordance with the provisions of the Act, the Rules and the Regulations. A DTL is defined under clause (16) of Section 2 as any electric supply-line for point-to-point transmission required for the purpose of connecting electric lines or electric plants, also under Section 9 and Section 10, to any transmission lines or sub-stations or generating stations or the load centre. The DTL, hence, is the obligation of the generating station.

23. Part V of the Act deals with the Transmission of Electricity, which includes both inter-State and intra-State transmission. For the purpose of inter-State transmission, the Central Government is empowered to make a region-wise demarcation

of the Country for the efficient, economical and integrated transmission and supply of electricity as per Section 25. Section 26 speaks of a National Load Despatch Centre (NLDC) for optimum scheduling and despatch of electricity between the Regional Load Despatch Centres (RLDCs); which RLDC's are established under Section 27. Insofar as the intra-State transmission is concerned, the State Commission is empowered to facilitate and promote transmission, wheeling and inter-State transmission connection within its territorial jurisdiction under Section 30 for effective functioning for which a State Load Despatch Centre (SLDC) is constituted under Section 31. The functions of the NLDC are as prescribed by the Central Government under sub-section (2) of Section 26 and that of the RLDC and SLDC are delineated respectively under Section 28 and Section 32. While the Central Transmission Utility (CTU) as notified by the Central Government under Section 38 undertakes establishment and facilitation of inter-State transmission under Section 38, the distribution licensees under Section 42 are obliged to develop and maintain an efficient, co-ordinated and economic distribution system in their area of supply. The State Transmission Utility as notified under Section

39 has an obligation to undertake transmission of electricity through the intra-State transmission system.

24. It is the CEA constituted under Section 70 which specifies the technical standards for construction of electrical plants, electric lines and connectivity to the grid, the compliance of which, as provided under clause (b) of Section 73, is stipulated in Section 7, with reference to a generating company setting up a generating station. The 'Grid' is defined under clause (32) of Section 2, which means "*the high voltage backbone system of inter-connected transmission lines, sub-stations and generating plants*" (sic). The transmission lines are defined under clause (72) of Section 2, which means all high-pressure cables and overhead lines, not being an essential part of the distribution system of a licensee, transmitting electricity from a generating station to another generating station or a substation with an intervening step-up and step-down transformer, switch-gear and other works necessary and used for the control of such cables or overhead lines.

25. Here, we should also have a better understanding of what a Pooling Station is and the purpose it serves. A Pooling Station is defined under the Central Electricity Regulatory Commission

(Indian Electricity Grid Code) Regulations, 2023. The Preamble of the said Regulation refers to the definition of 'Grid' in sub-section (32) of Section 2 of the Electricity Act, which is extracted hereinabove, as a backbone system. Keeping in view the mandate and statutory framework as envisaged in the Act for stable, reliable and secure grid operation in order to achieve maximum economy and efficiency of power system, the grid code is brought in; which apart from the provisions relating to the role of various statutory bodies and organizations and functional linkages contains extensive provisions pertaining to various aspects as delineated thereunder. A Pooling Station is defined as *'the ISTS grid sub-station where pooling of generation of connected individual generating stations is done for interfacing with the next higher voltage level'*. It has to be specifically observed that in the subject evacuation arrangement, the Tuticorin Pooling Station was to aggregate power from three sources; Tuticorin JV, Coastal Energen and Ind-Barath. The Pooling Station acts as an intermediary electrical hub collecting power generated from multiple energy sources and aggregates it into a single high voltage output for efficient evacuation to the main transmission grid. This is in tune with

Section 61 of the Electricity Act 2003, which requires the generation, transmission, distribution and supply of electricity to be conducted *inter alia* on commercial principles, encouraging competition, efficiency and economical use of the resources, good performance and optimum investments as also safeguarding of consumers' interest, enabling recovery of the cost of electricity in a reasonable manner *(sic. clauses (b) (c) and (d) of Section 61).*

26. From a conspectus of the above statutory scheme, the Grid encompasses the entire transmission system starting from the generating company at the point of evacuation of electricity generated, which moves through the dedicated transmission lines (DTL), as established by the generating company and gets transmitted through the transmission lines established by the CTU, including the LILOs, Pooling Stations etc; which come within the ambit of ''other works'' as found in the definition clause (72) of Section 2, received by the distribution licensee and supplied to its end consumers through its distribution lines. The distribution licensee receives the power from the transmission lines of the CTU and extracts it and through the distribution system, for supply to the end consumers. The

transmission, hence can be divided into three stages, (i) the DTL which extracts power from the generating station and brings it to the transmission lines of the CTU (ii) the transmission lines of the CTU, which transmits the power through the transmission lines to the distribution licensee and (iii) the distribution system established by the distribution licensee which extracts power from the transmission lines of the CTU and supplies it to the end consumers. From this statutory scheme, the upstream transmission system is the inter-State transmission system established by the CTU and the downstream transmission system is that established by the distribution licensee within the respective States. It is with this understanding of the statutory scheme that we have to look at the facts of the case.

