



Southern Power Distribution Company of Telangana Limited

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From
Chief Engineer (IPC&RAC),
TGSPDCL, Corporate Office,
6-1-50, 1st Floor, Mint Compound,
Hyderabad – 500 063.

To
The Commission Secretary,
TGERC, Vidyut Niyantaran Bhavan,
Sy.No.145-P,
G.T.S. Colony, Kalyan Nagar,
Hyderabad 500 045

Lr No.CE (IPC&RAC)/DE(IPC)/F.MYT/D. No. 4412 /25-26, dt: 09 .01.2026

Sir,

Sub:- TGSPDCL – IPC & RAC – SCCL filings for Annual tariff petition for FY 2026-27 containing ARR and revised tariff proposal for FY 2026-27 and True-Up for FY 2024-25 vide O.P.No.64 of 2025 in respect of 2X600 MW Singareni Thermal Power Plant before TGERC – Comments/suggestions of TGDISCOMs – Submission - Regarding.

Ref:- Public Notice issued by TGGENCO, dated: 20.12.2025.

The comments/suggestions of TGDISCOMs in respect of SCCL filings for Annual tariff petition for FY 2026-27 containing ARR and revised tariff proposal for FY 2026-27 and True-Up for FY 2024-25 vide O.P.No.64 of 2025 in respect of 2X600 MW Singareni Thermal Power Plant is hereby submitted for the kind consideration of the Hon'ble Telangana State Electricity Regulatory Commission (TGERC).

Further the additional objections/suggestions (if any) by TGDISCOMs on the aforesaid SCCL filings will be submitted during the Public hearing on 22.01.2026.

Encl: As above

Yours faithfully,

B.Ravi

Chief Engineer (IPC&RAC)

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Copy submitted to:

The Director (Finance), Power Projects, #11-4-660, 3rd floor, Singareni Bhavan, Red Hills, Hyderabad- 500 004.

The ED/Comml/TGPCC/Vidyuth Soudha

Copy to:

The Chief Engineer/IPC&RAC/TGNPDCL

**BEFORE THE TELANGANA ELECTRICITY REGULATORY
COMMISSION HYDERABAD**

O.P.No. 64 OF 2025

IN THE MATTER OF:

Filing of Annual Tariff Petition for FY 2026-27 in respect of 2x600 MW Singareni Thermal Power Project containing proposal for revised tariff for FY 2026-27 and True up of FY 2024-25 in accordance with Section 62 and 86.1 (a) of Electricity Act 2003 read with TGERC (Multi Year Tariff) Regulation 2023.

Between:

M/s. Singareni Collieries company Limited (SCCL)

..... **Petitioner**

AND

1. Southern Power Distribution Company of Telangana Limited
2. Northern Power Distribution Company of Telangana Limited

..... **Respondents**

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**BEFORE THE TELANGANA ELECTRICITY REGULATORY
COMMISSIONHYDERABAD**

O.P.No.64 OF 2025

IN THE MATTER OF:

Filing of Annual Tariff Petition for FY 2026-27 in respect of 2x600 MW Singareni Thermal Power Project containing proposal for revised tariff for FY 2026-27and True up of FY 2024-25 in accordance with Section 62 and 86.1 (a) of Electricity Act 2003 read with TGERC (Multi Year Tariff) Regulation 2023.

Between:

M/s. Singareni Collieries Company Limited (SCCL)

..... **Petitioner**

AND

1. Southern Power Distribution Company of Telangana Limited
2. Northern Power Distribution Company of Telangana Limited

..... **Respondents**

REPLY/OBJECTIONS FILED BY THE RESPONDENTS

I, B.Ravi, S/o, Late B.Sanjeeva Rao, aged 56 years, Occupation: Chief Engineer (IPC&RAC), TGSPDCL, Hyderabad, resident of Hyderabad, do hereby solemnly affirm and state as under-


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1. The Petitioner, M/s. SCCL [being the owner of Singareni Thermal Power Project (STPP)] has filed the present Petition, under the Section 62, Section 86 (1)(a) of the Electricity Act, 2003, praying for the following reliefs:

-
- a) Consider the submissions made by SCCL in this Annual Tariff Petition for determining tariff for FY 2026-27 and for undertaking the truing up of tariff/expenditure for the period FY 2024-25.
 - b) Approve revised Tariff for FY 2026-27 and allow recovery of additional trued up expenditure for FY 2024-25 in respect of 2x600 MW Singareni Thermal Power Plant (STPP).
 - c) Pass such further orders, as the Hon'ble Commission may deem fit and appropriate in circumstances of the case.
-

2. As could be seen from the basic prayer made by the Petitioner, the Petitioner is seeking the Hon'ble Commission to determine the revised tariff in respect of its STPP project for FY 2026-27 by considering the truing up of tariff/ expenditure for the year FY 2024-25, basing on the TGERC Tariff Regulation 2 of 2023.

3. **Brief history of M/s SCCL:**

- i. TGDISCOMs entered PPA with M/s SCCL on 18.01.2016 for supply of power from 2x600 MW Singareni Thermal Power Plant for a period of 25 years at a tariff to be determined by TGERC and project declared COD on 02.12.2016.

- ii. Hon'ble TGERC Vide order dated 28.06.2024 in OP No. 4 of 2024 approved AFC for FY 2024-25 to FY 2028-29 after taking into account truing up of expenditure of STPP for FY 2022-23 and final capital cost approved is Rs. 7745.32 Cr.
 - iii. Further, Hon'ble TGERC Vide order dated. 29.04.2025, in OP No. 30 of 2024 approved revised AFC in respect of 2x600 MW Singareni Thermal power Plant for FY 2025-26 after taking into account truing up of expenditure of STPP for FY 2023-24 and final Capital cost approval of Rs. 7748.23 Cr from FY 2023-24 considering Rs. 2.91 Crs additional capital Cost towards enhanced land compensation as per the directions of civil court.
 - iv. Further, in the aforesaid order, Hon'ble TGERC directed M/s SCCL on the following:
 - a. To maintain separate accounts for Power Generation i.e for 2x600 MW STPP and SCCL and to submit audited accounts in respect of payment of income tax for Generation business and coal business.
 - b. To submit the status of the efficiency improvement measures implemented by M/s SCCL and the results of the same in the next tariff filings.
 - c. To expedite the commercial production of coal from Naini coal block to reduce burden on the consumers.
4. In light of the above, before taking up the exercise of tariff determination for STPP Project for the FY 2026-27, the Hon'ble

Commission is required to undertake the Truing-up of tariff claimed by the Petitioner for the FY 2024-25 vis-a-vis the Tariff approved for FY 2024-25 in the MYT order dt. 28.06.2024 in OP No. 4 of 2024 and in the order dt. 29.04.2025 in OP No. 30 of 2024 along with the directions of the Hon'ble Commission to M/s SCCL under the aforesaid orders.

5. It is pertinent to submit that some of the important details of Capital Cost approved in respect of 2x600 MW STPP Project and the outstanding Debt and Equity approved by the Hon'ble Commission in the MYT order dated 28.06.2024 in OP No. 4 of 2024 /order dated 29.04.2025 in O.P.No. 30 of 2024 are extracted below, which are essential for examining the Petitioner's claim of True-up expenditure for FY 2024-25.

A) Basic Costs approved by TGERC in respect of 2 x 600 MW STPP

| Sl. No. | Details | Amount (Rs. Cr.) |
|----------------|---|---|
| 1. | Total Capital Cost approved (GFA : Gross Fixed Asset) vide order dt.29.04.2025 | 7748.23 |
| 2. | Equity Base approved (30% of GFA) | 2324.47 |
| 3. | Return on Equity (RoE @15.5% without MAT gross-up) | 360.29 |
| 4. | ROE grossed up with Minimum Alternate Tax (MAT) @ 17.47% | 436.54 |
| 5. | Depreciation approved @ 5.1612% of GFA for FY 2023-24 /5.169% for FY 2025-26. | 399.83 Cr for FY2023-24 / 400.51 Cr for FY 2025-26 |
| 6. | Approved Rate of Interest on Loan after Loan Refinancing for FY 2024-25 to FY 2028-29 | 8.24% p.a |
| 7. | Interest on working capital | 10.15% |

| | | |
|----|-------------------------------------|---|
| | approved for FY 2024-25 | |
| 8. | Outstanding Loan (year-wise) | Separate table is provided below as Item-B |

B) Outstanding Loan Balances approved by TGERC

Table 5-10: For the period FY 2024-25 to FY 2028-29
(as extracted from MYT order dated 28.06.2024 in O.P.No.4 of 2024)
Rs. in crore

| Particular | 2024-25 | 2025-26 | 2026-27 | 2027-28 | 2028-29 |
|---------------------------|---------|---------|---------|---------|---------|
| Opening Loan | 2529.61 | 2129.25 | 1728.89 | 1328.53 | 928.17 |
| Addition during the Year | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Repayment during the Year | 400.36 | 400.36 | 400.36 | 400.36 | 400.36 |
| Closing Loan | 2129.25 | 1728.89 | 1328.53 | 928.17 | 527.81 |
| Interest rate | 8.24% | 8.24% | 8.24% | 8.24% | 8.24% |
| Interest on loan | 191.85 | 158.88 | 125.90 | 92.93 | 59.96 |

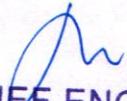
6. Further, to arrive at the true up of Additional Fixed Charges /tariff for the FY 2024-25, the Petitioner has once again sought this Hon'ble Commission to approve the Additional Capitalization of Rs.23.38 Cr for FY 2024-25, Rs.17.89 Cr for FY 2025-26 and Rs. 29.90 Cr for FY 2026-27 in respect of certain Capital works proposed after the Cut-off date (31.03.2019).
7. In the additional capitalization claim of Rs. 23.38 Crs for FY 2024-25, M/s SCCL claimed the following:
- i. Rs. 1.85 Cr towards enhanced compensation paid for land as per court directives. In this regard it is to submit that Hon'ble TGERC vide order dt.29.04.2025 in OP No. 30 of 2024 already approved Rs. 2.91 Cr towards enhanced land compensation and again M/s SCCL claiming the additional land compensation of Rs. 1.85 Crs

even for FY 2024-25 by referring the court order and the reasons for not claiming the same in the earlier tariff filings. Hence Hon'ble Commission is requested to prudently check the said claim.

- ii. Balance claim of Rs. 21.53 Crs for FY 2024-25 includes claim for Rs.16.64 Crs toward Railway siding overhead electrification and balance amount towards BOP miscellaneous work, site development and temporary sheds, Township, guest house and other amenities etc., which claims were already disallowed by the Hon'ble TGERC vide orders dated 23.03.2023 in mid-term review petition OP No. 77 of 2022 and in the MYT order dt.28.06.2024 & even in the latest order dt. 29.04.2025 in Op No. 30 of 2024, **since the claim was beyond the Original Scope of Works and after the cut-off date (31.03.2019).**Hence, the claim is not tenable again in the present petition.
8. For FY 2025-26, M/s SCCL claimed Rs.17.89 Cr towards miscellaneous BOP, furniture, gate complex security, Roads & Culverts, site Development enabling temporary sheds... such similar additional capitalization claims were already disallowed by the Hon'ble Commission in the previous orders since the claim was beyond the Original Scope of Works and after the cut-off date (31.03.2019). Hence, the claim is not tenable again in the present petition.
9. For FY 2026-27, M/s SCCL claimed Rs.29.90 Crs towards implementation of Flexible operation scheme as per CEA, in this regard it is to be submitted that Hon'ble TGERC Vide order dated 28.06.2024 in OP No. 4 of 2024

deferred the SCCL additional capitalization claim of Rs. 20.77 Cr for FY 2024-25 towards implementation of CEA Regulation on flexible operation Scheme duly stating that the same will be taken into consideration at the time of true up of the relevant year and granted in principle approval for the said works towards. Hence, the claim is not tenable in the present petition.

10. From the aforesaid additional capitalization claim of M/s SCCL from FY 2024-25 to FY2026-27, it is to state that despite the categorical disallowance of the aforesaid Capital Investment works, the Petitioner is trying to re-claim the additional Capitalization works, after the Cut-off date by furnishing the year-wise Audited Annual Accounts Statement and prayed the Hon'ble Commission to admit the said works to the extent of discharge of liabilities by actual payments.
11. In this regard, the Hon'ble Commission in the Mid-term Review order 23.03.2023/ MYT order 28. 06.2024/ in the order dt.29.04.2025, has already relied on the ratio decided in the Case law in Ld. APTEL's judgment dated 10th August 2010 in **Appeal No.37 of 2010 (Meghalaya State Electricity Board vs. Meghalaya State ERC) (copy of order enclosed as annexure-I)**, wherein it was held that the State Commission has to make Prudence Check of the expenditure and is not bound by the Certificates of Auditors.
12. In view of the above, the additional capitalization claims of M/s SCCL are not tenable.


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13. Apart from the Additional Capitalization claim, the Petitioner has also claimed Additional O&M Expenses over and above the O&M expenses (component of Fixed Charge) approved by the Commission on the ground of uncontrollable factors which will be discussed in the subsequent Paras.

14. Now the individual components of Fixed charges claimed by the Petitioner are discussed below:

(i) Computation of Return on Equity–

The Respondents submit that the Petitioner has claimed the Return on Equity (RoE) at the base rate of 15.5% on enhanced Equity (after considering **Additional Capitalization of Rs. 23.38 Crore** (30% as equity @ **Rs.7.01Crore**) for FY 2024-25, **Rs.17.89 Crore** (30% as equity @ Rs.5.37 Crore) for FY 2025-26 and Rs.29.90 crore (30% as equity @ Rs.8.97 Crore),thereby raising the Base Equity to **Rs. 2331.48 Crore for FY 24-25 and Rs.2345.82 Crore for FY 2026-27as against the approved Base equity of Rs.2324.47 Crore, even without obtaining the approval of the Hon'ble Commission.** Further, the Petitioner grossed up the simple RoE with the regular income tax rate @ 25.168% (rate applicable for the SCCL Company as a whole for Coal and Power business) as against the **concessional MAT rate of 17.47%** allowed by Hon'ble commission for STPP Power generation business, which has led to higher RoE claim of Rs. 482.20Crore for FY 2024-25, Rs. 483.48 Crore for FY 2025-26& Rs. 484.96 Crore for FY 2026-27 as against the **approved RoE of Rs.436.54 Crore.**

In fact, this Hon'ble Commission disallowed the grossing up of RoE with Corporate tax/ higher Income Tax rate in the order dt.29.04.2025, Mid-term Review order dated 23.03.2023 (Table 3.37 of TGERC order) and also in the Multiyear Tariff order dated 28.06.2024 (Table 4-15 &Table 5-15 of TGERC order)and Hon'ble Commission vide order dt. 29.04.2025 directed M/s SCCL to maintain separate accounts for coal business and Power business. But, M/s SCCL without separating the accounts again claiming higher interest rates, which claim has to be disallowed.

In this regard, the Hon'ble Commission in the Mid-term Review order 23.03.2023/ MYT order 28. 06.2024, has already relied on the ratio decided in the Case law in Ld. APTEL's judgment dated 10th August 2010 in **Appeal No.37 of 2010 (Meghalaya State Electricity Board vs. Meghalaya State ERC) (copy of order enclosed as annexure-I)**, wherein it was held that the State Commission has to make Prudence Check of the expenditure and is not bound by the Certificates of Auditors. In view of the above, the Hon'ble Commission is requested to restrict the claim of RoE to the approved figure of Rs. 436.54 Crore.

(ii) Interest and financing charges on loan –

The Petitioner stated that the Hon'ble Commission in the Mid-term Review order dated 23.03.2023 has allowed refinancing of loan in respect of STPP and allowed interest on loan accordingly. Therefore STPP claims the sharing of gains accrued due to refinancing in the truing up of FY 2024-25 and for FY 2026-27 by referring Regulation 31 of **Regulation 2 of 2023**.

In this regard, the Respondents submit that as already submitted in the RoE computation reply, the Petitioner has added the additional loan component due to additional capitalization to the outstanding loan balances approved in the MYT order dated 28.06.2024 (Table-5-10:MYT order dated 28.06.2024)/(Table- 3.36:order dt. 29.04.2025), **even without obtaining the approval of this Commission** and applying higher rate of interest @ 8.74% for FY 2024-25 and 8.27% for FY 2025-26 (claims as Audited) as against the rate of interest approved @8.24 % p.a for FY 2024-25 & FY 2026-27 which claim is not in accordance with the Mid-term Review order dated.23.03.2023/ MYT order dated.28.06.2024/order dt.29.04.2025. If there is a change in the interest rate on outstanding loan, then the Net Savings have to be re-worked out. Further, the Petitioner has also claimed one-third share of Savings of interest amount accrued due to loan refinancing while truing up for FY 2024-25 and also for the FY 2025-26 (provisional)& FY 2026-27, by simply citing the Regulation No.31 of TGERC Regulation No.2 of 2023.

With regard to loan refinancing taken up by the Petitioner during the previous Control period viz. FY 2019-24, it is submitted that though there was a saving in interest rate (@ 1.36%) after loan refinancing, yet the cost associated with such loan refinancing was significant at Rs. 77.84 Cr., which was entirely passed on to the Respondents upfront. Therefore the Hon'ble Commission in its Mid-term order allowed the one-third share of gains of Net Saving to the STPP/ SCCL **as a one time basis** during FY 2020-21 and

allowed the Respondents to retain the Net savings for subsequent years without any sharing. Disregarding the set procedure, the Petitioner has trued-up the expenditures by claiming the one-third share of gain of loan refinancing even for the balance period of the previous control period, which is not permissible.

Further, the Petitioner has continued to claim the one-third share of gains of loan refinancing even to FY 2025-26 (provisional) & FY 2026-27, by referring to the Clause 31 of Regulation 2 of 2023. In this regard, the Respondents have extracted the provision of Loan Refinancing (Clause-31) of Regulation 2 of 2023 vis-à-vis the similar provision of Regulation No.1 of 2019 as below, for critical examination by the Hon'ble Commission.

.....

TGERC Regulation No.1 of 2019 (Tariff Regulation):

12.6: Refinancing

12.6.1: The Generating Entity shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such refinancing shall be borne by the beneficiaries and the net savings shall be shared between the Beneficiaries and the Generating Entity in the ratio of 2:1 respectively subject to Prudence Check by the Commission.

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TGERC Regulation No.2 of 2023:

31. Interest and Finance Charges on Loan

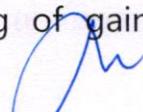
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31.10: The generating entity or the licensee or the SLDC, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event, the costs associated with such re-financing shall be borne by the Beneficiaries and the net savings shall be shared between the Beneficiaries and them in the ratio of 2:1, subject to prudence check by the Commission.

.....
Provided also that **the net savings in interest shall be calculated as an annuity for the term of the loan**, and the annual net savings shall be shared between the entity and Beneficiaries in the specified ratio.

.....
It could be seen from the above provisions that in the Regulation 2 of 2023s, it is specifically prescribed that the Net Savings in interest shall be calculated as an Annuity for the term of the Loan, whereas such methodology was not prescribed in the Previous Tariff Regulation (No. 1 of 2019). In the Annuity computation methodology, the **Present Values** of interest cost saving before and after loan refinancing have to be worked out by considering the discount rate at the interest rate of Post refinancing. This exercise has to be done to examine whether the claim of loan refinancing is beneficial to the TGDISCOMs even after passing on the Costs associated with loan refinancing to them. Apparently, the Petitioner has not carried out such exercise. Also, if further Loan Refinancing is taken up by the Petitioner in the FY 2025-26& FY 2026-27, then the Regulation No.2 of 2023 allows the Petitioner to make such a claim. Without making any such effort, the Petitioner is not entitled to make a claim on sharing of gains of Loan

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Refinancing. The Petitioner has failed to distinguish the Loan Refinance Provisions in the aforesaid two Tariff Regulations. As such, the Petitioner's claim for unilaterally adjusting the one-third share of gain to it, is legally not permissible.

The Hon'ble Commission is requested to restrict the rate of Interest and disallow the SCCL claim on sharing of one-third share of gain on Loan Refinancing for FY 2024-25 to till FY 2026-27 as the claim is not in accordance with Clause 31 of Regulation 2 of 2023.

(iii) Claim for Depreciation –

The Petitioner has claimed higher depreciation (@ 5.63% against approval of 5.169%) considering revised additional capital cost amounting to Rs. 436.64 Cr for FY2024-25 true up, Rs. 438.20 Cr for FY 2025-26 (Estimated) and Rs. 439.64 Cr for FY 2026-27 as against Hon'ble Commission approval of Rs. 400.51 Cr for FY 2025-26 for the capital cost of RS. 7748.23 Crs @ 5.169 % in the order dt. 29.04.2025 in OP No. 30 of 2024. As already explained in paras 6 to 12, the additional Capitalization has to be disallowed and there would be no change in the GFA (Gross Fixed Asset) of STPP Project, the Hon'ble Commission is requested to restrict the recovery of Depreciation (@ 5.169%) by the Petitioner to the already approved figure of Rs. 400.51 Crore only.

(iv) Interest on Working Capital –

The Petitioner computed the Working Capital requirement by summing up the individual components, such as Coal Stock requirement for 20 days /30 days for generation corresponding to

Target availability (85%) etc based on Regulation 2 of 2023 for FY 2024-25 and FY 2026-27 and also claimed interest on working Capital revision for FY 2023-24 including bridge linkage premium by referring the APTEL order dt. 28.08.2025 in Appeal No 256 of 2024 and the Price considered for Cost of Coal in working capital is Bridge Linkage premium coal Pricing.

In this regard, it is to submit that, TGERC vide order dt.01.04.2024 in OP No. 13 of 2023, directed SCCL to stop levying any premium on coal price under bridge linkage arrangement and to charge notified basic price of coal till production from Naini commences to STPP.

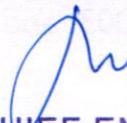
Aggrieved by the said order, SCCL filed Appeal No. 256 of 2024 before APTEL and APTEL pronounced common orders on 28.08.2025 in Appeal 256 of 2024 of SCCL and Appeal 19 of 2025 of TGDISCOMs, allowing SCCL's appeal and setting aside the TGERC Order dated 01.04.2024 in OP No. 13 of 2023.

APTEL order dt. 28.08.2025 in appeal 256 of 2024 while holding that the premium is included in the Regulations, the APTEL has gone on to hold that the TSERC does not have jurisdiction over the price of coal, which is an error observed in the order.

The errors observed in the APTEL order dt. 28.08.2025 in appeal 256 of 2024 are as follows:

- a. Under the Electricity Act, 2003, it is one of the functions of the regulator to look at all components of tariff which would

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include the variable charges and its sub-components. Its jurisdiction cannot be limited by a strict interpretation.

- b. The basic contradiction in the Judgment is that on one hand, the Electricity Regulator has been held to have no jurisdiction to comment on the pricing of coal and on the other hand, the delegated legislations framed by such regulator have been interpreted to include the bilateral premiums being charged by SCCL to its own thermal power plant – STPP; this reasoning is circular & conflicting.
- c. Equating the power of the electricity regulator to conduct a prudence check on costs claimed to its power of determining the cost itself.
- d. Incorrect interpretation of TGERC Tariff Regulations, 2019.
- e. Rewarding SCCL for its own default of failing to develop the captive coal mine at Naini in a time bound manner.

Thus Aggrieved by the APTEL order dt. 28.08.2025, TGDISCOMs filed Civil appeal No. 61265 of 2025 before Supreme Court (Annexure-II) and hearings completed on admission stage and Supreme Court admitted the appeal and served notice to the Respondents on 15.12.2025

At present, TGDISCOMs Civil appeal No. 61265 of 2025 filed before Supreme Court is under subjudice.

Further, Hon'ble TGERC has jurisdiction under Electricity Act, 2003 and as per TGERC Regulations, Hon'ble Commission Have

powers to regulate the electricity tariff to be passed onto the consumers.

Thus, Hon'ble Commission is requested to restrict the working capital claim with notified coal prices only and without any bridge linkage premium until Supreme Court finalizes the matter.