Adjudication on the Facts: -

27. On facts, we commence with Annexure A2, the Minutes of the 29th Meeting of the Standing Committee on Power System Planning in Southern Region (SCPSPSR) held on 27.08.2009. Under Clause (12) discussions on the Inter State Transmission Systems (ISTS) with respect to the Long Term Open Assess (LTOA) Applications made to the CTU for Projects in Southern

Region, Coastal Energen Pvt. Ltd. and Ind Barath Power Madras Ltd., in Tuticorin area, Tamil Nadu were considered. Insofar as the Coastal Energen Pvt. Ltd. and Ind Barath Power Madras Ltd., the Transmission Systems contemplated are seen from Clause 12.3.2, which are as under: -

> *12.3.2 Transmission System for Coastal Energen Pvt Ltd (2x660 MW) and IND Barath Power Madras Ltd. (4x350 MW) projects in Tuticorin of Tamil Nadu:*
>
> *(i) Establishment of 765 kV pooling station in Tuticorin, Salem and Madhugiri (north of Bangalore) (initially charged at 400 kV)*
>
> *(ii) Coastal Energen generation switchyard - Tuticorin pooling station 400kV D/C Quad / High-capacity line*
>
> *(iii) Ind-Barath generation switchyard Tuticorin pooling station 400kV D/c Quad/High-capacity line*
>
> *(iv) Tuticorin Pooling station - Salem Pooling station 765kV D/C line initially charged at 400kV*
>
> *(v) Salem pooling station-Madhugiri pooling station 765kV S/C initially charged at 400kV.*
>
> *(vi) Madhugiri - Yelahanka 400 kV Quad D/C line*
>
> *(vii) Tuticorin pooling station - Tuticorin JV 400 kV D/C quad line.*

28. Pertinently it has to be observed that the LILOs at the Tuticorin Pooling Station were not contemplated, and the Common Transmission for Coastal Energen and Ind Barath

Projects as decided are found under Clause (c) which is again as below: -

i. *Common transmission for Coastal Energen and Ind-Barath projects*

- *Establishment of 765 kV pooling station in Tuticorin, Salem and Madhugiri (near Bangalore) (initially charged at 400 kV)*
- *Tuticorin Pooling station - Salem Pooling station 765 kV D/c line initially charged at 400 kV.*
- *Salem pooling station - Madhugiri pooling station 765 kV S/c initially charged at 400 kV.*
- *Tuticorin pooling station - Tuticorin JV 400 kV D/c quad.*

The estimated Cost of the evacuation system shall be about Rs. 2500 Crores.

29. The dedicated transmission system with respect to Coastal Energen was to commence from the generation station of Coastal Energen evacuated to the Tuticorin Pooling Station 400 kV D/C quad/high-capacity line. A temporary measure for drawing startup power as well as to evacuate power till the commission of dedicated transmission system was contemplated as hereinbelow:

iv) Further a temporary measure for Coastal Energen to draw startup power as well as to evacuate power till

the commissioning of above transmission system, LILO of one circuit of Tuticorin JV – Madurai 400 kV Quad D/c line (under construction by POWERGRID) was agreed which shall be restored matching with the commissioning of pooling station in the Tuticorin area.

30. This led to the Bulk Power Transmission Agreement entered into on 24.02.2010 between the appellant on the one side and Coastal Energen and Ind-Barath Power, on the other side. The transfer of power from the respective station of generation to the place of delivery was specified in Annexure 1. The Transmission System required for direct evacuation of power from the respective generating stations to the pooling points of the PGCIL was finalized in consultation with the Central Electricity Authority and indicated at Annexure 2. The Transmission System to evacuate and dispatch power to respective beneficiaries from the generation projects was indicated at Annexure 3 and the applicable transmission charges were agreed to be shared and borne as decided by the CERC, which mechanism was indicated at Annexure 4. The extracts from these annexures of the BPTA are relevant for consideration.

31. Annexure 2 of the BPTA refers to the dedicated transmission line, which was the obligation of Coastal Energen, which as noticed hereinabove commences from the generation switch yard to the Tuticorin Pooling Station. The common transmission system to be developed by PGCIL as per Annexure 3 of the BPTA, for strengthening the system in Southern and Eastern Region, has been specified at Serial No.1, of which that intended for Southern Region alone are extracted herein below:

a) *Establishment of 765 kV Pooling station at Tuticorin and Salem (initially charged at 400 kV)*
b) *Tuticorin Pooling station - Salem Pooling Station 765 kV D/c line (initially charged at 400 kV)*
c) *Salem Pooling station - Madhugiri Pooling Station 765 kV S/c line (initially charged at 400 kV)*
d) *LILO of both circuits of Tuticorin JV - Madurai 400 kV D/c quad line at Tuticorin Pooling station*
e) *Establishment of 400/220 kV, 2x500 MVA substation at Madhugiri (near Bangalore) with 765/400 kV provision in the same switchyard*
f) *Madhugiri - Yelahanka 400 kV D/c quad line*
g) *Associated 400kV bays at Tuticorin Pooling station, Salem Pooling station, Madhugiri Pooling station and Tuticorin JV substations.*

32. The BPTA specifically provided for the LILO of both circuits of Tuticorin JV-Madurai Line at Tuticorin Pooling Station, which is not the LILO of the generating company created as a temporary measure for the purpose of evacuation of electricity from the generating station, before the commissioning of the dedicated transmission line (DTL). Annexure 3 was replaced on 08.09.2011 and the common transmission system was contemplated in two parts as Part A and Part B as specified hereinafter:

1. *Transmission System Strengthening in Southern Region for evacuation of power from Coastal Energen Private Limited and Ind-Barath Power (Madras) Limited in the Tuticorin area*

Part-A

a) *Establishment of 765 kV Pooling station at Tuticorin (initially charged at 400 KV)*
b) *LILO of both circuits of Tuticorin JV - Madurai 400 kV D/c quad line at Tuticorin Pooling station*

Part - B

a) *Establishment of 765 kV Pooling station at Salem (initially charged at 400 kV)*
b) *Tuticorin Pooling station - Salem Pooling Station 765 kV D/c line (initially charged at 400 kV)*

c) *Salem Pooling station - Madhugiri Pooling Station 765 kV S/c line (initially charged at 400 kV)*

d) *Salem Pooling Station - Salem 400 kV Quad line*

e) *Associated 400kV bays at Tuticorin Pooling station, Salem Pooling station, Madhugiri substation.*

This was in consonance with the decision of the 30th SCM held on 05.05.2010, extracted in paragraph 12 of this judgment. Due to the incapacity of Tuticorin JV to spare more than one bay, the LILO's were necessitated.

33. The commissioning schedule of Part A as per Annexure 4, replaced on 08.09.2011, was July 2014 and that of Part B was December 2014. The establishment of the 765 kV Pooling Station at Tuticorin initially charged at 400kV was in time and the LILO of both circuits of Tuticorin JV-Madurai line at Tuticorin Pooling Station occurred respectively on 04.01.2015 and 08.01.2015 with a marginal delay. As is evident from the order of the CERC, the investment approval was on 12.12.2011 and the scheduled date of Commercial Operation was 11.04.2014. There was a time over-run of 8 months 23 days with respect to the first LILO and 8 months and 27 days with respect to the second LILO, which was considered by the CERC in its order,