(v) Operation and Maintenance (O&M) Expenses –

The Petitioner has claimed higher O&M charges in the truing up of expenditure as against the approved / trued up figures as below:

Approved by TGERC in the MYT order dated 28.06.2024

(Rs. Crores)

| Particulars | FY 2024-25 | FY2025-26 | FY2026-27 | FY2027-28 | FY2028-29 |
|-------------------------------|---------------|---------------|---------------|---------------|---------------|
| Employee Expenses | 121.17 | 128.22 | 135.68 | 143.57 | 151.92 |
| A&G Expenses | 40.41 | 42.41 | 44.50 | 46.70 | 49.00 |
| R&M Expenses | 87.89 | 92.23 | 96.78 | 101.55 | 106.56 |
| Total O&M Expenses | 249.48 | 262.85 | 276.95 | 291.82 | 307.48 |

Approved by TGERC for FY 2025-26 in the order dated 29.04.2025

(Rs. Crores)

| Particulars | MYT order dt. 28.06.2024 | Claimed | Approved |
|-------------------------------|--------------------------|---------------|---------------|
| Employee Expenses | 128.22 | 190.40 | 124.86 |
| A&G Expenses | 42.41 | 58.26 | 40.89 |
| R&M Expenses | 92.23 | 117.14 | 87.93 |
| Total O&M Expenses | 262.86 | 365.81 | 253.67 |

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Actually Claimed (Audited/Estimated) by the Petitioner in the present petition

(Rs. Crores)

| Particulars | FY 2024-25 (Truing up based on actual) | FY2025-26 (Estimated) | FY 2026-27 (Revised) |
|-------------------------------|---|--------------------------|-------------------------|
| EmployeeExpenses | 130.93 | 137.43 | 144.24 |
| A&G Expenses | 58.65 | 61.61 | 64.73 |
| R&M Expenses | 104.59 | 107.20 | 109.75 |
| Total O&M Expenses | 294.17 | 306.24 | 318.72 |

Observations:

1. The Employee Cost has increased significantly during FY 2024-25 to FY 2026-27 vis-a-vis previous ERC approved cost.
2. Even the R&M Expenses and A&G Expenses have also gone up considerably.
3. The O&M Expenses for STPP Project were approved by the Hon'ble Commission on **Normative basis** as per the TGERC Regulation No. 2 of 2023. The Truing up procedure has to be based on **Point to Point change** (means Current month inflation rate over same month of last year as per MOSPI) in the WPI & CPI-IW Inflation factors as published by the Ministry of Commerce & Industry and Ministry of Statistics & Programme Implementation (MoSPI), Govt. of India, and the computation shall be as per the formula given for Employee Cost, R&M Expenses and A&G Expenses in Regulation. The Base values already approved in the MYT order will not

change. However, the Petitioner has overlooked the prescribed procedure and claimed higher O&M Expenses stating that the claims are audited actual expenditure, which is not in consonance with the methodology specified in the Regulation No.2 of 2023. As such, the Petitioner' claim of O&M expenses has to be restricted to figures already approved, with the truing up with actual WPI/CPI-IW Inflation factors only.

4. Though the Petitioner's claim is based on Audited figures, yet the Hon'ble Commission is not bound by the Auditors Certifications and the Commission has to undertake the Prudence Check of the Expenses claimed in terms of Ld. APTEL's judgment dated 10th August 2010 in **Appeal No.37 of 2010**.
5. The Hon'ble Commission is also requested to restrict the O&M claims for FY 2024-25 to FY 2026-27 duly taking into consideration the methodology stipulated at Regulation 45 of the TGERC Regulation No.2 of 2023.
6. Further, it is to state that, in the computation of R&M expenses, SCCL has claimed K factor as 1.29% on the GFA claim of 7748.23Crs and on the revised GFA claim of Rs.7771.61 Cr for FY 2025-26 against Approval of 1.08 % on GFA of 7748.23Crs (for FY 2024-25 to FY 2025-26) and for FY 2026-27 in addition to revising the k factor to 1.29 % also revised the GFA Claim to Rs.7789.50 Cr (including the

additional capitalization claim) against approved GFA of Rs.7748.23 Cr vide order dated 29.04.2025.

(vi) Non-Tariff Income

The sale of fly ash from STPP is also to be passed onto consumers as non-tariff income and further as per ministry of power guidelines dt. 15.03.2024 states that the **“appropriate Commission shall scrutinize any expenses regarding ash utilization... to ensure the least possible burden is passed on to the consumers....”**

Further, TGGENCO has also reimbursing the fly ash utilization reserve amount to DISCOMs. Hence, Hon'ble Commission is requested to consider the Fly ash utilization reserve balance of Rs. 112.75 Crs as on 31.03.2025 indicated by M/s SCCL in the annual accounts also to be included in Non Tariff income and passed on to DISCOMs.

(vii) Operating Norms –

The Operational Norms as stipulated in the TGERC Tariff Regulation 2 of 2023 is binding on the Parties and Hon'ble Commission is requested to restrict the claim of auxiliary consumption as per the Norms (5.75%) and to restrict Station Heat rate (2300Kcal/Kwh) as per the norms prescribed in the Regulation.

(viii) Energy Charges –

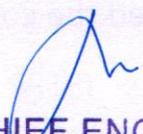

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The Petitioner has been claiming the Energy charges in respect of the power supplied from STPP Project with bridge linkage Coal pricing wherein additional premium of 20 to 30% for FY 2024-25 and approximately 5% for FY 2025-26 to FY 2026-27 has been projected over and above the SCCL Notified Price of Coal.

M/s SCCL also stated that Naini coal mine has started production from 16.04.2025 and the planned production for FY 2025-26 is 2.5 MT. However, it is observed that M/s SCCL is currently supplying the entire coal requirement to STPP under Bridge Linkage MOU pricing, without supplying the swapped SCCL Mines' coal at the basic notified price, as approved by MoC though Naini mine production started from 16.04.2025.

Further, the delay in commissioning of the NAINI Captive Coal Mine to SCCL/STPP Project is entirely attributable to SCCL and the Respondents cannot be burdened for long under the Bridge Linkage Coal Pricing, which is a Short term linkage but the Petitioner is taking undue advantage of the same and charging coal supply to STPP with additional premium over and above the Notified Price of corresponding grade of coal.

As already explained above at para 14 (iv), TGDISCOMs have filed Civil appeal No. 61265 of 2025 before Supreme court citing the errors in the APTEL order.


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Further, Hon'ble TGERC has jurisdiction under Electricity Act, 2003 and as per TGERC Regulations, Hon'ble Commission have powers to regulate the electricity tariff to be passed onto the consumers.

In light of the above, Hon'ble Commission is requested to restrict the energy charges claimed by M/s SCCL without any additional premium until Supreme Court adjudicates the Civil appeal No. 61265 of 2025 filed by TGDISCOMs.

15. Incentive –

The Incentive will be admitted in accordance with TGERC Tariff Regulation 2 of 2023. The projected claim of Incentive for FY 2026-27 may be disallowed in this petition, and the same may be allowed on actual basis during true-up.

16. Other charges:

Further, M/s. SCCL claimed other charges such as water charges, Audit fee & tariff filing fee and Hon'ble Commission is request to prudence check the same.

17. Tariff for FGD system:

MoEF& CC, Govt. of India, vide notification dated: 11.07.2025 has amended the emission standards relating to Sulphur Dioxide (SO₂) applicable to Coal / Lignite based Thermal Power Plants (TPPs) and has revised the compliance mechanism by categorizing TPPs and category C plants (STPP plant falls under category C) are exempted from compliance of SO₂ norms subject to meeting the stack height criteria.

Further directions from GoI in this regard are awaited.

18. **Integrated Mine (Naini) –**

The Petitioner has stated that Ministry of Coal (MoC) vide office memorandum dated 23.05.2025 has approved coal swapping proposal for quantity of 1.75 MTPA for three years upto FY 2027-28.

Further, M/s SCCL also stated that Naini coal mine has started production from 16.04.2025 and the planned production for FY 2025-26 is 2.5 MT. However, it is observed that M/s SCCL is currently supplying the entire coal requirement to STPP under Bridge Linkage MOU pricing, without supplying the swapped SCCL mines' coal at the basic notified price, as approved by MoC though Naini mine production started from 16.04.2025.

Further, the delay in commissioning of the NAINI Captive Coal Mine to SCCL/STPP Project is entirely attributable to SCCL and the Respondents cannot be burdened for long under the Bridge Linkage Coal Pricing, which is a Short term linkage but the Petitioner is taking undue advantage of the same and charging coal supply to STPP at additional price over and above the Notified Price of corresponding grade of coal.

In light of the above and as already explained at para 14 (iv), Hon'ble Commission is requested to restrict the Energy charges and working capital claim until Supreme court adjudicate the TGDISCOMs appeal CA 61265 of 2025.

19. Further, the Hon'ble Commission is also requested to permit Respondents TGDISCOMs to file objections if any, during the course of Public hearing or on or before public hearing.


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20. In light of the above, the Hon'ble Commission is prayed to take into account the aforesaid submissions in the true up of ARR for FY 2024-25 and Tariff determination for FY 2026-27 for STPP Project in the present Petition, else it translates into higher fixed charges and energy charges, burden the TGDISCOMs and ultimately consumers of the state.



Deponents / Respondents

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**BEFORE THE TELANGANA ELECTRICITY REGULATORY
COMMISSION HYDERABAD**

O.P.No. 64 OF 2025

IN THE MATTER OF:

Filing of Annual Tariff Petition for FY 2026-27 in respect of 2x600 MW Singareni Thermal Power Project containing proposal for revised tariff for FY 2026-27 and True up of FY 2024-25 in accordance with Section 62 and 86.1 (a) of Electricity Act 2003 read with TGERC (Multi Year Tariff) Regulation 2023.

Between:

M/s. Singareni Collieries company Limited (SCCL)

..... **Petitioner**

AND

1. Southern Power Distribution Company of Telangana Limited
2. Northern Power Distribution Company of Telangana Limited

..... **Respondents**

AFFIDAVIT

I, B.RAVI, S/o, B.SanjeevaRao, aged 56 years, Occupation: Chief Engineer (IPC&RAC), TGSPDCL, Hyderabad, resident of Hyderabad, do hereby solemnly affirm and says as follows:

I am the Chief Engineer/IPC& RAC/TGSPDCL, I am competent and duly authorized by the Respondents 1 & 2 to affirm, swear, execute and file this Reply.


CHIEF ENGINEER
IPC&RAC TGSPDCL
Corporate Office, 6-1-50,
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I have read and understood the content of the accompanying Affidavit drafted pursuant to my instructions. The statements made in the accompanying affidavit now shown to me are true to my knowledge derived from the officials records made available to me and are based on information and advice received which I believe to be true and correct.



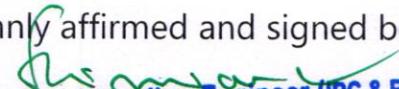
Deponents / Respondents

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VERIFICATION

The above named Deponent solemnly affirm at Hyderabad on 9th January, 2026 that the contents of the above affidavit are true to my knowledge no part of it is false and nothing material has been concealed there from.

Solemnly affirmed and signed before me.



Superintending Engineer (IPC & RAC)
TGSPDCL, Corporate Office,
6-1-50, Mint Compound,
Hyderabad - 500 004.



Deponents / Respondents

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**APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

Appeal No. 37 of 2010

Dated 10th August, 2010

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

Appeal No. 37 of 2010

In the matter of:

**Meghalaya State Electricity Board
Lumjingsghai, Short Round Road,
Shillong-793 001
Meghalaya**

... Appellant

Versus

**1. Meghalaya State Electricity Regulatory Commission
New Administrative Building, 1st Floor, Left Wing,
Lower Lachumiere,
Shillong-793 001
Meghalaya**

... Respondent-1

**2. Byrnihat Industries Association
13th Mile, Tamulikuchi,
Byrnihat-793 101
Ri Bhoi District, Meghalaya**

... Respondent-2

Counsel for Appellant

**Mr. Amit Kapoor &
Ms. Poonam Verma
Mr. Abhishek Munot**

Counsel for Respondent -1

**Mr. Mr. S.N.Mitra for Res.1
Ms Payal Chawla for R.1**

Counsel for Respondent-2

**Mr. M.G. Ramachandran,
Mr. Anand K.Ganesan and
Ms. Swapna Seshadri for
Byrnihat Industries Association
Ms Ranu Gupta and Mr. Gaurav**

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Meghalaya State Electricity Board is the Appellant herein. Meghalaya State Electricity Regulatory Commission (State Commission) is the Respondent-1. Byrnihat Industries Association is the Respondent-2.
2. The Appellant has filed the present Appeal as against the order impugned dated 10.09.2009 passed by the State Commission, truing up the Appellant's account for the FY 2007-08 and FY 2008-09.

3. The relevant facts that are required for the disposal of this Appeal are as follows.

4. The Appellant Board is a distribution licensee. It filed the Petition before the State Commission for determination of the distribution tariff for the FY 2007-08. The State Commission passed the order on 17.12.2007 on the projected Annual Revenue Requirement (ARR).

5. Thereupon, Appellant filed the Petition for determination of distribution tariff for the FY 2008-09. Accordingly, the State Commission by the order dated 30.09.2008 passed the tariff order determining the distribution tariff for the said year.

6. As against this order dated 30.09.2008 passed by the State Commission, Byrnihat Industries Association (R-2) the consumer association filed an Appeal before this Tribunal in Appeal No. 132 of 2008. After hearing the parties, the Tribunal passed the final order in the said Appeal on 09.02.2009

remitting the matter to the State Commission by giving a direction to undertake the true up exercise in respect of FY 2007-08.

7. In pursuance of the said order, the State Commission directed the Appellant by the order dated 06.07.2009 to submit its report for the truing-up exercise in respect of FY 2007-08 to enable it to comply with the orders of the Tribunal. Accordingly, the Appellant submitted the report in respect of the truing-up exercise of account for FY 2007-08 and the relevant documents before the State Commission on 09.07.2009. On 13.07.2009, the State Commission intimated the Appellant as well as Byrnihat Industries Association (R-2) that the Remanded proceedings would be heard on 29.07.2009 by the State Commission.

8. After receipt of the said intimation, Byrnihat Industries Association (Respondent-2) filed the reply on 28.07.2009 before the State Commission requesting the State Commission to take up the true-up exercise in respect of both FY 2007-08 as well as

for FY 2008-09. However, the Appellant raised objection to this course stating that the State Commission cannot go into the true-up exercise in respect of FY 2008-09 and it should confine itself to true-up exercise for the FY 2007-08 alone as per the order of the Tribunal dated 09.02.2009. Despite this objection the State Commission directed the Appellant to submit the break up of the power purchase relating to the period for FY 2008-09 as well. Accordingly same was submitted. Ultimately, the State Commission passed the impugned order on 10.09.2009 and gave finding on the following 2 aspects:-

- (i) The truing-up in the Appellant's account for the FY 2007-08 and FY 2008-09.
- (ii) The downward revision of electricity tariff for the FY 2008-09 was retrospectively given effect to w.e.f. 01.10.2008.

9. On being aggrieved, the Appellant has filed this Appeal.

10. The following are the grounds urged by the Learned Counsel for the Appellant.

- (i) The order impugned is beyond the scope of Remand Order dated 09.02.2009. The Tribunal remitted the matter back to the State Commission, with a specific direction to undertake the truing-up exercise of the Appellant's accounts for the FY 2007-08 only but, contrary to this direction, the State Commission carried out the truing-up exercise not only for the FY 2007-08 but also for FY 2008-09.

- (ii) It is settled law that it is mandatory for the State Commission to follow and adopt the financial statements, duly audited by the Comptroller & Accountant General. But on the other hand, the State Commission disallowed the various amounts of net prior period charges, such as employee's cost, depreciation, income-tax, administrative

expenditure, etc., after ignoring the certificate issued by the Comptroller & Accountant General and included the amount as revenue gain by 2% reduction of AT&C losses for the FY 2007-08 which is not in consonance with the financial statement duly audited by the Comptroller & Auditor General.

- (iii) The State Commission has wrongly given retrospective effect for adjustment of FY 2008-09 by revising the tariff downwards for the FY 2008-09.

11. In elaboration of the above grounds, the Appellant has made detailed submissions as given below:

- (A) The Tribunal by the order dated 9.2.2009, remitted the matter with a specific direction to undertake truing up exercise in respect of FY 2007-08 only. The said order did not direct the State Commission to simultaneously

undertake truing up exercise for the FY 2008-09. In violation of this order, the State Commission has done the truing up for the FY 2008-09.

(B) Actually, the Appellant abstained from filing any submissions relating to the truing up of the account for the FY 2008-09. As a matter of fact, the Appellant in his statement filed before the State Commission on 12.08.2009 specifically mentioned that the Electricity Board craves liberty not to reply to the respondent's contention since it refers to the allegations of the objectors relating to the FY 2008-09 since the issue before the State Commission is relating to truing up exercise for the FY 2007-08 only.

(C) Further, even in the impugned order the State Commission has recorded that the Remand proceedings were restricted to the extent of truing up of the accounts for the FY 2007-08. In the impugned order, State Commission itself recorded that the

Electricity Board, the Appellant, had not made any submissions with regard to the truing up of the accounts for the FY 2008-09, either in its reply dated 12.08.2009 or in its oral submissions during the hearings conducted on 29.07.2009 and 26.08.2009. Despite this factual position as admitted by the State Commission in the impugned order, it has wrongly gone ahead and trued up the Appellant's accounts not only for the FY 2007-08 but also for the FY 2008-09. There is neither a finding in the impugned order nor any interim order passed by the State Commission giving the reasonings as to why it undertook the truing up for the FY 2008-09 also.

- (D) When a matter is remanded by the Appellate Court to a lower court or the lower authority, with a limited direction, the scope of adjudication shall be limited to the directions as prescribed in the Remand Order. It is not open to such authority to do anything which is

beyond the scope of the Remand. This is well settled law laid down by this Tribunal, the High Courts and Supreme Court.

(E) The truing up exercise is a post-facto verification of actual expenses and revenues as against the projected expenses and revenue in tariff order. Therefore, the truing up exercise of the actual financial data for FY 2008-09, i.e. from 01.04.2008 to 31.03.2009 could be made only when the tariff for the next financial year is determined separately. Therefore, the impugned order, exercising the truing up both in respect of the FY 2007-08 and other year i.e. FY 2008-09 is not sustainable.

(F) The State Commission has failed to follow the accounts, duly audited by the CAG. It is mandatory for the State Commission to adopt and follow the figures which have been duly audited by the CAG. But in this case the State Commission while truing up of the

Appellant's financial accounts in respect of the FY 2007-08 has disallowed an amount of Rs. 8.54 crores on account of net prior period charges even though the same has been duly acknowledged and found legitimate in the accounts, duly audited by the CAG and wrongly included an amount of Rs. 17.26 crores as revenue gains by 2% reduction of AT&C loss which is not in consonance with the financial statement audited by the CAG. The total amount which has been acknowledged and audited by the CAG is Rs. 21.96 crores but the State Commission has allowed only Rs. 13.42 crores and disallowed the balance amounts. In doing so, the State Commission has wrongly classified the net prior period charges into 2 categories namely, controllable charges and uncontrollable charges. There is no basis for such a wrong calculation of prior period charges into 2 categories.

(G) Further, the amount of Rs. 17.26 crores has been wrongly included under the head “Revenue Gain for reduction of AT&C losses”, even though no such accounts were projected by the Appellant in the ARR petition filed in June 2007 and the CAG did not recognize the said amount in the audited accounts. It is true that in the decision of the Hon’ble Supreme Court in 2002 (8) SCC 715 (*West Bengal Regulatory Commission vs. CESC Ltd.*) it is held that audited accounts are not binding upon the Commission. However, in the very same judgment, the Hon’ble Supreme Court specially observed that the State Commission is bound to give due weightage to the audited accounts. Admittedly, this has not been done in this case. Further, the Tribunal in the judgment dated 04.05.2009 reported in 2009 ELR (APTEL) 538 (*Indian Tea Association vs. Assam State Commission*) has clarified about the binding nature of audited accounts in the absence of any reasonings

given by the State Commission for its deviance.

Therefore, the impugned order is wrong in this respect.

- (H) The State Commission in the impugned order revised the tariff downward for the FY 2008-09 and directed the same to be given retrospective effect from 01.10.2008. It also directed that such retrospective adjustment be implemented against future energy charges of all affected consumers with a view to ensure that all excess amounts recovered by the Appellant are fully adjusted by 31.03.2010. The State Commission by the impugned order directed the Appellant to take effective steps to adjust the excess amount billed and collected during the tariff period between 01.10.2008 and 31.03.2010. Thus, it is clear that this is a specific direction that the Appellant has to give effect to the adjustment by 31.03.2010. The Appellant being a public body, will not retain any

amount which is unjustified and shall account for any surplus amount. The State Commission itself in its order dated 24.02.2010 in the Review Petition has observed that each time the financial accounts are trued up, the tariff may not be revised from a retrospective date. Since the Appellants audited accounts for the FY 2008-09 are now available, the State Commission may be directed to conduct the true up in respect of the FY 2008-09 to be done on the basis of the CAG's Report. Consequently any revenue surplus be adjusted while working out the ARR of the prospective year FY 2010-11.

- (I) In fact, the State Commission, while truing up for the FY 2007-08 has adopted the right approach of comparing the Appellant's expenditure as well as the revenue earned during the FY 2007-08. After considering the 2 heads, i.e. revenue and expenditure, the Learned State Commission in that order concluded

that it is not necessary to revise the tariff for the FY 2007-08 retrospectively. However, the State Commission while truing up in respect of the FY 2008-09 has wrongly considered the trued up expenditure as well as the ARR approved by the State Commission through the tariff order dated 30.09.2008. Therefore, this Tribunal may direct the State Commission to consider the audited data of Appellant's accounts for the FY 2008-09 and to true up the same in accordance with law.

12. In reply to the above submissions made by the Appellant, the learned counsel appearing for the Byrnihat Industries Association (R-2) has made the following submissions:

- (i) It is true that the truing up was to be done by the State Commission in pursuance of the order passed by the Tribunal by the order dated 09.02.2009 directing to exercise truing-up for the year 2007-08

only. However, the said order did not prohibit the State Commission to undertake truing up exercise in respect of FY 2008-09 also. Actually the proceedings were initiated by the State Commission in the month of July 2009 as per the Remand order dated 09.02.2009 passed in the Appeal filed by the R-2 herein challenging the tariff order in respect of FY 2008-09. During the said proceedings, the State Commission found that the provisional accounts with the actual data for the FY 2008-09 were very much available to enable the State Commission to re-determine the tariff. On that basis, the Appellant was directed by the State Commission to submit its report for truing up for both the years namely FY 2007-08 and FY 2008-09.

(ii) Even though the Appellant mentioned in his reply objecting to the request of the Respondent to true-up in respect of the FY 2008-09 also, the

Appellant mentioned in the said reply agreeing that it would provide the details for true-up exercise in respect of FY 2008-09 also, if so ordered. This reply was filed on 12.08.2009. In pursuance of the same, the State Commission on 21.08.2009 directed the Appellant to submit the report in respect of the FY 2008-09 as well. Accordingly, the Appellant submitted such report. As such, the Appellant did not raise any objection before the State Commission, while submitting the said report. In such circumstances, the State Commission has done the true up exercise in respect of both the years. There is nothing wrong in it.

- (iii) The Appeal proceedings before the Tribunal in Appeal No. 132 of 2008 filed by R-2 was against the tariff order in respect of the FY 2008-09. The order remitting the matter is for re-determination of the revenue requirement and tariff for the FY

2008-09. In the said order dated 09.02.2009, the Tribunal observed that it was noticed that the tariff for the FY 2008-09 has been finalized by the State Commission without subjecting the estimates claimed by the Electricity Board with prudent check and validation of data. It was in that background, the directions were given for trueing up for the FY 2007-08. The directions given by this Tribunal was to complete the true up exercise by 31.05.2009. The compilation of the accounts of FY 2008-09 was expected to take some more time beyond May 2009. Since the State Commission could not take up the matter before 31.05.2009, the State Commission had to consider the provisional accounts which were made available then for FY 2008-09. Therefore, the true up exercise was done by the State Commission for both the years. This is not wrong.

(iv) It is well settled that the truing up process is only comparing estimated figures at the beginning of the year with the actual figures at the end of the year. Since the actual data are available, the State Commission is required to undertake the truing up exercise. It is not necessary for the State Commission to wait for the audited accounts for which it may take a long time.

(v) The Appellant's contention that the State Commission ought not to have given retrospective adjustments in the tariff is misconceived. In the Appeal No. 132 of 2008 filed by the R-2, the challenge in the said appeal was against the tariff for the year 2008-09. The prayer in the Appeal was for re-determination of the tariff for the FY 2008-09. When the matter was remitted by the Tribunal to the State Commission with the direction to consider the grievance of the Appellant and to pass order in

accordance with law, the State Commission was required to consider the revenue requirement and determination of tariff for the FY 2008-09 also.

- (vi) According to the Appellant, the State Commission disallowed the prior period charges. The ground of challenge is that the State Commission is bound by the audited accounts of the Appellant. This contention is also misconceived. The audited account is only to verify whether the expenditure has been actually incurred or not. The auditor does not deal with the prudence of the expenditure. Whether the said expenditure is to be allowed or not is only after prudent check by the State Commission. The auditor will only verify and certify whether the expenditure of such accounts has been actually incurred or not. However, the State Commission is required to apply prudent check to verify whether the expenditure is to be allowed or not. In the present case, the prior

period charges are expenditure incurred by the Appellant during the year 2002-03. This was never claimed to be allowed in the past. In such circumstances, it is not open for the Appellant to claim such expenditure at the time of truing up especially when the said claim was not made at the time of tariff petition. So, claiming the same for the first time in the truing up process is wholly unjustified.

In addition to the above points, the learned counsel for Respondent 2 urged the other grounds also mentioned filed by it in IA No. 82/2010 seeking for the cross claim.

13. The Learned Counsel for the State Commission also argued in detail in justification of the impugned order.

14. The following questions have arisen for consideration in the light of rival contentions urged by the respective counsel for the parties as referred to above in the main Appeal.

- i) Whether in the proceedings initiated in terms of the order passed by this Tribunal dated 09.02.2009 in Appeal No. 132 of 2008 titled as *Byrinhat Industries Association vs. Meghalaya State Electricity Regulatory Commission and Another*, directing to take up the true up exercise in respect of the FY 2007-08, the Meghalaya State Commission should not have gone beyond the scope of the Remand to undertake truing up exercise of the Appellant's accounts for FY 2008-09 also?
- ii) Whether the State Commission was right in not following and adopting the financial statement, duly audited by the Comptroller & Auditor General in spite of the principle of truing up?
- iii) Whether the State Commission was right in disallowing the expenses relating to employees cost,

depreciation, income-tax, administrative expenditure and other expenses related to entire prior period charges as claimed by the Appellant in spite of AS-5 issued by the Council of the Institute of Chartered Accountants of India?

- iv) Whether the State Commission could pass the impugned order dated 10.09.2009 to give effect to the trued up tariff with retrospective effect from 01.10.2008?

15. We have heard the learned Counsel for the parties on these questions and have given our thoughtful consideration.

16. We will now discuss on each of the issues.

17. With reference to the first issue, it has been contended on behalf of the Appellant, that the State Commission has gone beyond the scope and remand order by having erroneously trued-up the financial accounts of the Appellant for FY 2008-09,

when the Remand Order dated 09.02.2009 passed by this Tribunal in Appeal No. 132/2008 directed the State Commission only with regard to truing-up of FY 2007-08. With regard to Remand order, the Hon'ble Supreme Court as well as various High Courts in various authorities cited by the learned counsel for Appellant have laid down the various principles to be followed by the lower court or lower authority while dealing with the issue of limited Remand. Those decisions are as follows:

1. *Mohan Lal vs. Anandibat (1971) 1 SCC 813*
2. *Paper Products Ltd. vs. CCE (2007) 7 SCC 352*
3. *Smt. Bidya Devi vs. Commissioner of Income Tax, Allahabad AIR 2004 Calcutta 63*
4. *K.P. Dwivedi vs. State of U.P. (2003) 12 SCC 572*
5. *Mr. Muneswar and Ors. vs. Smt. Jagat Mohini Des AIR (1952) Calcutta 368*
6. *Amrik Singh vs. Union of India (2001) 10 SCC 424*
7. *Union of India & Anr. Vs. Major Bhadur Singh (2006) 1 SCC 3670*
8. *Prakash Singh Badal & Anr. Vs. State of Punjab and Ors. (2007) SCC 1*

The principles laid down in those authorities are given below:-

- (i) *The Court below to which the matter is remanded by the Superior Court is bound to act within the scope of remand. It is not open to the Court below to do anything but to carry out the terms of the remand in letter and spirit.*
- (ii) *Ordinarily, the Superior Court can set aside the entire judgment of the Court below and remanded to the subordinate court to consider all the issues afresh. This is called ‘open Remand’. The subordinate court can decide on its own afresh on the available materials.*
- (iii) *The Superior Court can remand the matter on specific issues with a specific direction through a “Remand Order”. This is called*

‘Limited Remand Order’. In case of Limited Remand Order, the jurisdiction of the Court below is confined only to the extent for which it was remanded’.

18. Keeping these principles in mind, we can now refer to the specific directions in the Remand order issued by this Tribunal in Appeal No. 132 of 2008. The relevant paras of the directions are as follows:

“6.

7. *In view of the above, we remit the matter to the Commission with the direction to undertake truing-up exercise of financial year 2007-08 with the financial data ending March, 2008 and examine the submissions and contentions of the Appellant in accordance with law. The Commission shall provide the opportunity to Appellant for being heard along with the Affected Parties before arriving at the determination in the truing-up exercise. Truing-up*

exercise for financial year 2007-08 shall be undertaken by the Commission expeditiously so as to conclude it by end of March, 2009. On completion of the truing-up exercise the Commission shall act in accordance with law for giving effect to the same”.

19. The above direction would make it clear that the State Commission was asked to undertake truing-up exercise of FY 2007-08 alone with the financial data ending March, 2008 and to conclude it by the end of March, 2009. As such, this is ‘Limited Remand Order’. Admittedly, the State Commission carried out the exercise not only for FY 2007-08 but also for FY 2008-09. There is no dispute in the fact that when the Appellant filed its Report relating to the truing-up of the accounts for FY 2007-08, as directed by this Tribunal, it is R-2 who prayed the State Commission to take up truing-up both in respect of FY 2007-08 and FY 2008-09. The Appellant in his reply filed before the State Commission on 12.08.2009 objected

to the same, and requested the State Commission to confine itself to the truing-up exercise in respect of FY 2007-08 alone and that alone would be in conformity with the order of the Tribunal. As a matter of fact, the reply filed on 12.08.2009 before the State Commission would show that the Appellant (Electricity Board) specifically mentioned that the Appellant would not propose to reply to the truing-up exercise in respect of FY 2008-09 since the issue before the State Commission, as per the order of the Tribunal, is relating to the truing-up exercise for FY 2007-08 only. Even in the impugned order, the State Commission has referred to the said stand taken by the Appellant.

20. Despite this, the State Commission in the impugned order has trued-up the Appellant's accounts not only for FY 2007-08 but also for FY 2008-09. Admittedly, there is no reasoning given in the impugned order as to why the State Commission undertook truing-up exercise for FY 2008-09 as well. It is

settled law, as indicated above that when a matter is remanded or remitted by the superior court to the subordinate court or subordinate authority, with a limited direction, the scope of adjudication shall be limited to such direction alone and it is not open to such authority to do anything which is beyond the scope of the Remand.

21. However, the Learned Counsel appearing for the Respondent submitted that this is not a case of remand and this is only an order remitting the matter, directing for the true-up exercise for 2007-08 and the State Commission, being the authority to undertake the true-up exercise, it has resorted to the said exercise in respect of the next year also as there is no bar or restriction to do so either under the Act or under the order passed by the Tribunal. In the light of the said stand taken by the Learned Counsel for the Respondent-2, it would be appropriate to deal with this issue.

22. It is not disputed that the Remand Order remitting the matter to the State Commission was passed by this Tribunal on 09.02.2009 in the Appeal No. 132/08 filed by the Byrnihat Industries Association, Respondent-2 herein challenging the determination of the distribution tariff for the FY 2008-09. It cannot also be debated that the Tribunal, specifically mentioned in para 7 of the said order that the matter is remitted to the State Commission with the specific direction to undertake the truing up exercise in respect of the FY 2007-08 with the financial data ending March 2008. In other words, the said order did not direct or permit the State Commission to simultaneously undertake the truing-up exercise for the FY 2008-09.

23. In the proceedings in the Appeal No. 132/08 filed by the R-2, it was represented by the Board, the Appellant herein before the Tribunal that the financial data of the Board from 01.04.2007 to 31.03.2008 would be produced before the State Commission to true-up the financial for the FY 2007-08. Endorsing the said contention, the Tribunal had remitted the

matter back to the State Commission only for carrying out the truing-up of Appellant's financial for the FY 2007-08. Thus, the order of Remand is very clear. The order remitting the matter to the State Commission was only restricted to the truing-up for the FY 2007-08. In pursuance of the said order, the State Commission also directed the Appellant, namely the Board, to submit the report and the materials for exercising the truing-up in respect of FY 2007-08 in order to comply with the order passed by the Tribunal. Further, the State Commission itself has recorded in the impugned order that the Appellant had not made any submissions with regard to truing-up for the FY 2008-09 either in its reply dated 12.08.2009 or in the oral submissions made by the Appellant during hearings on 29.07.2009 and 26.08.2009. On the other hand, the Appellant raised his objection in its reply dated 12.08.2009 for truing up in respect of next year. When such being the case, there is no reason as to why the State Commission went ahead for truing up Appellant's financial not only for the FY 2007-08 but also for the FY 2008-09. In fact, there is no reason neither in the impugned

order nor in any interim order by the State Commission referring to the reply made by the Appellant for rejecting the objection of the Appellant for objecting truing-up in respect of the FY 2008-09 and for justifying as to why it undertook the truing-up exercise in respect of the FY 2008-09 as well.

24. It is a well settled principle of law as mentioned earlier that when a matter is remanded by the appellate forum to the lower court or the lower authority, with a limited direction, the said lower court or the lower authority shall restrict itself to the extent as prescribed in the order of “Limited Remand”. In other words, it is not open to the court below to do anything but to carry out the terms of the Remand remitting the matter in letter and spirit.

25. As a matter of fact, when the proceedings, in pursuance of the Remand order had started, the State Commission has specifically stated in the communication dated 06.07.2009 sent to the Appellant and in the order passed on 29.07.2009 that the

State Commission will take up the truing-up exercise in respect of the FY 2007-08 only. In other words, in the above communication/order there is no reference for the proposal about undertaking of the truing-up exercise in respect of the FY 2008-09. When the R-2 filed a petition requesting the State Commission to undertake the truing-up exercise in respect of the next year also, the specific objection was raised by the Board in its reply dated 12.08.2009 as indicated earlier and the following is the statement made by the Appellant in this regard.

“28. MeSEB craves liberty to not to reply to para 24 to 40 since it relates to the allegations of Objector relating to the FY 2008-09. It is reiterated that the issue before the Hon’ble Commission is relating to the truing-up exercise for FY 2007-08. The Objector has unnecessarily raised objections relating to FY 2008-09. If the Hon’ble Commission so desires, MeSEB shall provide the details as and when required.”

26. The above statement of the Appellant would indicate that the Appellant has taken a specific stand raising objection to the exercise of the truing-up in respect of FY 2008-09 as it is not in consonance with the order of Remand passed by the Tribunal. When such was the stand taken through the statement made by the Appellant before the State Commission objecting to the proposal to take up the truing-up exercise in respect of FY 2008-09, there is no justification for the State Commission to undertake the truing-up for the FY 2008-09 as well.

27. It is contended by the Learned Counsel for the R-2 that the Appellant itself has produced the documents/report before the State Commission to enable the State Commission to take up the truing-up exercise in respect of FY 2008-09. Mere submission of the records before the State Commission as directed by the State Commission, would not amount to withdrawal of its stand of objection taken before the State Commission that the State Commission should not take up the true-up exercise in respect of FY 2008-09.

28. According to the Appellant, even though such a specific stand was taken before the State Commission, the Appellant was constrained to submit the report for the next year in pursuance of the direction issued by the State Commission or otherwise the non-compliance of the said directions by the State Commission would result in adverse consequences against the Appellant.

29. In spite of the fact that the specific stand taken by the Appellant, objecting to the truing up exercise for the next year, there is no specific reasoning given by the State Commission in the impugned order dated 10.09.2009 either with regard to the rejection of the said objection raised by the Appellant or with regard to the circumstances, under which for undertaking truing-up of the Appellant's financial for the FY 2008-09 was taken up along with the truing-up exercise for the FY 2007-08.

30. It is contended by the Learned Counsel for the Respondent that the order passed by the Tribunal is not a Remand and it is

only an order remitting the matter for truing-up exercising the process and in the absence of any prohibition referred to in the said order by the Tribunal for exercising the truing-up process in respect of FY 2008-09, it cannot be said that the order passed by the State Commission is wrong. This contention, in our view, cannot be sustained for the following reasons.

31. Even though the distribution tariff order in respect of FY 2008-09 had been challenged by the R-2 in Appeal No. 132/2008, the Tribunal had not entered into the merits of the tariff order which was passed by the State Commission in respect of FY 2008-09 and on the other hand, it thought it fit to direct the State Commission to finish the truing up process in respect of the FY 2007-08 as, in their view, the true-up exercise must be completed in time in respect of FY 2007-08 before passing the tariff order relating to FY 2008-09. The Appellant also submitted before the Tribunal that the Audited Accounts were available for truing up for the year 2007-08. In that view only the Tribunal remitted the matter with direction through the

order of remand. Therefore, it cannot be contended that it was not a Remand order. In our view, the same is a limited Remand Order remitting the matter to the State Commission with a specific direction to State Commission to exercise and pass the order of truing-up process in respect of the year 2007-08. Under those circumstances, the State Commission ought to have complied with the directions of the Tribunal by deciding the issue relating to truing-up exercise in respect of FY 2007-08 only. It is proper for the State Commission to take up the true-up exercise for the FY 2008-09 separately since the materials to decide the issue in that case would be entirely different. Therefore, the order passed by the State Commission truing up in respect of FY 2008-09, clubbing with the truing-up exercise for FY 2007-08 is wrong and the same is liable to be set aside.

32. The second issue is relating to the State Commission not following and adopting the financial statement, duly audited by the Comptroller & Auditor General. On this issue, it has been argued by the Learned Counsel for the Appellant that the State

Commission should not have disallowed the revenue requirement and accounts without considering the audited accounts of the Electricity Board in the truing-up exercise. While elaborating this point, it is contended on behalf of the Appellant that the State Commission while truing-up the Appellant's financial accounts in respect of FY 2007-08 has disallowed an amount of Rs. 8.4 crores even though the same had been duly acknowledged and found legitimate in the accounts duly audited by the Comptroller & Auditor General (CAG) and wrongly included an amount of Rs. 17.26 crores as revenue gain by 2% reduction of AT&C losses which is audited by the Comptroller & Auditor General. It is also contended on behalf of the Appellant that even though the total amount which had been acknowledged and audited by the CAG is Rs. 21.96 crores, the State Commission has allowed only Rs. 13.42 crores. In doing so, it is argued that the State Commission has wrongly classified the net prior period charges into 2 categories namely "controllable charges" and "uncontrollable charges". This contention, in our view, is not

tenable. The audited account is only to verify as to whether the expenditure has been actually incurred or not. The auditor does not deal with the prudence of the expenditure. The question whether the said expenditure is to be allowed or not has to be considered only by the State Commission after prudence check. The auditor will only verify and certify whether the expenditure on such account had been actually incurred or not. On the other hand, the State Commission is bound to apply its mind to make a prudence check in order to verify whether the expenditure is to be allowed or not and the State Commission is not bound by the opinion of the auditors as laid down by the Hon'ble Supreme Court in AIR 2002 SC 358 = AIR 2002 (8) SCC 70.

33. The State Commission has disallowed certain expenditure in the ARR of the Appellant which are controllable. However, 6 uncontrollable expenditures have been allowed by the State Commission despite the failure on the part of the Appellant to claim the revenue requirement at the appropriate time. The claim which were rejected were only of controllable

expenditure. Since the Appellant have failed in its duty by not controlling the same, the State Commission has rightly disallowed the same as the burden cannot be passed on to the consumers. Segregating the prior period charges into controllable expenditure and uncontrollable expenditure is a well-recognized principle. This has been recognized in the National Tariff Policy. It is imperative for the State Commission to be guided by the National Electricity Policy and National Tariff Policy as mandated under section 61 of the Electricity Act, 2003. In this context, it would be proper to refer to Section 5.3 (h)(iii) of the National Tariff Policy. The same is as follows:

“Uncontrollable cost should be recovered speedily to ensure that future consumers are not burdened with past cost. Uncontrollable cost would include fuel cost, cost on account of inflation, tax and cesses, variation in power purchase unit costs including on account of hydro thermal mix in cases of adverse natural events”.

34. It is noticed that the prior period charges claimed by the Appellant are expenditure incurred by it during the FY 2002-03. This was never claimed in the past. Admittedly, the same was not claimed at the time of tariff proceedings also. In such circumstances, it is not open for the Appellant to claim such expenditure at the time of truing-up exercise for the year 2007-08. It is settled law that the stage of truing up as mentioned earlier is not to reopen the basis of redetermination of tariff and it is only comparing the estimated figures at the beginning of the year with the actual figures at the end of the year. It is not open to the Appellant to raise such an issue for the first time after many years. These principles have been laid down by the Hon'ble Supreme Court in 2009(6) SCC 235 in *UP Power Corporation Limited vs. NTPC* and this Tribunal in 2007 ELR APTEL 193 in *North Delhi Power Limited vs. DERC*. Therefore, the contention on this issue urged by the Learned Counsel for the Appellant is misconceived and consequently the

same is rejected. Consequently, the finding on this issue by the State Commission is correct and so the same is upheld.

35. The next issue is relating to the retrospective effect given to the revised tariff. According to the Appellant the State Commission ought not to have given retrospective adjustment in the tariff as this finding by the State Commission relating to the retrospective effect is neither tenable in law nor in fact. In this context, it is noteworthy to point out that the Appellant caters to a consumer base of more than 2 lakhs consumers. The Appellant is functioning on manual accounting system. In addition to the above, the Appellant is in the process of corporatization and unbundling. In view of the above, it is claimed by the Appellant that it is extremely difficult to give effect to all the directions relating to retrospective effect.

36. The perusal of the impugned order would reveal that the State Commission directed the Appellant to take effective steps to adjust the amount collected during the tariff period between

01.10.2008 and 31.03.2010. Thus, there is a specific direction to the effect that the Appellant has to give effect to the adjustment by 31.03.2010. The Appellant being a public body, will not retain any amount which is unjustified and shall account for any surplus amount.

37. In fact, while truing-up for FY 2007-08, the State Commission has adopted the right approach of comparing the Appellant's expenditure as well as the revenue earned during the FY 2007-08 after considering the two heads i.e. revenue and expenditure and concluded that it is not necessary to revise the tariff for FY 2007-08 retrospectively. Having held so, the State Commission, while truing-up in respect of 2008-09, has wrongly considered the trued-up expenditure as well as the ARR by giving retrospective effect. This is not a correct approach.

38. At this stage, one other factor has to be noticed. As against this impugned order dated 10.9.2009 in respect of the retrospective effect, the Appellant has filed this appeal. Actually

this Appeal has been filed as early as on 23.10.2009 and the same has been numbered as Appeal No. 37/10. At that stage R-2 filed a Review Petition No. RP-1/10 on 10.01.2010 seeking for suitable directions to the Appellant for implementation of the impugned order in respect of the FY 2008-09. After hearing the parties, this Petition for Review has been disposed of by the order dated 24.2.2010. In the said order, the State Commission while referring to the contention of the Appellant urged before the State Commission with regard to retrospective effect passed the following order:

“Noting the contention of the Appellant that giving retrospective effect to true up is not possible, direct that the ARR for the Accounting Year 2008-09 be finally trued up on the audited statement of accounts as duly audited by the CAG, as soon as it is received from the Appellant. Consequently, the revenue deficit or revenue surplus in the trued up ARR for the Financial Year 2008-09 would be adjusted while

working out and fixing the ARR of the perspective year i.e. Financial Year 2010-11.”

39. In this context, it is also worthwhile to note the other observations made by the State Commission in the Review Petition No. 1/10 dated 24.02.2010.

“11 (b). The Commission has noted the contention of the Respondent in para 9(i) of their affidavit in response dated 22.02.2010 that inter alia, the fixation of tariff depends upon the estimated ARR after truing up the Accounts of preceding years. Truing up exercise has to be necessarily taken up against each ARR approved by the Commission wherein any excess or shortfall of trued ARR, over the approved ARR is adjusted in the subsequent tariff order. However, for each time the accounts are trued up, the tariff may not be revised with retrospective effect. This is because the consumer base of distribution utilities in general is of the order of 10 to

50 lakh consumers and retrospective revision of bills for such a large number of consumers, every time the accounts are trued up is not possible. Retrospective revision of bills will also entail revision of all the monthly commercial data and correction of the Statement of Accounts 2008-09". The aforesaid contention has merit. Therefore, let the ARR of the accounting year 2008-09 be finally trued up on the basis of the Audited Statement of Accounts for that year, and the C&AG's Audited Report thereon, as soon as it is received from the Respondent. Consequently, Revenue deficit or Revenue surplus in the trued-up ARR for the accounting year 2008-09, will be adjusted while working out and fixing the ARR of the perspective year 2010-11."

40. The above observation would make it clear that the State Commission has taken a view that for each time the financial accounts are trued up, the tariff may not be revised with

retrospective effect. To carry out retrospective revision of vast base of consumer every time the financial accounts are trued up is not possible. The Revenue deficit or Revenue surplus in the trued up in the ARR ought to be adjusted in the prospective year 2010-11.

41. In this context, the Appellant has prayed that since the Appellant's audited accounts (duly audited by the Comptroller & Accountant General) for the FY 2008-09 are now available, the State Commission may be directed to true up the Appellant's accounts on the basis of C&AG's report and consequently any revenue surplus or deficit be adjusted while fixing the ARR of the prospective year, i.e. 2010-11. It is also brought to our notice that the audited accounts, duly audited by the C&AG of the Appellant for the FY 2008-09 have already been submitted on 28.04.2010 before the State Commission and, therefore, this Tribunal may direct the State Commission to consider the audited data of the Appellant's accounts for the FY 2008-09.

42. In the light of this prayer, it would be appropriate to refer to the judgment of this Tribunal in Appeal No. 100/07 (Karnataka Power Transmission Corporation Limited V/s Karnataka Electricity Regulatory Commission and Others. The relevant observation with reference to retrospective effect has been given in paragraph 28, which is reproduced below:-

“28. We have heard contentions of the rival parties. Basic issue that has to be decided is: whether or not the Commission was correct in carrying out the truing up of revenue requirements and revenues of KPTCL for the tariff period 2000-01 to 2005-06. Invariably, the projections at the beginning of the year and actual expenditure and revenue received differ due to one reason or the other. Therefore, truing up is necessary. Truing up can be taken up in two stages: Once when the provisional financial results for the year are compiled and subsequently after the audited accounts are available. The impact of truing up exercises must be reflected in the tariff calculations for

the following year. As an example; truing up for the year 2006-07 has to be completed during 2007-08 and the impact thereof has to be taken into account for tariff calculations for the year 2007-08 or/and 2008-09 depending upon the time when truing up is taken up. If any surplus revenue has been realized during the year 2006-07, it must be adjusted as available amount in the Annual Revenue Requirement for the year 2007-08 or/and 2008-09. It is not desirable to delay the truing up exercise for several years and then spring a surprise for the licensee and the consumers by giving effect to the truing up for the past several years. Having said that, truing up, per se, cannot be faulted, and, therefore, we do not want to interfere with the decision of the Commission in this regard to cleans up accounts, though belatedly, of the past. It is made clear that truing up stage is not an opportunity for the Commission to rethink de novo on the basic principles, premises and issues involved in the initial projections of revenue requirements of the licensee”.

43. It is laid down in the said judgment that the impact of truing-up exercises must be reflected in the tariff calculations for the following year and not to be given retrospective effect. If any surplus/deficit has been realised during the financial year, it must be adjusted in the ARR of the utility in subsequent years. The aforesaid principle of provisional truing-up leads to the conclusion that the State Commission cannot give any retrospective downward revision to the Appellant's tariff for the FY 2008-09 since any surplus/deficit ought to have been adjusted in the ARR of the Appellant in the subsequent year.

44. Therefore, in view of the above settled law and factual position, the State Commission is directed to take into consideration above aspects while the process of truing-up exercise is taken up in respect of the FY 2008-09.

45. Let us now come to the cross claim of the Association, R-2 made in IA No. 82 of 2010. In this application, the R-2 urged

that the State Commission did not give due adjustment and credit to the consumers of the State of Meghalaya for the surplus profit earned by the Appellant in the FY 2007-08. According to R-2, even the State Commission acknowledged the fact that the Appellant had earned surplus of Rs. 63.69 crores for the FY 2007-08 which was over and above the revenue requirement as determined by the State Commission and that even then the State Commission has failed to pass a consequential order for the surplus earned by the Appellant to be adjusted in the tariff of the consumers.

46. According to the Appellant, the Appellant has not earned a surplus of Rs. 63.69 crores during FY 2007-08 but in fact it has incurred a deficit of Rs. 26.95 crores and, therefore, the State Commission cannot allow any amount to be passed on to the consumers in order to give any due adjustment as claimed by the Respondent.