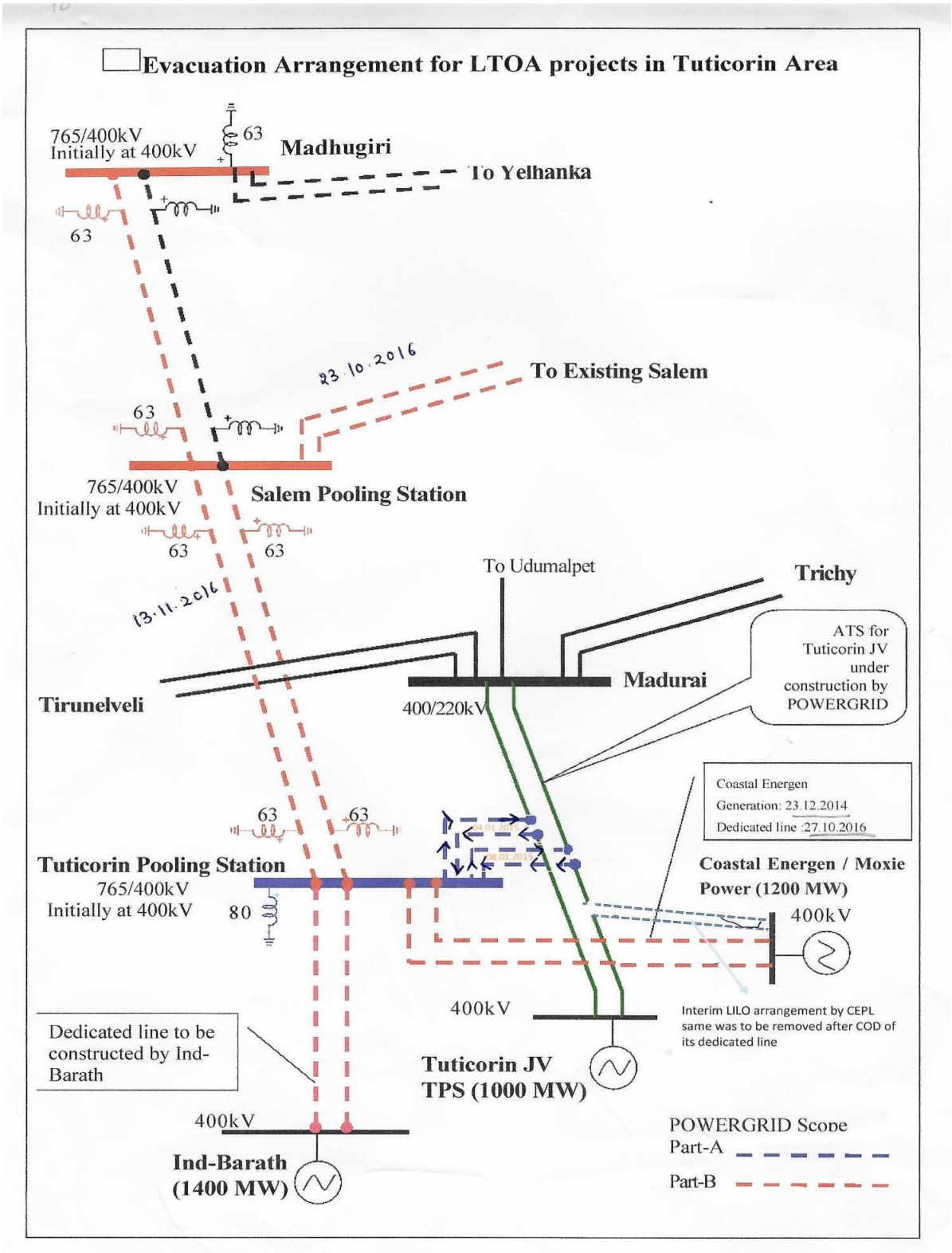
which time over-run in the case of the subject assets was not condoned, but the PGCIL given liberty to substantiate the reasons for the delay along with documentary proof at the time of truing up.

34. The various claims raised were considered and some declined, which eventually led to the order directing the generating companies to pay transmission charges for the instant assets till the dedicated transmission line (DTL) up to the Tuticorin Pooling Station is constructed and declared as commercially operational and put to regular use by the concerned generating station. Fifty percent of the charges of the LILO was to be included under PoC and the balance 50% of the transmission charges to be borne by the generating company, which had not commissioned the dedicated transmission line. It was categorically found by the CERC that the LILOs were agreed upon in the SCMs, and an extract was made from the meeting of 38th SR-SCM dated 07.03.2015 in paragraph 74 of the CERC order. It was also found that the LILO of Coastal Energen on one circuit of Tuticorin Madurai transmission line was agreed as an interim arrangement which was directed to be removed within six months from the date of

issue of the order of CERC; simultaneous to which the dedicated transmission line (DTL) was to be made operational.