47. We have carefully considered this issue in the light of the submissions made on behalf of the Appellant and the State Commission. As per the calculations of the R-2, the revenue earned by the Appellant in the year 2007-08 is Rs. 383.34 crores. As per the calculations of the R-2 in the trued ARR as decided by the State Commission is Rs. 319.65 crores. Thus, the difference of the revenue earned and the ARR is Rs. 63.69 crores. According to R-2, the State Commission has come to a finding that there is excess revenue of Rs. 63.69 crores but has not given any adjustment in favour of the consumer for the above surplus amount. The admitted surplus of Rs. 63.69 crores as found by the State Commission ought to be passed on to the consumers with carrying cost.

48. According to the Appellant Board, the total revenue earned by the Board for the financial year 2007-08 from sale of power was Rs. 318.15 crores which has also been confirmed by the audited statement of accounts, but the Commission has wrongly added an amount of Rs. 65.19 crores qua subsidising and grants

and other income in concluding that the total revenue of the Appellant for FY 2007-08 was Rs. 383.34 crores since the same had already been deducted by the Commission while truing up the ARR of the Appellant for the FY 2007-08. As such the Appellant has not earned any surplus but has suffered a deficit of Rs. 26.95 crores (i.e. Rs. 345.10 Cr. as per audited account - 318.15).

49. We have examined the issue. In the order dated 10.9.2009 the Commission in para 21.1.7 has indicated revenue from sale of power during 2007-08 as 318.15 Cr. and further noted that the Board has revenue of Rs. 32.80 crores as subsidies and grants and Rs. 32.39 crores as other income. Adding subsidies and grants and other income of Rs. 65.19 crores, the Commission has held that the total income during the year 2007-08 was Rs. 383.34 crores. On the other hand, the Commission while working out the ARR has also deducted the income on account of subsidies and grants and other income totalling to Rs. 65.19 crores to arrive at a figure of net ARR of

Rs. 319.65 crores. Thus the other income and subsidies and grants totalling to Rs. 65.19 crores has been accounted for twice. When other income and subsidies and grants totalling to Rs. 65.19 crores has been deducted from the ARR, the same cannot be added to the income. Against the net ARR of Rs. 319.65 crores approved by the Commission in the true-up for 2007-08, the total income is Rs. 318.15 crores. Thus, there is actual deficit of Rs. 1.5 crores on the true up of FY 2007-08 taking into the true-up ARR approved by the Commission in the impugned order and there is no surplus as claimed by Respondent-2.

50. So, in the light of the above fact, the contention of the Respondent 2 that the Appellant has earned a surplus of Rs. 63.69 crores is not correct. On the other hand, the Appellant has a deficit and in fact, the State Commission has to adjust the deficit and to pass the consequent orders in future years. Therefore, there is no merit in the cross Appeal. Accordingly the claim made in the Cross Appeal is rejected

Summary of our findings:

51. **(i) The order passed by this Tribunal dated 09.02.2009 is the order of Remand with a limited direction to the State Commission to take the true up exercise only in regard to FY 2007-08. In our view this is a limited Remand order remitting the matter to state Commission with a specific direction to the State Commission to pass the order by truing up process in respect of FY 2007-08. Therefore, the State Commission ought to have complied with these directions by deciding the issue relating to truing up exercise in respect of FY 2007-08 alone. It is open to the State Commission to take up the truing up exercise in respect of FY 2008-09 separately on the basis of materials placed by the parties and decide the**

issue. Therefore, the order passed by the State Commission clubbing truing up the FY 2008-09 is wrong and is liable to be set aside.

(ii) The second issue relates to the State Commission not adopting the financial statement of audited accounts by the Comptroller and Auditor General of India. This contention is untenable. The audited accounts is followed specifically as to whether the expenditure has been actually incurred or not. The audited accounts do not deal with the prudence of the expenditure. The question whether expenditure is allowed or not has to be considered only by the State Commission while truing up. The Auditor will verify whether the expenditure has been actually incurred or not. On the other hand the State Commission is bound to apply its mind to make a prudence check whether the

expenditure is to be allowed or not. Therefore, the State Commission is not bound by the certificate of the Auditors.

(iii) The State Commission has correctly disallowed certain expenditure, ARR of the Appellant which may be rejected only on controllable expenditure. Since the Appellant has failed in its duty by not controlling the same and so the State Commission cannot pass the burden on to the consumers. Segregating the prior period charges into controllable expenditure and un-controllable expenditure is well recognised principle. Further, the prior period charges claimed by the Appellant are expenditure incurred by it during FY 2002-03. This was never claimed in the past. It is a settled law that the stage of truing up is not to reopen the basis of re-

determination of tariff and it is only comparing the estimated figures at the beginning of the year with the actual figure at the end of the FY. It is not open to the Appellant to raise such an issue for the first time after many years.

(iv) The State Commission ought not to have given retrospective adjustment in the tariff as this finding relating to the retrospective effect is neither tenable in law nor in fact. While going through the order passed by the Commission in the Review Petition No. 1 of 2010 dated 10.01.2010, the State Commission itself has taken the view that for each time the accounts are trued up, the tariff may not be revised with retrospective effect. The impact of trued up exercise must be in the tariff calculation for the following year and the same shall not be given retrospective effect.

The surplus/deficit in revenue in the trued up ARR has to be adjusted in the ARR during the subsequent years. Therefore, the State Commission is directed to consider the said issue on the basis of the Appellant account duly audited by the C&AG for the FY 2008-09 which is now available and adjust in the ARR of the Appellant in the subsequent year.

(v) The contention of the Respondent-2 that the Appellant has earned surplus money of Rs. 63.69 crores is not correct. On the other hand the Appellant has deficit of Rs. 26.95 crores during 2007-08 as per the audited accounts of the Appellant and about Rs. 1.5 crores as per the trued up ARR decided by the Commission in the impugned order. In fact the State Commission has to adjust this deficit and pass the consequent orders in future years. Accordingly the claim made by the

Respondent 2 in the cross para in IA No. 82 of 2010 is rejected.

52. In view of our above findings, the impugned order is set aside to the extent as indicated above. Consequently, we direct the State Commission to consider taking up the true-up process separately in respect of the FY 2008-09 taking into account the observations made by this Tribunal with reference to the aspects contained therein and pass appropriate orders.

53. The Appeal is partly allowed. No costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NOT REPORTABLE

Dated: 10th August, 2010

IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. _____ OF 2025**

(Civil Appeal under Section 125 of the Electricity Act, 2003 against the Common Impugned Judgment and Final Order dated 28.08.2025 passed by the Appellate Tribunal for Electricity at New Delhi in (Appeal) APL No. 256 of 2024 and (Appeal) APL No. 19 of 2025)

IN THE MATTER OF:**Southern Power Distribution Company of****Telangana Limited & Anr****....Appellants**

Versus

Singareni Collieries Company Limited & Anr**...Respondents****WITH**

I.A. NO. OF 2025: APPLICATION FOR PERMISSION TO
FILE ADDITIONAL DOCUMENTS.

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IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. _____ OF 2025**

(Civil Appeal under Section 125 of the Electricity Act, 2003 against the Common Impugned Judgment and Final Order dated 28.08.2025 passed by the Appellate Tribunal for Electricity at New Delhi in APL No. 256 of 2024 and APL No. 19 of 2025)

IN THE MATTER OF:**Southern Power Distribution Company of****Telangana Limited & Anr****....Appellants**

Versus

Singareni Collieries Company Limited & Anr**...Respondents****OFFICE REPORT ON LIMITATION**

1. The Petition is within time.
2. The Petition is barred by time and there is delay of days in filing the same against Order dated 28.8.2025 and petition for condonation of days delay has been filed.
3. There is delay of days in re-filing the petition and petition for condonation of days delay in re-filing has been filed.

Dated: 24.10.2025**BRANCH OFFICER**

SEC- XVII

LISTING PROFORMA

The case pertains to [Please tick/check the correct box]:

1. Central Act:
 Section :
 Central Rule: N/A
 Rule No[s] : N/A
 State Act :
 Section :
 State Rule: N/A
 Rule No[s]: N/A
 Impugned Interim Order: 28.8.2025
 Impugned Final Order/Decree: N/A
 High Court:
 Names of Judges: Justice Ramesh Ranganathan, Ms. Seema Gupta
 Tribunal/Authority: Appellate Tribunal for Electricity
- 1 Name of Matter: Civil Criminal
- 2 [a] Petitioner: **Southern Power Distribution Company of
Telangana Limited & Anr**
- 3 [a] Respondent: **Singareni Collieries Company Limited**
4. [a] Main category classification: 1801
[b] Sub-classification :
5. Not to be listed before : NA
6. (a) Similar disposed of matter with citation, if any, and case details: No
(b) Similar pending matter with case details: NO SIMILAR PENDING MATTERS
7. **Criminal Matters:**
[a] Whether Accused/Convict has surrendered: Yes No
[b] FIR No. : NA

[C] Police Station : NA

[d] Sentence Awarded: NA;

[e] Period of Sentence Undergone including period of detention

Custody undergone: NA

[f] Whether any earlier case between the same parties is filed: NO

[g] Particulars of the FIR and Case: NA

[h] Whether any bail application was preferred earlier and decision thereupon: NA

8. **Land Acquisition Matters:**

[a] Date of Section 4 Notification: N/A

[b] Date of Section 6 Notification: N/A

[c] Date of Section 17 Notification: N/A

9. **Tax Matters:** State the Tax Effect: N/A

10. **Special Category** [First Petitioner/Appellant only]: N/A

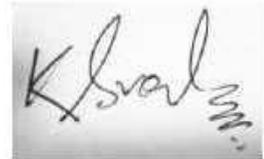
Senior Citizen SC/ST Woman/Child Disabled

Legal Aid Case In Custody

11. **Vehicle Number** [in case of Motor Accident Claim Matters]: N/A

12. Whether there was/is litigation on the same point of law, if yes, details thereof:

Date: 24.10.2025



Sravan Kumar Karanam

Advocate for the Appellants

CC No. 3132

B

SYNOPSIS

The present Civil Appeal is being preferred by the Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited (*hereinafter*, “**Telangana DISCOMs**”) and is borne out of the common judgment and final order dated 28.08.2025 rendered by the Appellate Tribunal for Electricity at New Delhi (*hereinafter*, “**Appellate Tribunal**”) in APL No. 256 of 2024 and APL No. 19 of 2025 (*hereinafter*, “**Impugned Order**”).

Vide the Impugned Order, the Appellate Tribunal has, *inter alia*, erroneously permitted Singareni Collieries Company Limited, i.e., a coal mining company, (*i.e.* Respondent No.1 and, *hereinafter* “**SCCL**”) to charge from the Telangana DISCOMs a premium over and above the base coal price notwithstanding that:

- (a) The premium has been determined by SCCL arbitrarily and without the knowledge of the Appellants;
- (b) The premium is in contravention of the Power Purchase Agreement (PPA) between the parties;
- (c) The premium is in contravention of the Telangana State Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2019; **and**
- (d) SCCL, which had failed to secure the operationalization of the coal mine and obtained multiple extensions for bridge linkage, could not have been allowed to take advantage of its own wrongs by passing on undue and unfair financial liability on the DISCOMs.

In the Impugned Order, the Appellate Tribunal has held that:

- (a) SCCL is authorized to fix the price for coal, including premium, under *bridge linkage* as a general practice ***without*** indicating how the said Respondent enjoys such power;
- (b) Regulation 21.8 of the Telangana Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2021 which defines “landed cost of fuel” includes premium which the coal supplier may charge over and above its base price solely on account of usage of the word “include” ***without*** a complete and comprehensive appreciation of the provision and providing any substantiation for enlarging the meaning of landed cost of fuel; ***and***
- (c) The State Commission does not have any jurisdiction to fix the price of coal and/or deny the premium which is sought to be charged by the coal supplier as part of coal price ***without*** explaining how the Commission is divested of all of its regulatory powers while implementing its own regulations.

Since the aforesaid findings are in violation of (1) statutory regulations; (2) foundational commercial contract i.e. PPA; ***and*** (3) principles of justice, they are unsustainable and liable to be set-aside.

Succinctly, the dispute between the coal company/supplier i.e. SCCL and the DISCOMs has taken shape through the following events:

The Appellants entered into a PPA with the *Singareni Thermal Power Plant (STPP)*, i.e. a wholly owned and controlled entity of SCCL,

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on 18.01.2016 for the sale and purchase of 2x600MW capacity from STPP. Following the execution of this PPA, the NAINI coal block was allocated for the supply of coal to the STPP.

Since the operationalization of the allotted coal block was anticipated to be by the year 2020 only, in order to fill the gap of coal requirement, a *bridge linkage* between the STPP (generating company) and SCCL (coal mining company/supplier) was approved by the Ministry of Coal for the period 2015-2018.

In pursuance of the very said linkage, SCCL and STPP entered into a memorandum of understanding (**MoU**) whereunder the price for different grades of coal had been ascertained. Pertinently, the Appellants were neither parties nor privy to such MoU. Moreover, this MoU was not a document available in public domain. The contents thereof were thus unknown to the Appellants.

Although the end-date for the *bridge linkage* had been fixed for 2018, SCCL sought multiple bridge linkage extensions on account of the delayed operationalization of the NAINI block. That being the case, SCCL and STPP entered into a supplementary MoU on 06.04.2018 modifying the price structure for FY 2018-2019 by creating two new slabs, namely, bridge linkage and non-bridge linkage. That this bifurcation was followed by other MoUs and supplementary MoUs revising the pricing guidelines and percentage of premiums which were arbitrary and a direct result of the delay in commissioning of the allocated coal block – NAINI.

Aggrieved by two such MoUs and imposition of premiums thereunder from FY 2021-2022, the Appellants filed O.P. No. 13 of 2023 before the State Commission contending violation of the Telangana

Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations and the PPA which provides as under:

Article 4.3. Variable Charges: For any billing month, the variable charges shall be determined as per TSERC Regulation.

The State Commission disposed of O.P. No. 13 of 2023 in favor of the Appellants by holding as follows:

25...This notification by the respondent through the MoU has triggered the present petition. By this notification, the respondent had imposed premium on the coal price under the bridge linkage and non-bridge linkage supply... As seen from the above, the respondent is having authority to fix the coal price, but it cannot be said that it has also the authority to fix the premium thereof. Thus, the respondent could not have imposed premium of 20% on the original quantum of coal supply and 30% on the quantum beyond the agreed quantity of 75%. It is strange that the respondent being a partly a State Government entity would undertake fleecing of another State Government undertaking in the name of price fixation for the coal supply. The Commission is in agreement with the contention of the petitioners that the respondent is seeking to get itself unjustly enriched in the name of price fixation of the coal supply.

...

27...The respondent did not pay any interest in establishing the captive coal mine expeditiously and went before the SLC (LT) seeking extension of time repeatedly. This attitude of the respondent smacks of ulterior intention to continue the bridge

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linkage of coal obtained pending establishment of the captive coal mine, which was initially for three years and now continued up to March 2024...Thus, in the name of continuing the power project which has achieved COD in FY 2016-17, the respondent is seeking to continue bridge linkage of coal whereby it gets power to determine the coal price according to its whims and fancies and burdening the end consumer. This Commission would invariably interfere with the actions of the respondent to safeguard the interest of all the stakeholders and more particularly the consumers, who will bear the variable cost paid by the petitioners for supply energy upon procurement from the respondent's generating unit, which includes price of coal. On this count also, the petitioners have a case and should succeed.

Despite these categorical findings, the State Commission, without any justification or substantiation, proceeded to take a contradictory stance while passing the order dated 28.06.2024 in O.P. No. 4 of 2024 which had been filed by SCCL for multi-year tariff determination and true-up for FY 2022-2023 considering the **coal price including the premium/ bridge linkage coal price instead of the** notified base coal price. A review petition filed by the Appellants against this order was dismissed by the state commission.

The Appellate Tribunal has now affirmed this order *vide* the Impugned Order (by party allowing APL No. 19 of 2025). Similarly, *vide* the Impugned Order, the Appellate Tribunal has been pleased to set-aside the order in O.P. No. 13 of 2023 and allow APL No. 256 of 2024 of SCCL holding that:

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80... SCCL has been authorized to fix price of coal under Bridge linkage, and since the definition of landed cost of coal is enumerative in TSERC Regulations 2019, it therefore includes the total price charged by coal company to the generator, and SCCL has not arbitrarily fixed high price for its own STPP in supplying coal under Bridge Linkage as it seems to have charged same premium over price of coal, to other generators under Bridge Linkage.

Apropos to such finding, it is crucial to reproduce **Regulation 28.1** which is as under:

21.8. The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail / road or any other means (all these parameters to be shown separately), and, for the purpose of computation of energy charge, and in case of coal shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal dispatched by the coal supply company during the month as notified by the Central Electricity Regulatory Commission, for respective Year unless specifically approved by the Commission; Provided that any refund of taxes and duties along with any amount received on account of penalties from fuel supplier shall be adjusted in the fuel cost

A bare reading of the above provision makes the following clear:

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- (a) The *landed cost of fuel* – shall i.e. mandatorily include the price of fuel depending on its qualitative nature.
- (b) That the price of fuel shall also include the royalty, taxes, duties, charges on transportation which may be incurred.
- (c) While computing *energy charge*, the landed cost of fuel shall also be arrived at by including the prescribed percentage of normative transit and handling losses.

Thus, having deemed the definition of the landed cost of fuel as “enumerative” solely due to the presence of the words “include” and “inclusive”, the Appellate Tribunal has misinterpreted and erroneously added words to an otherwise unambiguous provision.

Given that such observations and findings, among others, of the Appellate Tribunal are:

- (a) *ex-facie* erroneous;
- (b) contrary to the statutory regulations and PPA;
- (c) reward SCCL despite its failure to operationalize NAINI coal block since 2015 (which would have resulted in different price fixation); **and**
- (d) will have far-reaching financial implications for the DISCOMs and consumers alike (to whom the premiums will be passed through),

Interdiction of the Impugned Order is warranted by this Hon’ble Court.

Hence, the present Civil Appeal.

LIST OF DATES

| | |
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| 01.01.2000 | The Ministry of Coal issued the Colliery Control Order, 2000 whereunder the price-fixation function of the Government of India vis-à-vis coal was removed. |
| 26.12.2006 | Coal was omitted from the list of essential commodities <i>vide</i> the Essential Commodities (Amendment) Act, 2006. |
| 18.10.2007 | The Government of India approved the New Coal Distribution Policy in supersession of the existing coal distribution policy for core and non-core sector and other instructions issued by the government in this regard from time to time whereby, <i>inter alia</i> , the linkage system was sought to be replaced with bilateral commercial agreements in the nature of Fuel Sale Agreements in the interest of transparency. |
| 18.01.2016 | The Appellants executed a PPA with the Singareni Thermal Power Plant (STPP) i.e. a wholly owned and controlled entity of SCCL/Sinagreni Collieries Company Limited for the supply of 2 x 600 MW capacity. |
| 03.02.2016 | SCCL filed O.P. No. 9 of 2016 before the Telangana Electricity Regulatory Commission (State Commission) for the approval of the STPP's capital cost and generation tariff. |

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| 08.02.2016 | The Ministry of Coal notified the Bridge Linkage Policy <i>vide</i> an office memorandum with the object of bridging the gap between the requirement of coal for a specified end use plant (such as the STPP) and the start of production from the linked allotted coal mine/block. As per the said policy, it was the Standing Linkage Committee of the Ministry of Coal which was responsible for approving the bridge linkage subject to an application being made to such effect by the end-use plant (such as the STPP). |
| 18.03.2016 | The Standing Linkage Committee approved the bridge linkage application submitted by the STPP. |
| 30.08.2016 | The Ministry of Coal issued a letter to SCCL providing details of the approved bridge linkage quantification. |
| 25.09.2016 | Unit 1 of the STPP achieved its commercial operation date. |
| 02.12.2016 | Unit 2 of the STPP achieved its commercial operation date. |
| 19.06.2017 | The TG ERC /Telangana Electricity Regulatory Commission disposed of O.P. No. 9 of 2016 approving the capital cost and generation tariff for STPP. |
| 01.11.2017 | SCCL executed a Memorandum of Understanding (MoU) with STPP observing that the coal was being supplied to STPP by the 1 st Respondent as part of the mandate to sell 10% of production under |

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| | e-auction as per the applicable New Coal Distribution Policy without making any reference to “bridge linkage”. |
| 06.04.2018 | SCCL and STPP executed a supplementary MoU modifying the price structure into two new slabs, namely, bridge linkage and non-bridge linkage. |
| 10.04.2018 | Bridge linkage extension was provided to SCCL for a period of 5 years from 2018-2021 and 2021-2023 on tapering basis. |
| 04.01.2019 | The State Commission notified the Telangana State Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2019. |
| 30.03.2020 | SCCL and STPP entered into a second MoU with effect from 01.04.2020 to 31.03.2021 whereunder the pricing of coal was revised to provide that supply of 75% of the agreed quantity of coal would be at notified basic price of coal along with 20% over the notified basic price. |
| 12.11.2020 | SCCL and STPP entered into a supplementary MoU again revising the price for coal with effect from 01.06.2020 till 31.03.2021. |
| 16.04.2021 | A third MoU was entered into between SCCL and STPP revising the price of coal with effect from 01.04.2021 to 31.03.2024. |
| 28.03.2022 | A supplementary MoU following the third MoU was entered into and which was to take effect from 01.04.2022 to 31.03.2023. |

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| 21.11.2022 | OP No. 8 of 2021 filed by SCCL following the Appellants' objection to an invoice pertaining to FY 2018-2019 claiming 20% premium over and above the notified price of coal was disposed by the State Commission. |
| 21.02.2023 | SCCL obtained another bridge linkage extension for a period of 1 year i.e. 2023-2024 on tapering basis. |
| 29.03.2023 | A supplementary MoU was entered into by the STPP and Respondent No.1 revising the coal price with effect from 01.04.2023 to 31.03.2024. |
| | The Appellants filed O.P. No. 13 of 2023 impugning the premium pricing of coal determined under MoU dated 16.04.2021 and supplementary MoU dated 28.03.2022. |
| | SCCL filed O.P. No. 4 of 2024 seeking approval of the multi-year tariff for the control period FY 2024-2025 to 2028-2029 and true-up for FY 2022-2023. |
| 28.02.2024 | SCCL obtained another bridge linkage extension for a period of 1 year from 2024-2025 on tapering basis. |
| 01.04.2024 | SCCL's application seeking a clarification of the State Commission's order in O.P. No. 8 of 2021 i.e. I.A. No. 4 of 2023 in O.P. No. 8 of 2021 was disposed of by the State Commission holding that SCCL had an alternative remedy under Section 111 |

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| | of the Electricity Act, 2003 before the Appellate Tribunal. |
| 01.04.2024 | The State Commission was pleased to dispose of O.P. No. 13 of 2023 in favor of the Appellants effectively holding that the imposition of premium over and above the notified price of the coal by SCCL was arbitrary and in violation of the subject PPA and governing regulations of 2019. |
| May, 2024 | SCCL filed APL No. 256 of 2024 against the order rendered by the State Commission in O.P. No. 13 of 2023 before the Appellate Tribunal for Electricity at New Delhi (Appellate Tribunal). |
| 22.05.2024 | An amended PPA was executed between STPP and the Appellants. |
| 28.06.2024 | The State Commission disposed of O.P. No. 4 of 2024 approving energy charge rate and fixed charges taking into consideration the premium coal price instead of the notified basic price of coal contrary to its decision in O.P. No. 13 of 2023. |
| 30.07.2024 | The Appellate Tribunal disposed of DFR No. 252 of 2024 against the order of the State Commission in I.A. No. 4 of 2023 in O.P. No. 8 of 2021 by remanding the matter back to the State Commission. |
| 28.10.2024 | R.P.(SR) No. 53 of 2024 in O.P. No. 4 of 2024 i.e. review petition filed by the Appellants before the State Commission on account of the error apparent on the face of the record was disposed of by the |

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| | State Commission. While the State Commission acknowledged and admitted the contradiction in its own judgments (in O.P. No. 13 of 2023 and O.P. No. 4 of 2024) it directed the review petitioners i.e. the Appellants to “ <i>act in a manner whereby they have to give effect to both the orders and implement payment mechanism over coal price in a way which is beneficial to them.</i> ” |
| 18.11.2024 | The Appellants filed APL No. 19 of 2025 before the Appellate Tribunal impugning the order passed by the State Commission in O.P. No. 4 of 2024. |
| 27.06.2025 | SCCL sought bridge linkage for another 1 year i.e. 2025-2026 on tapering basis. |
| 02.07.2025 | Common Written submissions were filed by the Appellants before the Appellate Tribunal in APL No. 19 of 2025 and APL No. 256 of 2024. |
| 02.07.2025 | Written submissions were filed by SCCL before the Appellate Tribunal in APL No. 19 of 2025 and APL No. 256 of 2024. |
| 28.08.2025 | Common Impugned Judgment and Final Order was passed by the Appellate Tribunal in APL No. 256 of 2024 in APL No. 19 of 2025. |
| 24.10.2025 | Hence, the present Appeal. |

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 256 OF 2024 & IA No. 880 OF 2024 & IA No. 920 OF 2024 &
IA No. 794 OF 2025
&
APL No. 19 OF 2025 & IA No. 1907 OF 2024

Dated: 28th August, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

APL No. 256 OF 2024 & IA No. 880 OF 2024 & IA No. 920 OF 2024 &
IA No. 794 OF 2025

In the matter of:

SINGARENI COLLIERIES COMPANY LIMITED,

Through its Deputy General Manager,

Having office at:

Kothagudem, Collieries

Bhadadri Kothagudem District,

Telangana State – 507101.

... **Appellant(s)**

VERSUS

1. TELANGANA STATE ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,

Having office at:

5th Floor, Singareni Bhavan, Red Hills,

Lakdi-ka-pul,

Hyderabad 500 004

... **Respondent No.1**

2. SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED,

Through its Chairman and Managing Director,

Having office at:

Corporate office # 6-1-50,

Mint Compound,

Hyderabad, Telangana – 500 063

... **Respondent No.2**

3. NORTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED,

Through its Chairman and Managing Director,

Having office at:

H. No. 2-5-31/2, Corporate Office,
Vidyut Bhawan, Nakkalgutta, Hanamkonda,
Warangal, Telangana – 506001.

... **Respondent No.3**

Counsel on record for the
Appellant(s)

: Hemant Singh
Mridul Chakravarty
Biju Mattam
Lakshyajit Singh
Bagdwal
Supriya Rastogi
Agarwal
Nehul Sharma
Chetan Kumar Garg
Robin Kumar
Harshit Singh
Lavanya Panwar
Alchi Thapliyal
Sanjeev Singh Thakur
for App. 1

Counsel on record for the
Respondent(s)

: Somanadri Goud
Katam
for Res. 1

Anand K. Ganesan
Swapna Seshadri
Kriti Soni
Aishwarya Subramani
for Res. 2

Anand K. Ganesan
Swapna Seshadri
Kriti Soni
Aishwarya Subramani
for Res. 3

APL No. 19 OF 2025 & IA No. 1907 OF 2024**1. SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED,**

Through its Chief Engineer (IPC),
Corporate office # 6-1-50,
Mint Compound,
Hyderabad, Telangana – 500 063

... **Appellant No.1**

2. NORTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED,

Through its Chief Engineer (IPC),
H. No. 2-5-31/2, Corporate Office,
Vidyut Bhawan, Nakkalgutta, Hanamkonda,
Warangal, Telangana – 506 001.

... **Appellant No.2**

VERSUS**1. TELANGANA ELECTRICITY REGULATORY COMMISSION,**

Through its Secretary,
Vidyut Niyantaran bhavan, G.T.S. colony,
Kalyan Nagar,
Hyderabad 500 045

... **Respondent No.1**

2. SINGARENI COLLIERIES COMPANY LIMITED,

Through its Deputy General Manager,
Having office at:
Kothagudem, Collieries
Bhadadri Kothagudem District,
Telangana State – 507 101.

... **Respondent No.2**

Counsel on record for the
Appellant(s)

: Anand K. Ganesan
Swapna Seshadri
Harsha V Rao
Aishwarya Subramani
for App. 1

Anand K. Ganesan
Swapna Seshadri
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Counsel on record for the Respondent(s) : Somanadri Goud
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Hemant Singh
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Lakshyajit Singh
Bagdwal
Ankita Bafna
Harshit Singh
Nehul Sharma
Alchi Thapliyal
Sanjeev Singh Thakur
Lavanya Panwar
Indrayudh Chowdhury
Devansh Pundir
for Res. 2

JUDGMENT

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

1. Appeal No. 256 of 2024 has been preferred by M/s Singareni Collieries Company Limited (“**SCCL**”) assailing the order dated 01.04.2024 (hereinafter referred as “**Impugned Order 1**”) passed by the **Telangana State Electricity Regulatory Commission** in OP No. 13 of 2023 wherein premium charged by SCCL to its STPP for the coal supplied under Bridge Linkage was denied. Appeal No. 19 of 2025 has been preferred by Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited

(hereinafter referred as “**Telangana DISCOMs**”) assailing the order dated 28.06.2024 (hereinafter referred as “**Impugned Order 2**”) passed by the **Telangana State Electricity Regulatory Commission** (hereinafter referred to as “**State Commission/TSERC**”) in OP No. 4 of 2024 wherein State Commission has trued up the financials of “**SCCL**” for FY 2022-23 and approved MYT for control period FY 2024-25 to FY 2028-29 wherein premium charged by SCCL to its STPP for the coal supplied under Bridge Linkage was considered.

2. The issues involved in both the appeals are connected and are sort of cross appeals, they are being disposed of with this common judgment. The facts in these appeals are not in dispute. Therefore, for the sake of convenience, the description of the parties is given hereunder as per Appeal No. 19 of 2025.

3. **Appellant No.1- Southern Power Distribution Company of Telangana Limited** and **Appellant No.2-Northern Power Distribution Company of Telangana Limited** are the Distribution licensees, and are entrusted with the function of distribution of electricity in their respective areas of operation in the State of Telangana and collectively referred here-in-under as Telangana Discoms.

4. **Respondent No. 1, the Telangana State Electricity Regulatory Commission** is the Electricity Regulatory Commission for the State of Telangana exercising powers and discharging functions under the provisions of the Electricity Act, 2003. **Respondent No. 2- M/s Singareni Collieries Company Limited (“SCCL”)** is a coal mining company incorporated under the Companies Act, 1956.

FACTS OF THE CASE

5. The facts that are necessary and required for disposal of these appeals are narrated below in nutshell.

The SCCL entered into the business of power generation by establishing a 2X660 MW coal based thermal plant i.e. Singareni Thermal Power Plant (“**STPP**”), in which Unit I&II achieved COD on 25.09.2016 and 02.12.2016. The entire power generated from STPP is to be sold to the Telangana DISCOMs at a tariff determined by State Commission under the Power Purchase Agreement (“**PPA**”) dated 18.01.2016. The PPA was to remain valid for a period of 25 years from the COD of the last unit i.e. Unit II.

6. In order to meet the coal requirements of STPP, SCCL was allotted NAINI coal block in the State of Odisha. Since it was anticipated that coal production from NAINI coal block would commence in December 2020, as an interim measure, until the operationalization of the coal mine by SCCL, STPP applied for and obtained Bridge Linkage, the short term linkage for a fixed period of three years, from the Standing Linkage Committee of Ministry of Coal. The initial Bridge Linkage was granted for the period between 13.08.2015 to 12.08.2018 from the SCCL and pursuant to obtaining the Bridge Linkage, SCCL executed a Memorandum of Understanding (MoU) dated 01.11.2017 with STPP setting the price structure for coal to be supplied. While the PPA dated 18.01.2016 contained Annexures III & IV which provided for computation of variable charges based on coal price to be as decided by SCCL, the State

Commission by its Orders dated 22.10.2021 in O.P. No. 08 of 2016, directed that the above clauses to be deleted and replaced as under:

“For any billing month, the variable charges shall be determined as per TGERC Regulations”.

7. An amended PPA was entered on 22.05.2024. STPP upon achieving COD of Unit I on 25.09.2016 and Unit II on 02.12.2016 started utilizing coal as per MoU dated 01.11.2017 with pricing for G5- G8 grades coal & washary grade G9 coal at notified price of power sector and for G9 to G15 grade, the notified basic price plus 20% of notified basic price of power sector and started supplying power to Telangana DISCOMs.

8. On 06.04.2018, SCCL and STPP, entered into a supplementary MoU modifying the pricing structure and created two new slabs namely, bridge linkage and non-bridge linkage for FY 2018-19 w.e.f. 01.04.2018. Under the said MoU, for coal supply up to 75% of agreed quantity, the tariff payable was notified as basic price of coal applicable for power sector with a premium of 20% and for supply of coal beyond 75% of agreed quantity the tariff payable was notified as basic price of coal applicable for non-power sector with a premium of 20%.

9. Subsequently, since the Bridge Linkage provided to STPP was stated to expire as of 13.08.2018, in the meeting of the Standing Linkage Committee held on 10.04.2018, Bridge Linkage was extended up to 2023 with tapering basis from 2021 to 2023 and further extended for the year 2023-24 in the Standing Linkage Committee meeting dated 21.02.2023.

10. SCCL raised a supplementary invoice after completion of FY 2018-19, claiming 20% additional premium on the notified prices applicable to the non-power sector for supply of coal beyond 75% of agreed quantity, which was objected by Telangana DISCOMS claiming it to be contrary to the TSERC/CERC Tariff Regulations.

11. The Telangana DISCOMs had filed OP No. 13 of 2023 before TSERC praying to direct SCCL to provide coal supply to STPP at the Notified Basic Price corresponding to the coal grade being supplied without any additional charge/ premium in terms of the MOUs signed between SCCL and STPP. When the Orders in OP No. 13 of 2023 were reserved, SCCL filed O.P. No. 04 of 2024 before TSERC seeking approval of Multi Year Tariff (MYT) for the control period FY 2024-25 to FY 2028-29 and True-up for FY 2022-23. In the said petition, SCCL had taken into consideration the premium on the coal price.

12. The State Commission, vide its order dated 01.04.2024 (**"Impugned Order 1"**), disposed of OP No. 13 of 2023, in favour of the Telangana DISCOMs, holding as under:

... the petitioners are entitled to the relief as prayed for, whereby the respondent is estopped from levying any premium on the coal price for whatever quantities agreed to be supplied in terms of the PPA. The respondent also shall continue to desist from levying any premiums henceforth until it has started production from the Naini coal block allotted to it as it is denuding the petitioners the benefit of cheaper coal availability through the variable cost paid by the petitioners, which is ultimately beneficial to the end consumers.

13. The State Commission, vide its Order dated 28.06.2024 (**“Impugned Order 2”**), disposed of O.P. No. 4 of 2024 filed by SCCL/STPP approving energy charge rate and fixed charges taking into consideration premium on coal price, which according to Telangana Discom is in contravention to TSERC Order dated 01.04.2024 in OP No. 13 of 2023 (**“Impugned Order 1”**), . The Telangana Discom also stated that R & M expenses approved under **“Impugned Order 2”** were contradictory to its earlier orders dated 28.08.2020 (MYT Order) and 23.03.2023 (mid-term review order in O. P. No. 77 of 2022).

14. The Telangana DISCOMS, filed a petition seeking review of the **“Impugned order 2”** passed in O.P. No. 4 of 2024, which was dismissed by State Commission by its Order dated 28.10.2024. Telangana DISCOMS, aggrieved by the Order dated 28.06.2024 passed in O.P. No. 4 of 2024 on the issues of fixation of energy charge rate and annual fixed charges in so far as the same runs contrary to the **“Impugned Order 1”** dated 01.04.2024, and the approval of R & M expenses contradictory to its earlier orders dated 28.08.2020 (MYT Order) and 23.03.2023 (mid-term review order in O.P. No 77 of 2022), has preferred Appeal No. 19 of 2025.

15. The SCCL, challenging the order dated 01.04.2024 passed in OP No. 13 of 2023 (Impugned Order 1) to the extent that the State Commission has overstepped its jurisdiction by deciding the cost of coal to be charged by the SCCL for coal supplied through Bridge Linkage and also recovery of the said cost from Telangana DISCOMS, when power is supplied under the PPA by STPP, has preferred Appeal No. 256 of 2024.

SUBMISSIONS OF TELANGANA DISCOMs

16. Ms Swapna Seshadri, learned counsel for Telangana Discoms submitted that Telangana Discoms have signed the Power Purchase Agreement (PPA) dated 18.01.2016 (the “PPA”) with the thermal generating plant of SCCL, i.e., the 2x600 MW located in Jaipur, Mancherial District, Telangana (the “STPP”), though without mentioning the source of coal, but with the understanding that the STPP would receive coal from the Naini Coal Block, as a captive coal block and a mine integrated with the STPP, and allocated to STPP in terms of the Allotment Agreement dated 30.03.2015. It is further submitted that SCCL is primarily a coal mining company and the STPP is housed within SCCL, with no separation in terms of accounts and personnel. Since SCCL did not develop the Naini Coal block in time, STPP applied for ‘Bridge Linkage’ to the Ministry of Coal, i.e., coal to bridge the time between the operationalization of the STPP and the captive coal mine, as per the Bridge Linkage Policy Guidelines of the Ministry of Coal dated 08.02.2016. Pursuant to grant of the bridge linkage, SCCL and STPP signed a Memorandum of Understanding dated 01.11.2017 (the “MoU”), which was amended from time to time and imposition of the ‘premium’ over the Notified Price is incorporated in these MoUs, to which the Telangana Discoms are not a party and there was no consultation with the Discoms, while signing these MOUs. There is no authority granted to coal companies to impose Premium on such Bridge Linkage in the Policy Guidelines.

Regarding the contention of SCCL that coal pricing falls exclusively within the domain of coal companies, as a result, Electricity Regulatory Commissions are barred from oversight on the same, learned counsel submitted that it is an unwarranted extrapolation of the effect of the deregulation of coal pricing under

the Colliery Control Order, 2000. The cost of coal along with other cost elements – like loading charges, transportation charges, washery charges, etc., constitute part of the variable charges and are determined by the State Commission under Section 86(1) (a) read with Section 62. The costs so determined, are passed on the beneficiary, i.e., the Telangana Discoms and form part of the cost of power purchase in determination of retail supply tariff under Section 86(1)(a)&(b). The Colliery Control Order, 2000 merely removed the function of price determination from the Government of India in relation to coal. There was no positive function assigned to the coal companies, nor a judicial or regulatory bar on its oversight. Coal suppliers operate akin to any other supplier to a power plant and are subject to the same regulatory framework. SCCL contention seems to read as an exclusive authority to itself to fix whatever rates it deems fit including premiums with the impression that there is no other authority which seems to have this power, however, learned counsel submitted that such an interpretation, if accepted, would amount to coal companies assuming authority not conferred upon them either under the Colliery Control Orders or the Bridge Linkage Guidelines.

17. It is further submitted that the tariff payable to the STPP Division of SCCL for power generation is determined by the State Commission under Section 62 of the Electricity Act, 2003. The PPA, forming the basis of such tariff, was approved by the State Commission vide Order dated 22.10.2021 in O.P. No. 8 of 2016, wherein the Commission directed certain revisions to the PPA, the revisions relevant to the present appeal are set out hereinbelow.

- (a) Replacement of Article 4.3 that Variable Charges shall be determined as per TSERC Regulation

(b) Deletion of Annexure III (Computation of Variable Charges) & Annexure IV (Computation of Delivered Cost of Coal – Thermal Plants)

18. Learned counsel submitted that upon execution of the 3rd Supplementary MoU, which was executed on 16.04.2021, the Telangana Discoms filed Petition O.P. No. 13 of 2023 under Section 86(1)(f) of the Act, challenging the imposition of premium by SCCL as being contrary to the PPA and the applicable Regulations, specifically invoking the jurisdiction of the State Commission contending that such imposition is contrary to Clause 21.6.1 of the TSERC (Terms and Conditions of Generation Tariff) Regulations, 2019. Further, in its reply filed in O.P. No. 13 of 2023, SCCL contended that the imposition of premium was required to be treated as a pass-through under change in law and that only the Central Electricity Regulatory Commission would have the jurisdiction to determine the input price of the Naini Coal Block and that the State Commission does not have the jurisdiction, since SCCL comes under the control of Ministry of Coal. Learned counsel further submitted that the State Commission in exercise of its powers under Section 86(1)(f), has held that the Premium could not form part of the coal cost under “**Impugned Order 1**” dated 01.04.2024 in OP No. 13 of 2023.

19. Regarding the contention of SCCL, being advanced before this Tribunal that coal companies possess an exclusive right to determine the price of coal recoverable from consumers and that the State Commission lacks jurisdiction to determine the coal cost; learned counsel submitted that it is - premised on two incorrect assumptions that State Commission has *fixed* the coal price and/or determined what elements would be included in the landed cost of coal and whether Premium form part of the coal price?

20. Learned counsel submitted that it is not disputed that SCCL, like other coal companies, determines the price at which it wishes to sell the coal to its consumers like the STPP, however, that does not take away the regulatory power of the State Commission to assess the prudence and reasonableness of cost components and pass through only such components it considers prudent. The status of coal companies is no different than any other vendor or service provider that states a price for its product/service. As part of 'regulating' electricity purchase and procurement, the State Commission has the authority to determine and conduct a prudence check on all components of price of electricity. Even in the absence of specific regulations, the State Commission retains the jurisdiction to undertake such prudence checks guided by the principles under Section 61 of the Electricity Act, 2003. In this regard, the observations of the Supreme Court in "***Municipal Corporation of Delhi v. Gagan Narang***" 2025 SCC OnLine SC 19 , are apposite. By referring to another Supreme Court judgment in "***PTC India Ltd. v. Central Electricity Regulatory Commission***" (2010) 4 SCC 603, learned counsel contended that the Supreme Court has considered the scope of the regulatory functions of the Electricity Regulatory Commissions, in the presence and de hors regulations. In either of the cases i.e., whether the State Commission undertakes the prudence check in exercise of its powers under the Regulations framed or in the absence thereof, the source of such power is under Section 62 read with Section 86 of the Electricity Act 2003 only. The power to determine tariff, which inherently includes the authority to allow or disallow specific cost components, is an integral part of the Commission's statutory regulatory functions. Furthermore, even when the State Commission exercises its powers under Section 86 (1) (f), it is not that it loses its power for tariff fixation or the principles contained under Section 61, 62 or 64 of the Electricity Act, 2003.

21. Learned counsel contended that the input price of captive coal mines allocated under the Coal Mines (Special Provisions) Act, 2015 is also being determined by the Appropriate Commission under the framework of the Electricity Act, 2003, to ensure that the transfer price of coal from mine to power plant is neither arbitrary nor inflated. This reinforces the settled legal position that the Appropriate Commission not only possesses the jurisdiction but is statutorily obligated to ensure that all components of the electricity price are reasonable, irrespective of whether coal is procured through linkage, auction, or captive sources.

22. Learned counsel submitted that SCCL has erroneously contended that the Telangana Discoms case on the State Commission's jurisdiction is based solely on Regulations 21.8 and 21.9 of the TSERC Tariff Regulations, 2019, in fact, the Telangana Discoms have consistently maintained that such jurisdiction flows directly from the Electricity Act, 2003. The Tariff Regulations framed by the State Commission are only in furtherance of the power to regulate tariff conferred on it comprehensively by the Electricity Act, 2003. It is well settled that delegated legislation cannot confer jurisdiction beyond the Parent Act. While the vires of the Regulations are immune from being challenged before this Tribunal, as held in *PTC India Ltd. v. CERC*, it itself holds that any question of interpretation of the Regulations would very much lie before this Tribunal.

23. Regarding the contention of SCCL that the scope of the State Commission's jurisdiction is limited to disallowing procurement from the concerned sources i.e. in case cost of coal is high then plant may be denied scheduling, learned counsel submitted that it is erroneous and contrary to the statutory mandate under Sections 62 and 86(1)(a) and (b)

of the Electricity Act, 2003. The Multi Year Tariff Regulations framed by the State Commission envisage a detailed scrutiny of all cost components for each control period, and empower the Commission to regulate and determine tariffs accordingly. Further, any dispute arising out of the PPA falls squarely within the adjudicatory domain of the State Commission. In exercise of its regulatory functions, the Commission is empowered to apply various methods to regulate electricity price including prescription of normative operational and financial parameters (e.g., normative interest rates without interfering with a bank's autonomy), determining price caps, monitoring market alignment, enforcing competitive bidding etc. Thus, the regulatory oversight of the State Commission encompasses all aspects of tariff determination and the manner of its exercise is a matter within its exclusive jurisdiction. As such, in the context of the present appeals, the Commission has not determined the price at which coal mining companies may charge to its consumers but has merely determined, based on prudence, what component of such cost may be passed through by STPP to the TS Discoms.

24. Learned Counsel placing reliance upon the scope of the TSERC Generation Tariff Regulations, 2019, referred to the provisions contained in Regulations 21, 21.1, 21.8 and 21.9 thereof. As per Regulation 21.8, the landed cost of fuel includes the following components; (a) the price of fuel corresponding to its grade and quality of fuel; (b) Royalty and taxes as applicable; (c) transportation costs by rail, road, or any other means, and (d) normative transit and handling losses. Furthermore, in terms of Regulation 21.9 of the said Regulations, where fuel is procured from sources other than those mutually agreed upon between the generator and the beneficiary, the State Commission is entitled to make a prudence check in approving the price of alternative fuel and if there is an increase

in price of fuel above the stated threshold then prior consultation with the beneficiary is required. It is, therefore, evident that generators do not have unchecked power to decide prices in any situation. Any 'Premium' on the coal price is not contemplated in the above cost components. It is further asserted that the TSERC 2023 Regulation (Regulation 46.4, 2nd Proviso) expanded the categories to include washery charges and sampling charges and the State Commission has not recognised "premium" as one of the components of landed cost of fuel.

25. Learned counsel submitted that SCCL has taken two conflicting stands like (a) Premium is part of the 'price' of coal; and (b) Definition of landed cost of fuel is an inclusive definition and must include the premium also.

Firstly, it is submitted that the premium does not constitute a part of the coal price. The Price Notifications issued by coal companies from time to time, pursuant to the deregulation of pricing under the Colliery Control Order, 2000 (framed under the Essential Commodities Act, 1955), clearly delineate the basic price separately for the power and non-power sectors and wherever there is a premium to be levied, that is indicated separately. Notably, there is no mention of any premium applicable to bridge linkage consumers. Additionally, other elements of the landed cost—such as loading charges, royalty, taxes, and sampling charges are individually itemized. This notified price is universally considered to be the default price of coal save any terms agreed contractually or any price discovered in the spot market.

Secondly, the definition of "landed cost" as employed in the relevant Regulation is not inclusive in nature; rather, the use of the expression "shall include" in this context must be read exhaustively in so far as the

categories mentioned therein. Whether a statutory list is to be interpreted as exhaustive or inclusive depends on the context of the list. In this regard, learned counsel placed reliance on the judgment of the Supreme Court in **“South Gujarat Roofing Tiles Manufacturers Association v. State of Gujarat” (1976) 4 SCC 601.**

However, on SCCL’s contention that the definition of “landed cost” is inclusive and may extend to include premium, it is submitted that, in the absence of a specific provision in the Regulations, the State Commission is entitled to adjudicate, applying Section 61 of the Electricity Act, 2003, what cost components to be included in the landed cost of coal. This principle has recently been reiterated and expanded by the Supreme Court in **“Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Transmission Co. Ltd. & Ors.” 2025 SCC OnLine SC 1128.**

Regarding the contention of SCCL that accepting this would amount to fixing prices for services provided by other entities, such as the Railways, learned counsel submitted that while railways can determine the cost of providing the transportation, however, if it seeks to levy arbitrary and unjustified levy of over the top costs, it cannot be the case that the State Commissions are restrained from evaluating what is or what is not a reasonable cost for a particular service and deny pass through of the same. The affected party which is the generator would be free to avail of any remedy available in law to address the costs. The State Commission, under Section 61 of the Electricity Act, 2003, does not fix prices of third-party services like those of railways. Instead, it conducts a prudence check on the cost components claimed by generators as part of the landed coal cost, to ensure only reasonable and justifiable expenses are passed on to consumers, an action well within its regulatory mandate.

Further, it is submitted that the State Commission is empowered to examine each cost component such as water cess, GCV-related charges, or any other levy to determine its admissibility in tariff. The same principle applies to the premium, which is a separate component levied over and above the basic coal price and does not form part of the coal mining cost. Therefore, regulatory scrutiny of such components does not equate to price fixation for external service providers but is a necessary function of tariff determination under the regulatory framework.

26. Learned counsel for the SCCL has relied on certain MoUs entered into with other generators to justify the imposition of premium; however, such MoUs pertain to projects not located in Telangana and whose beneficiaries are unidentified. Further, SCCL has been supplying coal to the STPP to meet 100% of its availability requirement, even though it was required to supply only on best efforts basis and that too to the extent of 75% of the Agreed Requirement which is 90% of normative requirement of the plant operating at 85% PLF (with 80% being the Target PLF in the PPA between STPP & TS Discoms). As a result, STPP by consistently declaring full availability, recovered its entire fixed costs, and earned substantial incentives, while simultaneously recovering premiums over and above the notified price of coal at its discretion.