35. From the above, it is very evident that the LILOs on the two circuits of the Tuticorin JV-Madurai Line, though not initially contemplated, was later made part of the transmission system, which even according to the respondents is an integral part of the system. The liability now cast on the power generating company is only by reason of the DTL having not been constructed, which would have extracted power from the generating station and transmitted it directly to the Tuticorin Pooling Station. In the absence of the DTL, power was evacuated from the generating station through the temporary LILO on the Tuticorin JV-Madurai Line at the location of the generating station, which, from 04.01.2015 was taken to the Tuticorin Pooling Station and further transmitted to the distribution licensee. The intervening LILOs were, hence, essential for the purpose of implementation of the system and was an integral part of the system, which was made commercially operative on 04.01.2015 and 08.01.2015. After the establishment of the LILO, there could not have been a direct transmission of electricity from the LILO of the generating

company directly to Madurai as is clear from the pictorial depiction, which we extract hereunder: -



36. Upstream connection, which was not established as per the timelines stipulated is the one shown in red commencing from the Tuticorin Pooling Station to the Salem Pooling Station and then further to Madhugiri. The delay in such establishment did not in any manner affect the evacuation arrangement, since the Tuticorin JV-Madurai line was utilized from the initial generation of power from Coastal Energen as on 23.12.2014. Though as argued by the generating company, electricity moves seamlessly through the transmission lines, upon the intervention made by the LILOs respectively on 04.01.2015 and 08.01.2015, the power generated from the NTPL, i.e. the Tuticorin JV, and Coastal Energen evacuated through Tuticorin JV-Madurai Transmission lines necessarily gets diverted to the Tuticorin Pooling Station from which it is again evacuated and transmitted through the Tuticorin JV-Madurai Line to the distribution licensee. The LILOs being an integral part of the system, the delay in implementation of the upstream transmission to Salem does not affect the evacuation arrangement at all. Hence, when the evacuation arrangement as contemplated with the two LILOs were put in place on 04.01.2015 and 08.01.2015; which operated as the upstream

transmission path, the delay in operationalizing the DTL assumes significance.

37. The DTL in the above depiction is again indicated by the broken red lines starting from Coastal Energen and ending at the Tuticorin Pooling Station. The temporary arrangement by way of a LILO for extraction of power from the generating station is depicted by the broken blue lines commencing from the generating station and the LILO at one circuit of the Tuticorin JV-Madurai Line. The LILOs intersecting the power and diverting it to the Tuticorin Pooling Station is shown again in two sets of broken green lines commencing from the Tuticorin JV-Madurai line and ending in the Tuticorin Pooling Station and then retransmitted to the Tuticorin JV-Madurai Transmission Lines. The beneficial use is hence clearly established.

Commercial Operation Date: -

38. Insofar as the COD is concerned, we extract the definition clause Regulation 3(53) and Section 4 hereunder:

> *3 (53) '**Regular Service**' means putting into use a transmission system or element thereof after successful trial operation and a certificate to that effect has been issued by the concerned Regional Load Dispatch Centre.*
>
> ***xxx*** ***xxx*** ***xxx***

4. Date of Commercial Operation: The date of commercial operation of a generating station or unit or block thereof or a transmission system or element thereof shall be determined as under:

(1) Date of commercial operation in case of a generating unit or block of the thermal generating station shall mean the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice to the beneficiaries, if any, and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station:

Provided that

(i) where the beneficiaries have been tied up for purchasing power from the generating station, the trial run shall commence after seven days notice by the generating company to the beneficiaries and scheduling shall commence from 0000 hrs after completion of the trial run:

(ii) the generating company shall certify to the effect that the generating station meets the key provisions of the technical standards of Central Electricity Authority (Technical Standards for Construction of Electrical plants and electric lines) Regulations, 2010 and Grid Code:

(iii) the certificate shall be signed by CMD/CEO/MD of the company subsequent to its approval by the

Board of Directors in the format enclosed at Appendix VI and a copy of the certificate shall be submitted to the Member Secretary, (concerned Regional Power Committee) and concerned RLDC before declaration of COD:

39. Sub-clause (ii) of clause (3) of Regulation 4 applies only when a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating stations or in commissioning of the upstream and downstream transmission system. Hence, when a generating station has operationalized its power generation and there is a delay in the operationalization of the transmission lines or *vice-versa* when the transmission lines are operationalized and there is a delay in the generating station being operationalized, then the defaulting party would be made liable for which an appropriate application for approval of the date of commercial operation (COD) is required to be filed before the CERC.