27. Regarding the contention of SCCL that increase in cost of coal was marginal or lower than other sources, learned counsel submitted that the legality of the cost sought to be imposed on Telangana Discoms must be assessed on individual basis under the applicable Regulations and the PPA. The parties under the PPA had agreed to reduce coal costs using a captive coal block, and in its absence, the Bridge Linkage was provided by the Government. The key issue is whether SCCL acted as per the

applicable policy. It is not relevant to compare from spot market prices or the conduct of other coal companies and it is an admitted fact that SCCL supplied coal to STPP to comply with its 10% statutory mandate, which allowed STPP to declare higher-than-normative availability and claim incentives, fixed, and variable charges—all sourced from SCCL's own operations. SCCL must follow the Government Policy and cannot arbitrarily choose its coal recipients.

28. Learned counsel also submitted that SCCL, being a government company, is required to maintain transparency in its pricing, which must be available in the public domain. The end beneficiaries cannot be left without recourse to challenge the pricing imposed by coal companies. While a price notification published publicly may be challenged before the appropriate forum, a pricing term within a private contractual arrangement cannot be questioned by third parties. Therefore, it is impermissible to include a cost component in the landed price of coal that is beyond regulatory oversight. The learned counsel submitted that it is only the State Commission that exercises regulatory oversight herein as it is within the domain of the State commission to determine what would and would not constitute landed cost of coal for the purposes of computation of ECR.

SUBMISSION OF SCCL

29. Mr Sanjay Sen, learned senior counsel representing SCCL submitted that main issue in the present case is regarding the jurisdiction of State Commission to, inter alia, hold that State commission, while exercising powers under Section 86 (1)(b) of the Electricity Act 2003 to regulate Power Purchase Agreements executed by generating company with the State Discom, can also regulate the price or coal and /or issue

directions to the supplier of coal in the matter of coal pricing. Learned senior counsel pointed out that specifically following findings and conclusions made by State Commission in the **Impugned Order 1** dated 01.04.2024 are wrong and deserves to be set aside; there is no factual or legal basis to come to these findings like.

- (a) It is not clear from record as to whether SCCL was authorized to notify the tariff, even for Bridge Linkage coal supplied to end use plants;
- (b) SCCL appears to have overstepped its authority in determination of tariff of coal and not only fixed the tariff for coal supplied but also added the premium to be paid for coal;
- (c) The action of the SCCL in determining not only the coal price but also including premium to the said price is beyond the agreement
- (d) STPP did not pay any interest in establishing the captive coal mine expeditiously and went before SLC seeking extension of time repeatedly. Such attitude of STPP shows ulterior intention to continue the bridge linkage of coal obtained pending establishment of the captive coal mine.
- (e) TSDISCOMs are entitled to relief as prayed for, whereby SCCL is estopped from levying any premiums henceforth until it has started production from the Naini coal block allotted to it as it is denuding the Telangana DISCOMs the benefit of cheaper coal availability through the variable cost paid by the Telangana DISCOMs, which is ultimately beneficial to the end consumers

30. Learned senior counsel submitted that it is an admitted position that the SCCL supplied coal from its own coal mines, which are not captive to its thermal power plant, namely the Singareni Thermal Power Plant

("STPP"/"the Power Project"). The SCCL operates primarily as a coal company, akin to Coal India Ltd. Coal, being a scarce natural resource, was nationalized, and its distribution is regulated by the Central Government and accordingly, the SCCL supplies coal in accordance with prevailing central policies in which price of coal is determined by the Coal companies, which are government companies.

31. The Consumers of coal obtain coal linkage through the Ministry of Coal, based on decisions of the Standing Linkage Committee, which are binding on coal companies. The SCCL supplies coal under the Bridge Linkage route to other similar consumers at the same price at which coal is supplied to its own generating station. The extant coal policy does not authorize any person or authority, apart from the coal company, to determine or regulate coal prices. Consequently, the electricity regulator, being a tribunal (statutory body) with limited jurisdiction, could not have exercised jurisdiction on matter concerning the price of coal. The impugned order does not refer to any provision of the statute or regulation in relation to its jurisdiction to determine / regulate the price of coal. It does not have the powers of judicial review.

32. As per the extant policy relating to Bridge Linkage, the Ministry of Coal, by letter dated 30.08.2016, confirmed that the Standing Linkage Committee ("**SLC**"), in its meeting dated 18.03.2016, granted Bridge Linkage for operating SCCL's 2 x 600 MW Thermal Generating Station. This Bridge Linkage, initially granted as an interim measure, has been extended from time to time and is expected to continue until coal becomes available from the allocated Naini Coal Block in Odisha. The linkage was specifically granted to meet the coal requirements of the SCCL plant during the period when the Naini Coal Block was not operational. The

Naini Coal block faced delays due to forest clearance and other regulatory issues. Since the power plant was ready for commissioning, the Ministry of Coal/SLC recommended allocation of coal from the SCCL's own mines under Bridge Linkage to ensure fuel supply continuity. Further, extensions were granted by the SLC in meetings dated 10.04.2018, 21.02.2023, and 13.02.2024, after the SCCL explained the delay in operationalising the Naini Coal Block. Once the Ministry of Coal/ SLC accepted such reasons and extended the linkage, the State Regulatory Commission cannot, thereafter, sit on judgment over the decision of Ministry of coal and / or find fault with the Appellant for not operationalizing the coal block, including the continuation of Bridge Linkage beyond the initial 3 years or its pricing. The State Commission's contrary findings deserve to be set aside. Pursuant to the Bridge Linkage grant, the Appellant executed multiple MoUs dated 01.11.2017, 06.04.2018, 30.03.2020, 12.11.2020, 16.04.2021, 28.03.2022, and 29.03.2023.

33. Learned senior counsel placing reliance on the provision of the Electricity Act, 2003 and the TSERC (Terms and Conditions of Generation Tariff) Regulations, 2019 submitted that there are no provisions that permits / allows the electricity regulator to exercise jurisdiction on matters of coal pricing; specific reliance was placed on Regulation 21.6, which governs computation of the Energy Charge Rate (ECR) and is based on the weighted average "landed price" of primary fuel for computation of the ECR. Regulation 21.8, clarifies that the landed cost of fuel for the month to include the price of fuel corresponding to the grade and the quality of fuel inclusive of royalty, taxes and duties as applicable, transportation, cost by rail/ road or any other bills and provides that for the purpose of computation of energy charge, the cost shall be arrived at after considering the normative transit and handling losses as a percentage of

the quantity of coal dispatched by the coal supply company during the month as notified by the Central Commission. Regulation 21.9 deals with the use of alternate source of fuel supply, other than as agreed by the Generating Entity and beneficiaries in their PPA and on account of shortage of fuel or optimization of economical operation through blending, and certain restrictions are thereafter imposed; however, the said provision has neither been relied upon in the Impugned Order 1 nor is it applicable in the present case. As such, the PPA does not specify any particular source of coal, including the Naini Coal Block. Further, the coal supplied under Bridge Linkage cannot be construed as an 'alternate source' within the meaning of the said Regulation, as its supply is not occasioned by shortage or blending requirements, rather, Bridge Linkage constitutes the primary and approved source of coal supply to the Appellant's generating station, in accordance with the prevailing coal distribution policy.

34. Learned senior counsel submitted that the Impugned Order 1 does not at all refer to or rely upon any provision of the TSERC Tariff Regulations, 2019 or the PPA dated 18.01.2016 and its amendment dated 22.05.2024. Notably, neither the original nor the amended PPA defines any specific coal source. The PPA provides that the variable charge is computed on the basis of the landed cost of coal. Although the amended PPA was executed after the Impugned Order 1, it also does not confer any jurisdiction upon TSERC to regulate coal pricing. The amendment to the variable charge clause in the original PPA merely aligns it with Regulation 21.6 of the 2019 Regulations. The reliance on CERC Regulations is misplaced, as the transfer pricing principles therein pertain to captive coal blocks and are inapplicable to the present case.

35. Learned senior counsel submitted that the National Coal Distribution Policy 2007 and as amended in the year 2016, is limited only to the manner in which coal can be distributed amongst various users. In addition to the National Coal Distribution Policy, the Ministry of Coal has issued a policy guideline through Office Memorandum dated 08.02.2016, providing for the grant of Bridge Linkage to certain end-use power plants that have been allocated coal blocks ; thus neither the said policy nor the Office Memorandum provides for any authority to regulate or control the price of coal, whether by the Central Government or by any agency or authority appointed by the Central Government.

36. Learned senior counsel submitted that the relevant statutory / policy framework entitles SCCL and other coal companies i.e. Coal India Limited and its subsidiaries, to determine the price of coal. Initially, clause 4 of the Colliery Control Order, 1945 empowered the Central Government to fix the sale price, or the maximum or minimum sale price, or both, subject to which coal may be sold by colliery owners and any such notification may fix different prices for different classes, grades and sizes of coal; and different collieries. However, this was subsequently replaced by the Colliery Control Order, 2000 (“CCO, 2000”), under which the role of Central Government was only to prescribe, by notification, the classes, grades and sizes into which coal may be categorized and the specifications for each such class, grade or size of coal. As such, with effect from 01.01.2000, the Central Government did not play any role in fixation of price of coal. Similarly, earlier section 3(2)(c) of the Essential Commodities Act, 1955 also empowered the Central Government to control / regulate price of coal as an essential commodity, as specified in the Schedule. Through the amendment dated 24.12.2006 to the Essential Commodities Act, 1955, ‘coal’ was deleted from the list of essential

commodities with effect from 12.02.2007. The said deletion was also recognized by MoC in Clause 9 of the New Coal Distribution Policy, 2007 dated 18.10.2007. Consequently, the said Policy only provides for the manner in which the coal is to be distributed but does not provide for the pricing of coal. The Bridge Linkage Policy Guidelines issued vide O.M dated 08.02.2016, clarifies that the role of Coal Controller was only limited to quantification and regularization. Therefore, it is upto CIL/ SCCL to determine the price of Bridge Linkage coal, and since the coal was to be supplied on “*best efforts basis*” it was upto the seller to levy premium on the same. It is further pointed out that in the SLC meeting dated 21.02.2023 regarding extension of bridge linkage to the Appellant, it was recommended that “*The rate for coal supplies against extended Bridge Linkages would be decided by CIL/ SCCL*”. Therefore, it is evident that the pricing of coal, including under Bridge Linkage arrangements, or otherwise is to be decided by CIL/SCCL.

37. Learned senior counsel placing reliance on the judgment of the Supreme Court in “***Pallavi Refractories v. Singareni Collieries Company Limited & Ors.***”, ((2005) 2 SCC 227) submitted that the decision relating to fixing the price of coal is taken by the Coal company in terms of the extant law and policy and the reasons for differential pricing. In addition, reliance was placed on the judgment of the Supreme Court in “***Ashoka Smokeless Coal India (P) Ltd. v. Union of India & Ors.***”, ((2007) 2 SCC 640) , and submitted that the judgement provides a historical overview of the coal sector in India and it enumerates the manner in which the price of coal was de-controlled over the years.

With reference to Impugned Order 2 dated 28.06.2024 State Commission, while truing up the financials of SCCL for FY 2022-23 and approving the Multi Year Tariff for the control period of FY 2024-25 to FY

2028-29, has allowed the Energy Charge Rate (ECR) by taking into consideration Bridge Linkage coal price along with premium. However, as regards the issue of computation of 'K-factor' for the purpose of approval of R&M expenses, this issue may be remanded to the State Commission for fresh consideration.

38. Learned senior counsel concluded that in view of above submissions and also a reading of the Colliery Control order 1945 and the Colliery Control order 2000 (*Ann.-J to IA for Addl. Docs. @ Pg. 278, V-I*), it is clear that the coal company has been vested with the power to determine the price of coal. A statutory body created under the provisions of the Electricity Act, 2003 cannot regulate the price of coal and/or issue directions to a coal company as to what it should charge for supply of coal under Bridge Linkage or otherwise and requested Tribunal to set aside the Impugned Order 1.

Analysis and Deliberation

39. Heard Mr. Sanjay Sen, learned Senior Counsel appearing on behalf of SCCL and Ms. Swapna Seshadri, learned Counsel appearing on behalf of Telangana Discoms. The main issue, which emerges for deliberation is, whether premium charged on coal price by SCCL for coal supplied to its thermal plant under Bridge coal linkage can be denied by State Commission as pass through in Energy Charge Rate (ECR) under **Impugned Order 1** dated 01.04.2024 or the same is to be allowed as pass through in ECR as per **Impugned Order 2** dated 28.06.2024. As regards the issue of computation of 'K-factor' for the purpose of approval of R&M expenses in the **Impugned Order 2** dated 28.06.2024, raised by learned counsel for Telangana Discoms, the learned Senior Counsel for

SCCL has consented that this issue may be remanded back to the State Commission for fresh consideration. Elaborate submissions have been made by learned Counsel on behalf of Telangana Discoms and learned Senior Counsel on behalf of SCCL regarding the jurisdiction of State Commission over denial of premium paid on coal price under Bridge coal linkage by Singareni STPP to SCCL.

40. It is a fact that SCCL was allotted NAINI coal blocks located in the State of Odisha to meet coal requirement of its 2 X600 MW Thermal Power project (STPP) vide allotment letter dated 13.08.2015. The power purchase Agreement was entered into between SCCL and Telangana Discoms on 18.01.2016 for supply of 100% power generated from the said STPP, at a tariff to be determined by State Commission and the PPA to remain valid for 25 years from COD of the plant. SCCL has submitted that it had applied for grant of bridge linkage for supply of coal for STPP, as commencement of coal production from Naini coal mines as per Allotment Agreement was scheduled for December 2020, while commissioning of generating units of STPP was expected in 2016. It is noted that Ministry of Coal, GOI vide its notification No 23021/3/2015-CPD dated 08.02.2016 issued guidelines for grant of "Bridge Linkage" to specified end use plants of Central and State Public Sector Undertaking (both in Power as well as Non-Power) which have been allotted coal mines/blocks. The Bridge linkage is to act as a short term linkage to bridge the gap between requirement of coal of a specified end use plants of Central and State PSUs and the commencement of production from the linked allotted coal mines/blocks, and this bridge linkage may be granted for a fixed period of three years from the date of allotment of coal mine/block, and the following

procedure for grant of Bridge Linkage is mentioned in the above notification:

“PROCEDURE:

- (i) *Every plant desirous of availing 'Bridge Linkage' shall be required to apply to Ministry of Coal (MoC) in the prescribed format (enclosed) along with prescribed processing fee. The prescribed application fee should be paid through a Demand Draft amounting to Rs. 2000/- (Two thousand only) per Mega Watt, subject to a maximum of Rs. 5,00,000/- (Rs. Five Lakh only), in favour of "Pay and Accounts Officer, Ministry of Coal" payable at New Delhi. The application fees/processing fees once remitted and deposited would be "Non Refundable", whether the application/request is accepted or rejected by the Competent Authority for grant of 'Bridge Linkage'. If a particular End Use Plant has already submitted an application with processing fee in the Ministry of Coal for grant of normal coal linkage in respect of that particular unit for which bridge linkage is requested then this unit would not be required to pay processing fee again. It will simply apply in the prescribed format to Ministry of Coal without payment of application fee. After receipt of application, the existing procedure of getting reports/recommendation from concerned Ministries etc. in each individual case, similar to the normal procedure for authorizing LoA, would be followed by the Ministry of Coal.*
- (ii) *After receipt of application for 'Bridge Linkage' and before sending it to the concerned Ministry, a certification shall be obtained from CA-III Section of MoC regarding allotment of coal mine/ block to the applicant and specified end use plants (EUPs) thereof.*
- (iii) *On receipt of recommendation from the concerned Ministry, the request shall be placed before the Standing Linkage Committee (Long Term) [(SLC(LT))] meeting for each individual case, The recommendation of SLC (LT) shall be submitted for approval by the Competent Authority. Thereafter, CIL/SCCL shall be intimated accordingly who shall decide the grade, source, etc. The quantification shall be done by Coal Controller Organisation (CCO) and informed to CIL/SCCL and applicant allottee company.*

(iv) *Coal Controller shall be responsible for quantification and regularization of 'Bridge Linkage' in consultation with CIL/ SCCL. Based on approval by SLC (LT), Ministry of Coal shall intimate details of the approved schedule to CIL/SCCL, which shall be duly incorporated in the MoU to be concluded between concerned coal company and allottee company “.*

41. It is noted from the letter dated 30.08.2016 of Ministry of Coal, that in terms of Ministry of Coal, GOI notification dated 08.02.2016, bridge linkage was approved for the STPP from the SCCL for three years valid from 13.08.2015 to 12.08.2018 and source of which was to be finalised by SCCL in consultation with Railways. It is an admitted position that such Bridge Linkage was extended from time to time in following manner:

| Date of granting linkage | Duration | Period |
|---------------------------------|-----------------|---|
| 10.04.2018 | 5 years | 2018 – 2021 2021 to 2023 on tapering basis |
| 21.02.2023 | 1 year | 2023 – 2024 on tapering basis |
| 13.02.2024 | 1 Year | On tapering basis |

42. Thus, bridge linkage for the STPP has been provided in terms of Notification dated 08.02.2016 of the Ministry of Coal, from SCCL, the company which also owns the STPP, and we believe that same must have been made after considering all relevant factors which lead to delay in development of allotted capital coal mine at NAINI for the STPP and need of Bridge linkage for longer duration, which is within the purview of Ministry of Coal and beyond our jurisdiction.

43. Further, no dispute has been raised by Telangana Discoms before us regarding the allocation of Bridge Linkage by SCCL for its STPP, other than levy of Premium over cost of coal supplied under it. However, we note that

State Commission in Para 27 of **Impugned Order 1** dated 01.04.2024 has made observation about lack of interest on the part of SCCL in developing the captive coal mine and to seek Bridge linkage, which smacks of ulterior intention of SCCL to continue the bridge linkage of coal whereby it gets power to determine the coal price according to its whims and fancies and burdening the end consumer. Such remarks by State Commission, in our view, is unwarranted since grant of Bridge Linkage in the event of delay in coal supply from captive coal mines, and its source falls within the purview of Ministry of Coal.

44. Broad Policy Regime in Coal Sector with regard to fixing coal price

Highlights of Judgements, pertaining to present issue, relied on by learned Senior counsel for SCCL, are as summarised below:

Pallavi Refractories v. SCCL and Ors. reported as (2005) 2 SCC 227

The appeals by grant of special leave had been filed by the writ petitioners the appellants herein, against the common order passed by the High Court of Andhra Pradesh in a group of writ petitions. The High Court in the impugned judgment has upheld clause 10 of Price Notification No. 3/96-97 dated 14-3-1997 issued by M/s Singareni Collieries Co. Ltd., which imposed a 20% higher coal price on non-core/unlinked sector industries compared to core/linked sector industries. The appellants - coal based small industries, contended that this dual pricing was arbitrary and violated Article 14 of the Constitution. The Respondent, a government-owned company, defended the pricing policy on grounds of financial necessity and the essential national role of core industries. The Supreme Court upheld the High Court's decision, ruling that the classification between core and non-core industries was rational, based on consumption levels and national importance, and that dual

pricing did not amount to hostile discrimination. It further held that there is no such law that a particular commodity cannot have dual fixation of price. Dual fixation of price based on reasonable classification from different types of customers have met with approval of courts. The High Court rightly came to the conclusion that Clause 10 of the price notification did not violate the equality clause of Article 14 of the Constitution and also emphasized that price fixation is a policy matter, largely beyond judicial review, unless it is shown to be arbitrary or discriminatory, which was not the case here. The appeals were accordingly dismissed.

***Ashoka Smokeless Coal India (P) Ltd. v. Union of India & Ors.,
reported as (2007) 2 SCC 640***

In this case, the validity and/or legality of a scheme framed by the Coal India Limited for sale of coal by Electronic Auction (E-Auction) was in question. The Supreme Court opined that, the coal companies evolve price fixation but, they have been doing so at the instance of the Central Government. The Central Government seeks to exercise its statutory power. However, such a power is confined to four corners of the Colliery Control Order, 2000. When there is no control over price, the Central Government is forbidden to issue any direction which will have an impact thereover. The Supreme Court further highlighted that in relation to fixation of price or other related matters, the Central Government, therefore, has no say. Under Colliery Control Order, 2000, the power of the Central Government is limited exclusively to regulating the supply of coal i.e., determining the recipient, quantity, mode, period, or source of supply. It has no authority to regulate price, as coal pricing was deregulated post-2000. Supply and/or disposal of coal which is governed by Colliery Control Order, 2000, pertains solely to matters such as: to whom the supply would be made, what would be the quantity, the mode,

period or the source of supply. Such a power to issue directions would not include fixation of price. Consequently, the Central Government lacks the power, whether directly or indirectly, to issue any directions under Clause 6 read with Clause 9 of the said order that effectively regulate or influence pricing under the guise of regulating disposal of coal, such as through e-auctions. Therefore, the Central Government cannot issue any direction which would have direct or indirect impact on price of coal.

45. It is understood, from the submissions made, that India's coal pricing policy has undergone a significant transformation—from rigid government control to a more market-responsive framework. Until 1990s, coal prices were regulated under the provisions of the Colliery Control Order, 1945 and the Essential Commodities Act, 1955. In the year 1996, the Government of India began deregulating coal prices, which ultimately culminated in the Colliery Control Order, 2000. This Order redefined coal governance by emphasizing quality assurance, ensuring transparency, and enhancing regulatory accountability, while paving the way for price deregulation and market-based coal allocation in subsequent reforms.

46. It is noted that the Coal was originally classified as an “essential commodity” under the Essential Commodities Act, 1955; however, pursuant to an amendment dated 24.12.2006, coal was omitted from the list of essential commodities with effect from 12.02.2007. Post Colliery Control Order 2000, coal prices were no longer fixed by the Government but were instead notified by coal companies and were influenced by cost of production, transportation charges, quality parameters, and prevailing market demand. While the Government of India does not exercise control over price fixation, it retains powers to regulate supply and quality through the Coal Controller. The Coal Controller ensures correct grade declarations, quality surveillance, and adjudication of disputes between

consumers and collieries. Learned counsel for the Telangana Discoms have also admitted that Colliery Control Order, 2000 did remove the pricing function from Government of India with regard to coal but there is no bar of judicial /regulatory oversight. Learned Senior counsel for SCCL also submitted that post Colliery Control Order 2000, Central Government did not play any role in fixation of coal price; deletion of coal from the list of essential commodities stands duly recognized by the Ministry of Coal under the New Coal Distribution Policy, 2007 dated 18.10.2007 and the said policy only specifies the manner in which coal is to be allocated and distributed among various categories of consumers/users.

47. Thus, from the above, it is clear that the post Colliery Order 2000 era, it is the coal companies which can fix the price of coal and same position has been affirmed by the Supreme Court in its judgements "***Pallavi Refractories v. Singareni Collieries Company Limited & Ors.***", (2005) 2 SCC 227) and "***Ashoka Smokeless Coal India (P) Ltd. v. Union of India & Ors.***", ((2007) 2 SCC 640). The coal prices are no longer fixed by the Government, however they are subjected to regulatory oversight and Government retains powers to regulate supply and quality through the Coal Controller. The question in the present case is whether such regulatory oversight/control can be extended to the price of coal charged by coal companies on the end consumer under Bridge Linkage Arrangement, which in the present case is by SCCL to STPP, and whether the premium charged by coal companies can be regulated by the Electricity Regulator i.e. State Commission, which is deliberated in subsequent paragraphs.

MOUs entered into between SCCL and the STPP and provisions of TSERC Regulation 2019

48. Learned counsel for the Telangana Discoms have submitted that pursuant to getting Bridge Linkage, SCCL and STPP signed Memorandum of Understanding (“**MoU**”) dated 01.11.2017, which was amended from time to time and imposition of premium over the Notified price of coal is incorporated in these MoUs to which Telangana Discom is neither a party nor was consulted when these MoUs were signed.

49. It is noted from point (iv) of the Procedure under Ministry of Coal Notification dated 08.02.2016, that based on approval by SLC, Ministry of Coal shall intimate details of approved schedule to SCCL/CIL, which shall have to be duly incorporated in the MoU to be concluded between the concerned coal company and allottee company. Signing of MoU between the concerned coal company and allottee company has been contemplated under the Ministry of Coal, GoI Notification dated 08.02.2016. Thus, even hypothetically, if it is considered that bridge linkage was assigned to STPP from CIL instead of SCCL, then also STPP and CIL would be required to enter into the MoU for such Bridge linkage.

50. Regarding the contention of Telangana Discoms that, in terms of Regulation 21.9 of the TSERC Regulations 2019, when fuel is procured from sources other than those mutually agreed upon between the generator and the beneficiary, and there is an increase in price of fuel above the stated threshold then prior consultation with the beneficiary is required. Regulation 21.9, as reproduced below:

“ 21.9. In case of part or full use of alternative source of fuel supply by coal based Thermal Generating Stations other than as agreed by the Generating Entity and Beneficiaries in their power purchase agreement for supply of contracted power on account of shortage of

fuel or optimization of economical operation through blending, the use of alternative source of fuel supply shall be permitted to Generating Station.

Provided that in such case, prior permission from Beneficiaries shall not be a precondition, unless otherwise agreed specifically in the power purchase agreement:

Provided further that the weighted average price of use of alternative source of fuel shall not exceed 30% of base price of fuel, however the Commission will make a prudent check in approving the price of alternative fuel, considering the improved GCV and impact of energy rate on account of increased price of alternative source of fuel. Provided also that where the energy charge rate based on weighted average price of use of fuel including alternative source of fuel exceeds 30% of base energy charge rate as approved by the Commission for that year or energy charge rate based on weighted average price of use of fuel including alternative sources of fuel exceeds 20% of energy charge rate based on weighted average fuel price for the previous month, whichever is lower shall be considered and in that event, prior consultation with Beneficiary shall be made not later than three Days in advance.”

51. Regulation 21.9 deals with the use of alternate source of fuel supply on account of shortage of fuel or optimization of economical operation through blending and prior consultation has been mandated under some conditions. However we note that prior permission from beneficiaries is not a precondition unless otherwise agreed specifically in the power purchase agreement. No provision of PPA was referred to by learned counsel for Telangana Discoms, which mandates such prior consultation with them. In our view, the coal supplied under Bridge Linkage cannot be, as such, construed as alternate source of fuel for blending purposes, and therefore shall be construed as primary and approved source of coal supply, and Regulation 21.9 is inapplicable; and accordingly we do not find merit in this submission of Telangana Discoms.

52. Our attention is drawn to the fact that though the NAINI coal block was allotted to STPP in 2015, the PPA was signed on 18.01.2016 between the Telangana Discom and SCCL/STPP for supply of 100% power from the STPP to Telangana Discom, which makes no mention of source of coal under Annexure IV of the said PPA, and it was agreed that cost of coal shall be as per SCCL coal marketing department. In our considered view, even if Telangana Discoms have signed the PPA with the understanding that allotted coal mine was NAINI, they had accepted while signing the PPA on 18.01.2016, that the cost of coal, which shall be used for computation of variable energy charge shall be as per SCCL and they shall be liable for payment of variable energy charge based on the cost of coal worked out by SCCL itself. The said PPA dated 18.01.2016, was amended only on 22.05.2024 as per State Commission order dated 22.10.2021, which included that *“For any billing month, the variable charges shall be determined as per TSERC Regulations”*. In the amended PPA also, source of coal has not been mentioned. On this count also we do not find merit in the submissions of Telangana Discoms that prior consultation from Telangana Discom was required by STPP for entering into the MoU with the SCCL for Bridge Linkage.

53. Regarding the provision of variable charge to be as per TSERC Regulations as per amended PPA dated 22.05.2024, we note that in the TSERC (terms and conditions of Generation Tariff) Regulations, dated 04.01.2019, (**“TSERC Regulations 2019”**), under Regulation 21.6, in the formula for calculation of Energy Charge Rate (ECR), LPPF has been considered, which is defined as under :

LPPF = Weighted average landed price of primary fuel in Rupees per kg, per litre or per standard cubic meter, as applicable during the month (in case of blending of fuel from different sources, the weighted average landed price of primary fuel shall be arrived in proportion to blending ratio.

54. Regulation 21.8 of TSERC Regulations 2019, defines landed price of coal as below:

“21.8 The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means (all these parameters to be shown separately), and, for the purpose of computation of energy charge, and in case of coal shall be arrived at after considering normative transit and handling losses as percentage of quantity of coal dispatched by the coal supply company during the month as notified by the Central Electricity Regulatory Commission, for respective Year unless specifically approved by the Commission;

Provided that any refund of taxed and duties along with any amount received on account of penalties from fuel supplier shall be adjusted in the fuel cost.”

55. It has been contended by learned Counsel for Telangana Discoms that definition of landed cost of coal is not inclusive; the words “shall include” should be read exhaustively and does not include premium. In support of this contention, learned Counsel relied on the Supreme Court judgement in “**South Gujarat Roofing Tiles Manufacturers Association v. State of Gujarat**” ((1976) 4 SCC 601). Learned counsel for Telangana Discoms, referring to sample price notification of SCCL dated 10.06.2023, also contended that though said price reveal the basic Price separately for power and non-power sector and wherever there is a premium to be levied, that is indicated separately, however, there is no mention of any premium for bridge linkage

consumers, in addition all other components of the landed cost – loading charges, royalties, taxes, sampling charges, etc. are indicated separately and thus premium does not form part of basic price itself.

56. Per contra, learned Senior counsel for SCCL argued that Bridge linkage is the primary source of coal available till operationalization of Naini coal block as per prevailing coal distribution policy notification dated 08.02.2016 and the landed cost of such fuel is the delivered price of coal at the generation plant and shall include premium and other charges, if any, in the cost of coal as per TSERC Regulations 2019.

57. As noted hereinabove, the first few lines of Regulation 21.8 of the TSERC Regulations read as *“the landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means (all these parameters to be shown separately),*”

58. While the first limb of the afore-extracted portion of Regulation 21.8 uses the word *“include”*, the second limb uses the word *“inclusive of”* which also means *“include”*. Use of the word ‘includes’ conveys an extensive meaning. The word *“include”* is generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute and, when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. **(ESI Corpn. v. High Land Coffee Works, (1991) 3 SCC 617; Oswal Fats & Oils Ltd. v. Commr. (Admn.), (2010) 4 SCC 728; Municipal Corpn. of Greater Bombay v. Indian Oil Corpn. Ltd., 1991 Supp (2) SCC 18 : AIR**

1991 SC 686; Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd., (2007) 3 SCC 607; CTO v. Rajasthan Taxchem Ltd., (2007) 3 SCC 124; P. Kasilingam v. P.S.G. College of Technology, 1995 Supp (2) SCC 348).

59. The word “include”, a word of extension, is used in an interpretation clause when it seeks to expand and enlarge the meaning of the words or phrases occurring in the body of the statute. (**Forest Range Officer v. P. Mohammed Ali, 1993 Supp (3) SCC 627; Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299; CTO v. Rajasthan Taxchem Ltd., (2007) 3 SCC 124**). It gives extension and expansion to the meaning and import of the preceding words or expressions. When the word “include” is used, it must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. In using the word “includes”, the legislature does not intend to restrict the definition. It makes the definition enumerative, but not exhaustive. The term defined will retain its ordinary meaning, but its scope would be extended to bring within it matters which its ordinary meaning may or may not comprise. (**Mamta Surgical Cotton Industries v. Commr. (Anti-Evasion), (2014) 4 SCC 87**).

60. **Craies on Statute Law** (7th Edn., 1.214) states that an interpretation clause which extends the meaning of a word does not take away its ordinary meaning, and is *not meant to prevent* the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act to be applied to something to which it would not ordinarily be applicable. (**Black Diamond Beverages v. CTO, (1998) 1 SCC 458**).

61. Both, in “**Bharat Co-op Bank (Mumbai) Ltd vs Employee Union**” (2007) 4 SCC 685 and in “**P. Kasilingam v. P.S.G College of Technology**” 1995 Supp2 (2) SCC 348, the Supreme Court has held that, when the word “includes” is used in the definition, the legislature does not intend to restrict the definition; it makes the definition enumerative but not exhaustive; the word “include”, when used, enlarges the meaning of the expression defined, that is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise; and only if the use of word “means” is followed by the word “includes” then it is indicative of the legislative intent to make the definition exhaustive and would cover only those which fall within the purview of the definition.

62. The expression “means and includes” indicates “an exhaustive explanation of the meaning which, for the purposes of the Act/Regulations, must invariably be attached to these words or expressions”. (**Dilworth v. Commissioner of Stamps [1899 AC 99, 105-106:(1895-9) All ER Rep Ext 1576]; Mahalakshmi Oil Mills v. State of A.P. (1989) 1 SCC 164, 169**). The use of these words suggests that the provision is intended to cover only those categories specified therein. (**P. Kasilingam v. P.S.G. College of Technology, 1995 Supp (2) SCC 348**). It must be understood to be an extensive explanation of the meaning which must invariably be attached to these words or expressions.

63. It is clear, therefore, that, by use of the word “include/ inclusive of” in a statutory provision, Rule or Regulation, the legislature or the rule/regulation making authority, ordinarily, intends to make the provision enumerative and not exhaustive, and to indicate that the provision

comprises of other things not explicitly specified therein. It is only if the word “means” or “means and includes” is used therein, can the statutory provision be said to have, ordinarily, intended to exhaustively define the said provision, make the definition a hard and fast definition, and prevent any other meaning to be assigned to the said expression, than that is put down in the definition. **(P.Kasilingam & Ors. Vs. P.S.G. College of Technology (AIR 1995 SC 1395: 1995 SCC Supl. (2) page 348; Gough v. Gough: (1891) 2 QB 665; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court: (1990) 3 SCC 682)**. The provision, wherein the word “include” is used, would require it to be read as not only comprehending such things as they signify according to their natural meaning, but also those things which the provision declares that they shall include. Significantly Regulation 28.1 uses the expression “include/ inclusive of”, and not the word “means” or the expression “means and includes”.

64. Since reliance is placed on behalf of the Respondent Discoms, on **South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat, (1976) 4 SCC 601**, to contend that the word “include”, as used in Regulation 28.1, should be read as “means” or to be understood as exhaustive, we shall briefly note the facts of the said case and the law declared therein.

In this case, manufacturers of Mangalore pattern roofing tiles challenged a Gujarat Government notification under the Minimum Wages Act, 1948, which fixed minimum wages for workers in the “potteries industry” as defined in Entry 22 of the Act’s Schedule. The key issue was whether roofing tiles fell within the scope of Entry 22, which listed nine specific pottery items. The appellant, an association of tile manufacturers, challenged a subsequent Government notification dated May 12, 1975,

which revised and applied minimum wages to their industry on the basis that roofing tiles were included in Entry 22. The key legal question was the interpretation of the word “includes” in the Explanation to Entry 22, which listed nine specific pottery items (like crockery, glazed tiles, toys, etc.). The appellants contended that the Explanation was exhaustive and roofing tiles were excluded. The Gujarat High Court rejected this contention and held that roofing tiles to be covered; the Supreme Court reversed this finding, holding that the term “includes” in the given context was used in a restrictive (not expansive) sense, effectively meaning “means” and thus limiting Entry 22 only to the nine enumerated articles. Thus word includes has been used here in the sense of means. The Court found no legislative intent to cover all pottery products and held that had such intent existed, no such specific list would have been needed. The Supreme Court quashed the 1975 notification as it applied to Mangalore roofing tiles and allowed the appeal.

65. As held in **South Gujarat Roofing Tiles Manufacturers Assn**, the word “include” is susceptible of another construction which may become imperative if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions used. It may be equivalent to “mean and include” and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to those words or expressions. (**Oswal Fats & Oils Ltd. v. Commr. (Admn.)**, (2010) 4 SCC 728). The word “includes” is also used in interpretation clauses to mean “comprises” or “consists of” or “means and includes”, depending on the context. (**N.D.P. Namboodripad v. Union of India**, (2007) 4 SCC 502). While, ordinarily, the word “includes” is used in a provision to enlarge the meaning of the expression defined, on rare

occasions, the said word is used to give an exhaustive explanation, and to be understood to mean “comprise”, “consist of” or “means and includes”.

66. Relying on **South Gujarat Roofing Tiles Manufacturers Association vs State of Gujarat: (1976) 4 SCC 601**, Mrs. Swapna Seshadri, learned Counsel for the Respondent, would commend that the word “inclusive of”, as used in Regulation 21.8 of the PSERC Regulations 2018, be understood as the word “means”, giving the words used therein an exhaustive meaning.

67. In examining whether such a contention merits acceptance, it would be necessary for us to analyze what Regulation 21.8 stipulates. The first limb of Regulation 21.8 uses the word “include”, and the second limb “inclusive of”. While the word “include” in the first limb is used in the context of the landed cost of fuel and provides that the said landed cost shall include the price of fuel corresponding to the grade and quality of the fuel; the second limb qualifies the price of fuel to be inclusive of (or, in other words, include) royalty, taxes and duties as applicable, transportation cost by rail, road and by other means.

68. It is settled law that where either the legislature or the Regulation making authority use the same expression in different parts of the very same provision, or in two continuous provisions, the said expression must be understood to carry the very same meaning, for words are generally used in the same sense throughout in a statute unless there is something repugnant in the context. (**Bhogilal Chunilal Pandya v. State of Bombay: AIR 1959 SC 356**). Ordinarily the rule of construction is that the same expression where it appears more than once in the same statute,

more so in the same provision, must receive the same meaning unless the context suggests otherwise. (**Suresh Chand v. Gulam Chisti, (1990) 1 SCC 593 : 1990 SCC OnLine SC 93**). In other words, where the legislature uses the same expression in the same statute at two places or more, then the same interpretation should be given to that expression unless the context requires otherwise. (**Raghubans Narain Singh v. U.P. Government, 1966 SCC OnLine SC 37**). On the other hand, when two different words are used by the same statute, one has to construe these different words as carrying different meanings. (**Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd. (2003) 4 SCC 305; Kurapati Bangaraiah vs Govt of AP: (2015) 5 ALD 622**) for, if the field of the two provisions were to be the same, the same words would have been used. (**B.R. Enterprises v. State of U.P (1999) 9 SCC 700; Kurapati Bangaraiah vs Govt of AP: (2015) 5 ALD 622**).

69. If the legislative intention was to distinguish and, while stating landed cost of fuel, it was intended to confine it only to the price of fuel, it would have sufficed to use the word “means” or “means and includes”. and there would have been no necessity of using the word “includes”, or use similar expressions, ie “includes”/“inclusive of”, in two consecutive limbs of Regulation 28(1). Consequently, the word “include”/ “inclusive of” must be given the very same meaning both in the first and second limb of Regulation 21.8.

70. Accepting the submission of Mrs. Swapna Seshadri, learned Counsel for the Telangana Discoms, would require us to hold that the landed cost of fuel would mean the price of fuel corresponding to the grade and quality of fuel and nothing else. Likewise, in the second limb, the words “price of fuel” must then be held to comprise only royalty, taxes and

duties and transportation cost, and nothing else. The emphasis placed by the learned Counsel is with respect to use of the word “inclusive of” in the second limb of Regulation 28.1. As the same meaning, for the word “include/inclusive of”, must be given both in the first and second limb, we find it difficult to agree with the submission that the Regulation making authority intended for the landed cost of fuel for that month only to mean the price of fuel and nothing more. Since there is nothing repugnant in the context, we are of the view that the words “include/inclusive of” must be given its ordinary meaning, and as only providing an enumerative list of matters which would fall within the ambit of the provision, and as to bring within its ambit even those matters which are not expressly stipulated therein.

71. Accepting the construction placed, on behalf of the Telangana - Discoms, on the second limb of Regulation 21.8, that the price of fuel is confined only to royalty, taxes and duties as applicable, and transportation cost by rail/road or any other means, alone and nothing more, would also result in exclusion of the actual consideration paid for purchase of fuel therefrom, and would result in the first and second limb of the said regulation contradicting each other.

72. On the expression “include/inclusive of” in Regulation 21.8, being construed as it ordinarily should, we must express our agreement with the submission urged by Mr. Sanjay Sen, learned Senior Counsel appearing on behalf of the Appellant, that the landed cost of fuel, as referred to in Regulation 21.8, would also bring within its ambit the premium charged by the coal company on the price of coal supplied to the generating company/station.

73. The words “landed cost” of fuel would be the landed cost which the generating company would have incurred in procuring fuel till its door-step, and as the price at which coal was procured by the generating station includes the premium charged by the coal company also, we find it difficult to hold that Regulation 21.8 intended to exclude such premium from the price of coal. Further, as the price of coal charged by the coal company on the generating station includes the premium, such premium would also form part of the price of fuel which the generating station is obligated to pay to procure coal from the coal company, and would undoubtedly form part of the landed cost.

74. Viewed from any angle, we must express our inability to agree with the submission, urged on behalf of the Telangana Discoms, that the first limb of Regulation 21.8 implicitly excludes the premium, charged by the coal company for bridge linkage coal, from the ambit of landed cost of fuel or that the second limb confines price of fuel only to royalty, taxes and duties as applicable, transportation cost by rail/road or any other means, and nothing more.

75. Learned senior Counsel for SCCL contended that pricing of coal supplied under Bridge linkage at a premium is a general practice and in that regard cited notifications of coal price of MCL/CIL, which were also submitted by them to State Commission and were referred to in the **Impugned Order 1** dated 01.04.2024.

MCL/CIL Prices Notification dated 31.05.2023

| Grade of Coal (a) | MCL/CIL Notified Basic Price for Power Sector (Regulated Sector) Rs. per Ton (b) | Premium levied by MCL/CIL @ 40% flat (c) = (b) x 40% | Total Price of Coal Applicable to Bridge Linkage Customers of |
|--------------------------|---|---|--|
| | | | |

| | | | |
|------|---------|--------|---|
| | | | Power Sector (d) = (b) + (c) |
| G-9 | 1240.00 | 496.00 | Rs.1736.00 |
| G-10 | 1120.00 | 448.00 | Rs.1568.00 |
| G-11 | 965.00 | 386.00 | Rs.1351.00 |
| G-12 | 896.00 | 358.00 | Rs.1254.40 |

SCCL's Prices Notification dated 29.04.2023

| Grade of Coal | SCCL Notified Basic Price for Power Sector (Regulated Factor) Rs. Per Ton | Premium levied by SCCL @ 20% flat | Premium levied by SCCL @ 30% flat | Total Price of Coal Applicable to Bridge Linkage Customers of Power Sector@ 20% premium | Total Price of Coal Applicable to Bridge Linkage Customers of Power Sector@ 30% premium |
|----------------------|--|--|--|--|--|
| G-9 | 3050.00 | 610/- | 915/- | Rs.3660/- | Rs.3965/- |
| G-10 | 2910.00 | 582/- | 873/- | Rs.3492/- | Rs.3783/- |
| G-11 | 2420.00 | 484/- | 726/- | Rs.2904/- | Rs.3146/- |
| G-12 | 2150.00 | 430/- | 645/- | Rs.2580/- | Rs.2795/- |

76. We take note that SCCL is a Government coal mining company jointly owned by the Government of Telangana and Government of India and MOUs signed by SCCL with the STPP are on the same terms and conditions, which it is imposing on other beneficiaries under Bridge Linkage, such as Mahengenco (a Maharashtra Government owned generating Company) and NTPC. The Respondent SCCL has placed on record the MOU dated 13.04.2022 signed with NTPC for the supply of coal for the period 01.04.2022 to 31.03.2023 (i.e. FY 2022-23) under Bridge Linkage, which also included the premium over notified basic price of coal; the basis price of coal shall be as per SCCL price notification. Respondent -SCCL has also placed on the record its internal note dated 11.04.2022, regarding signing of MOU quantities and pricing for FY 2022-23 for sector wise coal allocation, wherein 20% price over and above notified base price has been approved to be charged for Bridge Linkage.

77. The fact that Respondent -SCCL is charging same premium to all the customers under Bridge Coal linkage has not been refuted by the Telangana Discom except for the submissions that MoU with other generators depends upon their respective contracting terms and concerned Regulations and regulatory treatment of other MOU is within the scope and functions of the Appropriate Commission.

78. From the Minutes of Meeting of Standing Linkage Committee dated 10.04.2023 held for power sector on 21.02.2023, which recommended further extension of Bridge Linkage for the STPP of SCCL for one year, it is noted that rate for the coal supplies against extended Bridge Linkage is to be decided by CIL/SCCL and recorded as under :

“Additional Agenda Item No. 8: Bridge Linkage extension for Singareni Thermal Power Plant 2 x 600 MW of SCCL:

Record of Discussions: Project Proponent informed that the delay in the operationalization of Naini coal block is not on the account of SCCL and Stage-II Forest Clearance is pending with MoEF&CC. It was also stated that Singareni Thermal Power Plant (2 x 600 MW) (Stage-1) is running at a very high PLF and therefore, to meet the requirement of the plant, extension of Bridge Linkage is required.

Representative of Nominated Authority informed that the issue of Forest Clearance is being taken up with MoEF&CC and issue would be resolved in a month's time. Representative of Nominated Authority also recommended for extension of Bridge Linkage on tapering basis. Ministry of Power / CEA also recommended for extension of Bridge Linkage in order to avoid loss of generation from the Singareni Thermal Power Plant (2 x 600 MW) (Stage- 1) linked with Naini coal mine.

Recommendations: In view of the recommendation of Ministry of Power and the Nominated Authority, SLC (LT) recommended for extension of

Bridge Linkage to Singareni Thermal Power Plant (2 x 600 MW) of SCCL for a period of 1 year on tapering basis from SCCL. The rate for coal supplies against extended Bridge Linkages would be decided by CIL / SCCL.

79. We also take note that the Minutes of Meeting of Standing Linkage Committee dated 28.02.2024 for the SLC meeting held on 13.02.2024, which recommended further extension of Bridge Linkage for the STPP of SCCL for one year, also specifies that rate for the coal supplies against extended Bridge Linkage is to be decided by CIL/SCCL.

80. Thus, in view of above observations, we are of the view that SCCL has been authorized to fix price of coal under Bridge linkage, and since the definition of landed cost of coal is enumerative in TSERC Regulations 2019, it therefore includes the total price charged by coal company to the generator, and SCCL has not arbitrarily fixed high price for its own STPP in supplying coal under Bridge Linkage as it seems to have charged same premium over price of coal, to other generators under Bridge Linkage.

Jurisdiction of State Commission over the price of coal including the premium under Bridge Linkage for the purpose of calculation of Energy Charge for the STPP

81. Learned Counsel for the Telangana Discoms has contended that State Commission has inherent subject matter jurisdiction on all components of electricity price under Electricity Act 2003 and in the absence of any regulation, State Commission can undertake same exercise guided by Section 61 of the Electricity Act 2003 and in this regard reliance is placed upon the judgments of the Supreme Court in **“Municipal Corporation of Delhi v Gagan Narang,” (2025) SCC**

OnLine SC 19 and “**PTC India Ltd V Central Electricity Regulatory Commission**” (2010)4 SCC 603 and “**Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Transmission Co. Ltd. & Ors.**”, 2025 SCC OnLine SC 1128 and further submitted that when State Commission exercises power under Section 86 (1)(f) of the EA 2003, it does not lose its power for tariff fixation or the principles contained under Section 61, 62 or 64 of EA 2003. Learned Counsel for Telangana DISCOMs also submitted that input price of captive coal mines, allocated under the coal mines Special Provision Act 2015 is being determined by Appropriate Electricity Regulatory Commission under the aegis of EA 2003, which reinforces the position that Electricity Regulatory Commission has jurisdiction; and that all components of price of electricity are reasonable-regardless of whether the coal is procured through linkage, auction or captive sources.

82. Per Contra, learned Senior counsel for SCCL placing reliance on the provisions of the Electricity Act, 2003 and the TSERC Regulations, 2019 submitted that there are no provisions that permits / allows the electricity regulator to exercise jurisdiction on matters of coal pricing.

83. Since the present *lis* is not about determining the price of coal from captive mines by Electricity Regulatory Commission for which learned counsel for Telangana Discoms has submitted that Regulations have been framed under the Electricity Act 2003, and admittedly, same are not applicable to the present case, it is unnecessary for us to make any observation on the same.

84. As mentioned in previous paragraphs, as per Colliery Order 2000, it is the coal companies which can fix the price of coal and same position has been reiterated by the Supreme Court in its Judgements in “**Pallavi**

Refractories v. Singareni Collieries Company Limited & Ors., ((2005) 2 SCC 227) and ***Ashoka Smokeless Coal India (P) Ltd. v. Union of India & Ors.***, ((2007) 2 SCC 640).

85. Regarding the contention raised by learned counsel for Telangana Discoms that SCCL is charging premium over its basic notified price under Bridge Linkage on STPP and is unduly enriching themselves and therefore State Commission is right in denying such premium as pass through in Energy Charge rate. We do not find merit in this submission, as coal companies have been authorised to fix price of coal which they charge to the consumer and Ministry of Coal while granting Bridge Linkage from SCCL to STPP has left determination of such coal price to SCCL, and the premium charged by SCCL over the price of coal for Bridge Linkage for STPP is same, which SCCL charges to other generators for providing coal under Bridge Linkage. Further, even if it is assumed that since SCCL and STPP are one company and SCCL could have given concession, then it would lead to differential/discriminatory pricing of coal under Bridge Linkage to other generators in Power Sector, as same premium over coal price is being charged by SCCL under Bridge Linkage to other generators such as Mahengenco, NTPC etc. Hypothetically, if it is assumed that Bridge Linkage to STPP was provided by CIL and not by SCCL, who also charges premium over the Bridge Linkage, in that situation STPP would have no control over such premium. Therefore, the contention of undue enrichment by parent company i.e. SCCL supplying coal to its STPP, does not hold good. In these circumstances denial of pass through of such premium over the price of coal under Bridge Linkage shall adversely affect the Energy Charge for the STPP, which in our view, is not justified. Thus, whether Coal under Bridge linkage is sourced from CIL or SCCL, both are the Government

companies and as the same price is charged on all the generators who are assigned Bridge Linkage, the treatment of such premium as pass through in Energy Charge Rate should be same.