40. In the present case, as has been admitted by both the generating company and the distribution licensee, there was no

impediment caused to the transmission of electricity from the date of commencement of generation at the generating station. The upstream transmission system insofar as the subject evacuation arrangement had two alternatives, one the Tuticorin to Salem Pooling Station and further to Madhugiri and the LILOs on the Tuticorin JV-Madurai Line at the Tuticorin Pooling Station, the latter of which stood established, though with some delay. Despite the delay not being condoned, the liability falls on the generating company from the date of the COD of the LILOs; especially for reason of the DTL having not been established. The definition clause, as extracted hereinabove, clearly indicates that 'Regular Service' means putting into use of the transmission system or element thereof, after successful trial operation and a certificate to that effect issued by the concerned RLDC. This is in consonance with clause (3) of Regulation 4 which declares the COD to be the date declared by the transmission licensee from 0000 hours of which an element of the transmission system is in regular service after successful trial operation.

41. The CERC in its order has specifically referred to the claim of the petitioner, the CTU, of commercial operation of

Asset 1 and Asset 2, both being LILOs at the Tuticorin Pooling Station, implemented as on 04.01.2015 and 08.01.2015. The RLDC certificate for charging of the instant assets after the successful trial run and the CEA certificate under Regulation 43 of the Central Electricity Authority (Measures Related to Safety and Electricity Supply) Regulations 2010 had been submitted by the CTU through an affidavit dated 12.05.2016. The CTU also submitted the implementation of 1x80 MVAR bus reactor in its Tuticorin Pooling Station for the purpose of voltage control. Referring to the 29th and 30th Standing Committee Meetings, as per scheme approved by the Southern Region beneficiaries, the commercial operation date of Asset 1 and Asset 2 as on 04.01.2015 and 08.01.2015 was accepted. This calls for no-redetermination under Regulation 4(3)(ii) of the Tariff Regulations.

<u>The Precedents</u>: -

42. All the parties placed heavy reliance on the decision of this Court in ***Power Grid Corporation of India Limited vs. Madhya Pradesh Power Transmission Company Limited and***

Ors.[1] (authored by one of us: Justice J.B. Pardiwala) wherein the first respondent who was the distribution licensee was required to construct and commission the Inter-State Transmission Line coinciding with the timeline of completion of works, which were within the scope of the appellant, the CTU. Therein the time over-run was attributable to the distribution licensee, who delayed the commissioning of the downstream intra-State asset while the CTU obtained approval of the COD under Regulation of 4(3)(ii) of the transmission lines set up by the CTU. The CERC not only allowed the CTU to claim compensation for the period prior to the COD as liquidated damages, interest during construction and incidental expenses incurred during construction, but also the transmission charges in case of all the assets, to be borne by the first respondent, from the COD determined under Regulation 4(3)(ii) up to one day before actual charging of the downstream system. The first respondent argued that there was no regulation to support the said liability.

43. Looking at Section 79 and 178 of the Act of 2003, it was held that the CERC, the statutory authority under the Electricity Act is enjoined with the tasks of both; regulation as well as

[1] (2025) 8 SCC 705

adjudication on the aspects of generation transmission and distribution of electricity. However, such functions by themselves were distinct and separate, since those under Section 79 were administrative or adjudicatory in nature, while those under Section 178 were delegated legislative powers. It was held so under paragraph 42, relying on ***PTC India Limited v. Central Electricity Regulatory Commission, Thr. Secretary***[2] :

> ***"42.*** *What is discernible from the aforesaid exposition of law is that there is a dichotomy between the power to make a regulation under Section 178 and the power to regulate or adjudicate on the various areas enumerated under Section 79(1). A regulation under Section 178 is of general application to the entirety of a particular subject-matter as opposed to regulation on a case-to-case basis which may be done by CERC under Section 79. Therefore, making of a regulation under Section 178 has the effect of interfering with and overriding existing contractual relationships between the regulated entities. On the other hand, the orders under Section 79 have to be confined to the existing statutory regulations and do not have the effect of altering the terms of contract between the specific parties before CERC."*

44. ***PTC India Limited***[2] declared that *'making of a regulation under Section 178 is not a precondition to the Central Commission*

[2] (2010) 4 SCC 603

taking any steps/measures under Section 179 (1)' (sic). While unequivocally declaring that if there is a regulation under Section 178 then the measure under Section 79(1) has to be in conformity with such regulation, it was also held that an order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. While the validity of the delegated legislation under Section 178 has to be tested by way of judicial review, an unreasonable levy under Section 111, whether it be; in the absence of a regulation, or on an interpretation of the regulation enacted under Section 178, could be challenged before the APTEL by way of an appeal.

45. Reliance was also placed on ***Energy Watchdog v. Central Electricity Regulatory Commission and Ors. Etc.***[3], which found Section 79(1) to be the repository of the regulatory powers of the CERC, which powers should be exercised in conformity with the guidelines or regulations; if in existence under Section 178, and even otherwise despite a regulatory lacuna. The order of the CERC which was impugned in PGCIL imposing liability of payment of compensation for delay on the part of the first respondent was upheld despite absence of a

[3] (2017) 14 SCC 80

regulation under Section 178; finding the liability to be reasonably imposed on the defaulting party. The dictum squarely applies in the present case, where the generating company failed to establish and operationalise its DTL within the time stipulated. In the period between COD of the LILOs established by the CTU and the establishment of the DTL by the generating company, the liability cast by the CERC on the generating company is perfectly in order.

<u>In Denouement of the APTEL Order</u>: -

46. We are definitely of the opinion that the APTEL erred in finding the usage of LILOs to be absent in the transmission of power. We have seen that the strengthening of the Southern Region Transmission System as available from the minutes of the SCM, which were duly agreed to, in the BPTA, required the LILO of both circuits of the Tuticorin JV-Madurai Line to be made at the Tuticorin Pooling Station. The PGCIL thus was obliged to construct the said LILO, which was also a permanent part of the transmission plan. However, while accepting the LILO to be a permanent part of the transmission plan, surprisingly the APTEL found its use to be not established and the COD having not been granted in the manner it should have been done; despite clear

admission of its use by the generating company. We have already held that the consideration of the COD by the CERC, in the context of no prevention of regular service, to be perfectly in order. In fact the COD as projected by the PGCIL was accepted on the basis of the admitted 'Regular Service' as defined in the Tariff Regulations, on the strength of the successful trial operation certified by the RLDC.

47. It is pertinent that APTEL noticed the contention of PGCIL that TANGEDCO has taken mutually destructive pleas of; no liability to transmission charges despite utilization of the LILOs, and the plea of the LILOs have been not been put to use at all. The APTEL also noticed that under Section 29(4) of the Electricity Act, the decision taken by the Regional Power Committee of the SCM, in furtherance of grid stability and coordinated transmission planning has legal sanctity and hence the approval of the LILO in the 30th SCM participated by all stakeholders, including TANGEDCO binds all parties. It is pertinent here, to observe that the generating company never raised any objection in the SCMs and also did not participate in the tariff determination before the CERC.

48. The error committed by the APTEL also in placing heavy reliance on paragraph 72 of the CERC order, based on which the concept of 'beneficial use' was coined, in the context of absence of the upstream transmission lines. As we observed, paragraph 72 of the CERC order cannot be isolated and considered out of context. Looking at the spirit and tenor of the CERC order, paragraph 72 cannot be termed as a finding of the CERC and can only be looked at as the recording of the contentions of the TANGEDCO, while paragraph 73 to 77 posed the question of liability of the transmission charges and mulcted it squarely on the generating company, based also on the minutes of the 30th SCM the extract from which, we also extracted in paragraph 12 of this judgment. The conclusion of the APTEL that the pictorial depiction clearly indicates the temporary arrangement of a LILO made by the generating company on the Tuticorin JV-Madurai line, which proceeds directly to Madurai and does not reach the Tuticorin Pooling Station, factually is incorrect. The LILO's on the line restricted such transmission directly to Madurai without being routed through the Tuticorin Pooling Station.

49. The first question of law is answered in the affirmative, finding the element of the two LILOs, in the Tuticorin JV-Madurai line at Tuticorin Pooling Station, as includable in the transmission tariff, as found by the CERC, from 04.01.2015 upto the establishment of the Dedicated Transmission Line (DTL) on 27.10.2016 as non-PoC. The second question of law is answered in the negative, finding the interpretation of the APTEL, on the COD, to be erroneous. The third question of law is again answered in the affirmative, based also on the decisions of this Court cited as precedents hereinabove.

50. We, hence, on the above reasoning, set aside the impugned orders of the APTEL in both the appeals and restore the order of the CERC.

51. The appeals are allowed.

52. Pending application (s), if any, shall stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI
NOVEMBER 18, 2026.