86. The State Commission/TSERC is a creation of the Electricity Act, and the jurisdiction which it is entitled to exercise must be confined to what is stipulated under the Electricity Act, and the Rules and Regulations made thereunder, and not beyond. The jurisdiction conferred on the Regulatory Commission, both Central and States, is by the Electricity Act, 2003, an Act of Parliament. Wherever jurisdiction is given to a court (or Tribunal) by an Act of Parliament, and such jurisdiction is only given upon certain specified terms contained in that Act, these terms must be complied with, in order to create and confer jurisdiction on it for, if they be not complied with, it would lack jurisdiction. (**Nusserwanjee Pestonjee v. Meer Mynodeen Khan** [LR (1855) 6 MIA 134 (PC); **Mohd. Hasnuddin v. State of Maharashtra, (1979) 2 SCC 572**). As it derives its powers from the express provisions of the Electricity Act, the powers, which have not been expressly given by the said Act, cannot be exercised by the State Regulatory Commission. (**Rajeev Hitendra Pathak v. Achyut Kashinath, (2011) 9 SCC 541**). An authority created by a statute must act under the Act and not outside it. As it is a creation of the statute, it can only decide the dispute in terms of the provisions of the Act. (**K.S. Venkataraman & Co. v. State of Madras, AIR 1966 SC 1089; Mysore Breweries Lt. v. Commissioner of Income-Tax, (1987) 166 ITR 723 (KAR)**). The State Regulatory Commission can exercise jurisdiction only when the subject matter of adjudication falls within its competence, and the order that may be passed is within its authority, and not otherwise. (**Dakshin Haryana Bijli Vitaran Nigam Ltd. v. Princeton Park Condominium: 2007 Aptel**

764; BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, 2009 SCC OnLine APTEL 52).

87. The State Commission, no doubt, have been empowered to regulate the price at which Discoms shall purchase the electricity but has the duty to balance the interest of Consumers on one hand and that of Generators and Discoms on other hand, and also to act as per the provisions of Electricity Act 2003. In the absence of any specific provisions in the Electricity Act 2003 to regulate the price of coal which coal companies charge under the Bridge linkage, adjudication by the State Commission under section 86 of the Electricity Act has to be in terms of the provisions of the Electricity Act and the Regulations framed under Section 181 of the Electricity Act. As deliberated in previous paragraphs, Regulations framed in the present case does not provide an exhaustive list of cost to be included in the landed cost of coal to be considered under Energy Charge Rate, and premium paid would form part of price of fuel and form part of landed cost. We find that the State Commission has erred in denying pass through of premium paid over the cost of coal under bridge linkage to STPP.

88. Judgements, relied on by learned counsel for Telangana Discoms pertaining to present issue are as summarised below:

Municipal Corporation of Delhi v. Gagan Narang & Ors., 2025 SCC OnLine SC 19

This case pertains to the Municipal Corporation of Delhi's (MCD) initiative to set up a Waste-to-Energy (WTE) project in Narela Bawana through a tariff-based bidding process, for which it sought approval from the Delhi Electricity Regulatory Commission (DERC) under Section 63 of the Electricity Act, 2003. The DERC approved the bid tariff of Rs. 7.38/KWh

and allowed the project to proceed. However, this approval was challenged by Gagan Narang before the Appellate Tribunal for Electricity (APTEL), which held that MCD, being neither a distribution licensee nor a generating company, could not seek tariff adoption under Section 63. On appeal, the Supreme Court reversed APTEL's decision and upheld DERC's orders, holding that MCD, as a statutory body mandated under the Solid Waste Management Rules, 2016, was competent to initiate the bidding process. The Court emphasized that Section 63 does not restrict who may initiate tariff adoption and it must be read harmoniously with Section 86(1)(b) of the Act which cast a duty upon State Commission to regulate electricity purchase and procurement process of Distribution licensee, and the price at which it shall be procured. In broader environmental obligations, restored approval to MCD's project in public interest.

PTC India Ltd. v. Central Electricity Regulatory Commission, (2010)
4 SCC 603

The Hon'ble Supreme Court while deciding the issue whether APTEL, constituted under the Electricity Act, 2003, has jurisdiction under Section 111 to examine the validity of Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2006 framed in exercise of powers conferred under Section 178 of the Electricity Act 2003, held that the APTEL do not have the jurisdiction under 111 and 121 to examine the validity of the regulations. The Supreme Court further held that the hierarchy of regulatory powers and functions under Section 178 of Electricity Act, 2003, which deals with making of regulations by the Central Commission, under the authority of subordinate legislation, is wider than Section 79 (1) of the 2003 Act, which enumerates the regulatory functions

of the central commission, in specified areas, to be discharged by orders (decisions). A regulation under Section 178 is made under the authority of delegated legislation and consequently its validity can be tested only in judicial review proceedings before the Courts and not by way of appeal before the Appellate Tribunal for Electricity under Section 111 of the said Act. The CERC is empowered to take measures/steps in discharge of functions enumerated under section 79 (1) but the same has to be in conformity with the regulations made under section 178. The Supreme Court also held that 'to regulate' is an exercise which is different from making of regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission before taking any steps/measures under Section 79(1). Under Section 79(1)(g), the Central Commission is required to levy fees for the purpose of the Electricity Act 2003. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178, but the same has to be guided by the factors specified in Section 61. If levy is unreasonable, it could be the subject-matter of a challenge before the appellate authority under Section 111 as levy is imposed by an order/ decision-making process. However, if there is a regulation under Section 178 in that regard, then order levying fees under Section 79(1)(g) has to be in consonance with such regulation.

Power Grid Corporation of India Limited v Madhya Pradesh Power Transmission Company Limited and Others, 2025 SCC OnLine SC 1128 dated 15.05.2025

In this case, there was a delay in the construction and commissioning of an intra-State transmission element in Madhya Pradesh, which resulted in delayed commissioning of transmission element being implemented by

inter-State transmission Licensee, which then applied for the approval of the COD under Regulation 4(3) of 2014 Tariff Regulations. The Central Electricity Regulatory Commission (CERC) permitted the inter-State transmission licensee to claim compensation for the period prior to the COD, including liquidated damages, interest during construction, and incidental expenses from Intra State Licensee. Aggrieved by this order, Intra- State transmission licensee filed a Writ Petition before the High Court, alleging that the CERC had no power under the 2014 Tariff Regulations to levy compensatory transmission charges, and it committed a jurisdictional error and claimed that the CERC's decision effectively rewrote the terms of the agreement between the parties. Inter-State Transmission licensee before the High Court claimed that in the Writ Petition, it has not stated that CERC does not have jurisdiction but has challenged the exercise of jurisdiction by CERC, which is not permissible in terms of availability of alternate remedy under Section 111 of Electricity Act, 2003. The High court admitted the said Writ Petition, which was challenged by Inter-State Transmission Licensee before the Supreme Court.

89. The Supreme Court held that sources of power for enactment of a regulation under Section 178 and regulatory orders under 79(1) are different. The former emanates from the power of delegated legislation whereas the latter is an ad hoc power which is limited to the specific parties and the situation in context of which order is given and orders under section 79 (1) are appealable under Section 111 of Electricity Act. The Supreme Court held that CERC was empowered under Section 79 of the Electricity Act, 2003 to pass such orders in the absence of specific regulations, and that its order was regulatory, not ultra vires. Thus, CERC is empowered to order for imposition of transmission charges on the party

whom delay is attributable and leaving the issue of consideration of liability of payment of transmission charges on intra -State transmission licensee in the specific facts of the case before appropriate authority i.e. APTEL, should Intra-State Transmission licensee choose to prefer an appeal before APTEL under Section 111 of the Electricity Act 2003. The High Court should not have entertained the writ petition given the availability of an alternative statutory remedy. Accordingly, the Supreme Court allowed the appeals and set aside the High Court's decision.

90. Let's us analyse the judgements relied upon by the Learned counsel for Discoms and their applicability in present case regarding the jurisdiction of the State Commission in denying premium paid under Bridge Linkage. In "***Municipal Corporation of Delhi vs Gagan Narang***", **2025 SCC online SC 19**, the broad outcome is that bodies like the Delhi Electricity Regulatory Commission (DERC) are empowered to regulate and approve tariffs for such WTE projects—even when project proponents are non-licensee entities fulfilling statutory obligations. In the "***PTC Vs CERC***", **(2010) 4 SCC 603**, broadly it has been held that "to regulate is an exercise which is different than making Regulations, and accordingly CERC is required to levy fee for the purpose of electricity Act 2003; an order imposing regulatory fee could be passed on even in the absence of Regulations. Thus, making of Regulation under Section 178 is not a precondition before taking any steps under Section 79 (1). However if there is a Regulation under Section 178 in that regard, the order under Section 79 has to be in consonance with such Regulation. In "***Power Grid Vs Madhya Pradesh***", **2025 SCC online SC 1128**, the Supreme Court held that sources of power for enactment of a regulation under Section 178 and regulatory orders under 79(1) are different and power under 79(1) is an ad hoc power which is limited to the specific parties and

the situation in context of which order is given and orders under section 79 (1) are appealable under Section 111 of Electricity Act. The Supreme Court held that CERC was empowered under Section 79 of the Electricity Act, 2003 to pass such orders in the absence of specific regulations, and that its order was regulatory, not ultra vires.

91. We take note that Section 61 of Electricity Act, 2003 deals with the jurisdiction of Appropriate Commission to specify terms and conditions for determination of Tariff and to frame Tariff Regulation accordingly; Section 62 of the Electricity Act is with regard to determination of Tariff, while Section 86 of the Electricity Act deals with the Functions of the State Commission. Learned counsel for Telangana Discoms has not drawn our attention to any specific provision of the Electricity Act 2003, which provides for determination of cost of coal by the Electricity Regulator. The State Commission has already framed the Tariff Regulations i.e. TSERC Regulations 2019 specifying Terms and conditions of Generation Tariff, applicable in present case, under the aegis of Electricity Act 2003, as referred to in above paragraphs, which has specified that landed cost of coal is to be considered while calculating the Energy Charge Rate, and it does not mention anything about determination of such landed cost of coal by State Commission.

92. In the present case, Regulations have already been framed by State Commission specifying various parameters for tariff determination with no specific provision with regard to determination of coal price while considering landed cost of coal in Energy Charge Rate; Post Colliery 2000 order, coal companies are authorised to fix coal price and as such there is no discrimination in price of coal charged by SCCL to its STPP under bridge linkage as compared to its other customers, so as to unduly enrich

itself. State Commission cannot therefore, be considered as having jurisdiction to determine the landed cost of coal and deny premium charged by coal companies as part of landed cost of coal. From the referred judgements, nowhere it can be inferred that powers beyond the provisions of the Electricity Act can be exercised by the Central/State Commission, as their powers are confined to the provisions of the Electricity Act. Learned Counsel for Telangana Discoms has not referred to any specific provision in Electricity Act, authorising State Commission to decide coal price. Therefore under its power to regulate power purchase cost of Discoms, State Commission cannot regulate such cost on which it does not have jurisdiction and accordingly judgements referred by Telangana Discoms (“**Municipal Corporation of Delhi v Gagan Narang, (2025) SCC OnLine SC19**, “**PTC India Ltd V Central Electricity Regulatory Commission (2010)4 SCC 603**” and “**Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Transmission Co. Ltd. & Ors.**, 2025 SCC OnLine SC 1128), in our considered view, are inapplicable to the facts and circumstances of the present case.

93. As such, we find that State Commission has taken contrary stand with regard to pass through of premium over coal price under Bridge Linkage, while denying the same in **Impugned Order 1** dated 01.04.2024 and allowing the same in **Impugned Order 2** dated 28.06.2024 in True up for FY 2022-23 and MYT for FY 2024 -25 to FY 2028 -29.

94. In view of above deliberations, we set aside the **Impugned Order 1** dated 01.04.2024 which denied the Premium paid over the coal price under Bridge Linkage by STPP to SCCL as pass through in Energy Charge Rate and dispose of Appeal No. 256 of 2024 in these terms. Under

Impugned Order 2 dated 28.06.2024, the issue of computation of 'K-factor' for the purpose of approval of R&M expenses, is remanded back to State Commission and Appeal 19 of 2025 is disposed of in these terms. All associated IAs in both the Appeals are also disposed of.

Pronounced in open court on this the 28th day of August 2025.

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

Reportable / ~~Non-Reportable~~

ts/ag/dk

IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. _____ OF 2025**

(Civil Appeal under Section 125 of the Electricity Act, 2003 against the Common Impugned Judgment and Final Order dated 28.08.2025 passed by the Appellate Tribunal for Electricity at New Delhi in APL No. 256 of 2024 and APL No. 19 of 2025)

Arising out of Appeal No. 256 of 2024**POSITION OF PARTIES**

BEFORE THE
APPELLATE
TRIBUNAL
FOR
ELECTRICITY

**BEFORE
THIS
HON'BLE
COURT**

**1. Southern Power
Distribution Company of
Telangana Limited,**

Through its Chief
Engineer (IPC),
Corporate Office #6-1-
50,

Mint Compound,
Hyderabad, Telangana –
500 063

Email: cmd@tgsouthern
power.org

Phone No.: 040-23431018

Respondent No.
2

**Appellant
No. 1**

**2. Northern Power
Distribution Company of
Telangana Limited**

**Through its Chief
Engineer (IPC),**

H. No. 2-5-31/2,
Corporate Office,
Vidyut Bhawan,
Nakkalgutta,
Hanamkonda,
Warangal, Telangana –
506 001.

Email: cmd@tgnpdcl.com

Phone No.: 0870-2461501

Respondent No.

3

Appellant

No. 2

VERSUS

**1. Singareni Collieries
Company Limited**

Through its Deputy
General Manager,
Kothagudem Collieries,
Bhadradi Kothagudem
District,
Telangana State – 507 101.

Email:

fad_stpp@scclmines.com

Phone No.: 9903097168

Appellant

Respondent

No. 1

**2. Telangana State
Electricity Regulatory
Commission**

Through its Secretary,
Having office at:5th Flooe,
Singareni Bhavan,
Red Hills,Lakdi-ka-pul,
Hyderabad – 500 004.

Email:

chairman@TGERC.gov.in

Phone No.: 040-23311127

Respondent No.

1

Respondent

No. 2

Arising out of Appeal No. 19 of 2025**POSITION OF PARTIES**

| | BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY | BEFORE THIS HON'BLE COURT |
|--|---|------------------------------------|
| <p>1. Southern Power Distribution Company of Telangana Limited, Through its Chief Engineer (IPC), Corporate Office #6-1-50, Mint Compound, Hyderabad, Telangana – 500 063. Email: cmd@tgsouthernpower.org Phone No.: 040-23431018</p> | <p>Appellant No. 1</p> | <p>Appellant No. 1</p> |
| <p>2. Northern Power Distribution Company of Telangana Limited Through its Chief Engineer (IPC), H. No. 2-5-31/2, Corporate Office, Vidyut Bhawan, Nakkalgutta, Hanamkonda, Warangal, Telangana – 506 001. Email: cmd@tgnpdcl.com Phone No.: 0870-2461501</p> | <p>Appellant No. 2</p> | <p>Appellant No. 2</p> |

VERSUS**1. Singareni Collieries
Company Limited**

Through its Deputy
General Manager,
Kothagudem Collieries,
Bhadradri Kothagudem
District,
Telangana State – 507 101.

Email:

fad_stpp@scclmines.com

Phone No.: 9903097168

Respondent No.

2

Respondent

No. 1

**2. Telangana State
Electricity Regulatory
Commission**

Through its Secretary,
Vidyut Niyantran bhavan ,
G.T.S. colony,
Kalyan Nagar,
Hyderabad – 500 045.

Email:

chairman@TGERC.gov.in

Phone No.: 040-23311127

Respondent No.

1

Respondent

No. 2

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THIS
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPEAL OF THE APPELLANT ABOVE NAMED:-

MOST RESPECTFULLY SHOWETH:

1. That the present appeal is being filed under Section 125 of the Electricity Act, 2003 against the Common Impugned Judgment and Final Order dated 28.08.2025 (“**Impugned Order**”) passed by the Appellate Tribunal for Electricity at New Delhi (“**Appellate Tribunal**”) in APL No. 256 of 2024 and APL No. 19 of 2025 *vide* which the Appellate Tribunal has, *inter-alia*, held as follows:
 - (a) That the Telangana State Electricity Regulatory Commission (“**State Commission**”) in this case, does not have jurisdiction to determine the landed cost of coal and deny premium charged by coal companies as part of landed cost of coal (Para 92).
 - (b) That Singareni Coal Company Limited (“**SCCL**”) which is both the coal supplier as well as the generating company has been authorized to fix price of coal under Bridge linkage ‘*as a general practice*’ without indicating as to how this jurisdiction vests in SCCL or the very least, how the premiums can be levied unilaterally over and above the price fixed by SCCL (Para 80).
 - (c) After holding that SCCL is free to determine its coal price and premiums and that the State Commission has no jurisdiction to deal with the same, the Appellate Tribunal has construed Regulation 21.8 of the TGERC (Terms and Conditions of Generation Tariff) Regulations, 2021 (“**Tariff**

Regulations”), which defines ‘*landed cost of fuel*’ as an inclusive definition and held that it would include within its ambit, the premium charged by the coal company on the price of coal supplied to the generating company/station (Para 71 – 73).

- (d) Further, even though the State Commission lacks jurisdiction under the Act, the Regulations framed by it which is a delegated legislation under the very same Act have been interpreted in favour of SCCL by the Appellate Tribunal; As an instance, Regulation 21.9 dealing with alternate source of fuel of the Tariff Regulations has been held inapplicable and hence consent of the beneficiaries is not required in case of increase in price of coal (Para 51).
- (e) The Telangana DISCOMs signed the PPA on 18.01.2016 on the understanding that SCCL would be determining the cost of coal, since no source of coal is mentioned in the PPA (Para 52).
- (f) Since SCCL is a government company and is charging premium to all its customers & that the Minutes of Meeting of Standing Linkage Committee dated 10.04.2023 states that rate for the coal supplies against extended Bridge Linkage is to be decided by CIL/SCCL, the Appellate Tribunal has rendered a finding that SCCL is authorised to fix the price of coal and since the definition of landed cost of coal is enumerative, it includes the premium (Para 76 – 80).

- (g) Whether it be the framing of issues or the findings rendered, the Appellate Tribunal has grossly rendered contradictory findings on all aspects –
- i. It has, on one hand, held that in the absence of any specific provisions in the Electricity Act, 2003 to regulate the price of coal which coal companies charge under the Bridge linkage, adjudication by the State Commission under Section 86 of the Electricity Act has to be in terms of the provisions of the Electricity Act and the Regulations framed under Section 181 of the Electricity Act (Para 87). However, while interpreting the Regulations framed by the State Commission, the same have been deemed to include the premiums being charged by the SCCL (Para 74)
 - ii. The first issue framed is on the interpretation of the term ‘landed price of coal’ under Regulation 21.6 & 21.8 [which is a delegated legislation framed by the State Commission under Section 181 of the Electricity Act, 2003] & the subsequent issues framed are on the jurisdiction of the State Commission to regulate the coal price under the Electricity Act, 2003
 - iii. While the first issue on the interpretation of the Regulation has been decided against the Appellants, a decision on merits on this issue would presume that the State Commission has subject matter jurisdiction; however, while deciding the subsequent issues, the State Commission has been held to lack any jurisdiction under the Electricity Act, 2003 to decide the components of coal price;

- iv. The Appellants' only case was that SCCL being the coal company as well as the power generator and fixing the notified price of coal ought to supply the coal at this notified price; the grievance raised by the Appellant was on the extra premiums which were levied unilaterally by the coal department on the power department of SCCL; Surely, the State Commission which determines variable charges under its Regulations would have the power to check the components of such variable charges;
2. The Impugned Judgment is grossly erroneous since the Appellate Tribunal has unwarrantedly enlarged the scope of the Collieries Control Order 2000 by reading a removal of price fixation by the Government of India as a bar on the right of the electricity regulator to regulate on what components of price may be passed on legitimately to the consumer in determination of electricity tariff. The Appellate Tribunal has failed to consider the submission of the Appellants that authority to regulate what components of cost can be passed on the consumers is not 'fixing' the price, thereby conflated the issue of jurisdiction of the State Commission and right of SCCL to determine its coal cost.
3. **QUESTIONS OF LAW:**
The present appeal raises the following substantial questions of law for consideration of this Hon'ble Court in the second appeal under Section 125 of the Electricity Act, 2003:

- (a) Whether all entities in the supply chain being authorised to fix their own prices, what is the scope of the regulatory jurisdiction of State Electricity Regulatory Commission under Sections 61 and 86(1)(f) of the Electricity Act, 2003?
- (b) Whether the powers of the State Commission under Sections 61, 62 & 64 read with Section 86 of the Electricity Act, 2003 have been read down by the Learned Appellate Tribunal to hold that the State Commission has no role to play in the determination of pass through of cost components?
- (c) Whether the Learned State Commission can act as a mere “*post office*” in simpliciter rubber stamping cost of components forming part of energy charges, under Section 62 of the Electricity Act?
- (d) Whether absence of Government intervention in coal pricing can be extrapolated to exclude jurisdiction of the State Commission in determining components of cost of power that can be legitimately passed on to consumers?
- (e) Can the Learned Appellate Tribunal interpret the Tariff Regulations (which is a delegated legislation under the Electricity Act) to hold that

premium is included in the landed cost of coal, however, under the Parent Act i.e. Electricity Act, 2003, the State Commission has no jurisdiction on pass through of various components of the landed price of coal?

- (f) Whether the role of the Electricity Regulator under the Electricity Act 2003 which has now been extended to determine coal price itself for generating companies having captive coal mines both by the Ministry of Power & the Ministry of Coal has been diminished by the narrow interpretation given by the Appellate Tribunal?
- (g) Whether the Learned Appellate Tribunal has rewarded SCCL for its own default of not developing the captive coal mine in time and simply mulcting the consumers of the State with unilateral premiums in the variable charges over and above the notified price of coal by SCCL itself which the Appellants have never disputed to pay?

4. FACTS OF THE CASE:

- (1) The Appellants, namely Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited are distribution licensees within the meaning of Section 2(17) of the Electricity Act, 2003, are entrusted with the function

of distribution of electricity in their respective areas of operation in the State of Telangana.

- (2) The Respondent No. 1, M/s. Singareni Collieries Company Limited (hereinafter referred to as “SCCL”) is a coal mining company incorporated under the Companies Act, 1956. SCCL has established Singareni Thermal Power Plant (STPP) and the entire power generated from STPP is sold to the Appellants under the Power Purchase Agreement dated 18.01.2016 (hereinafter referred to as “PPA”). It is pertinent to mention that STPP is not an independent legal entity and wholly owned and managed by the SCCL. SCCL is primarily a coal mining company and the STPP is housed within SCCL, with no separation in terms of accounts and personnel.
- (3) The Respondent No. 2, the State Commission, is the Electricity Regulatory Commission of the State of Telangana exercising powers and discharging functions under the provisions of the Electricity Act, 2003.

Background on coal pricing by coal companies

- (4) The Government of India, acting through the Ministry of Coal, controlled the pricing, distribution, movement, and allocation of coal as it was

included as an 'essential commodity' in the Essential Commodities Act, 1955. Under the Essential Commodities Act, 1955 the Ministry of Coal issued Collieries Control Orders from time to time.

- (5) Pursuant to policy of deregulating various aspects of pricing and distribution of coal, the Ministry of Coal issued the Collieries Control Order, 2000 under which it *removed* pricing as a function of the Government of India, by implication, placing coal producers at par with any other manufacturers, vendors, service provider in a market – i.e., free to set their own prices for sale to consumers. It is pertinent to note that there is no positive authority or entitlement on the coal companies or any bar or restriction on judicial/ regulatory oversight on the same for all times to come.

A copy of the Collieries Control Order, 2000 dated nil is attached herewith and marked as **Annexure - A-1 (Page 125-127)**.

- (6) Subsequent to pricing being removed from the purview of the Government of India, the coal companies (i.e., SCCL, Coal India Limited (CIL) and its subsidiaries), notified the price of the coal along with various add-ons – like royalty and taxes, mark-ups, including for power sector and non-power sector end uses. CIL and SCCL either gave a price

for different grades of coal from all its coal mines, or from an identified mine. The above is commonly called ‘**notified price of coal**’. All end users, including power plants, having fuel supply agreements (FSAs) or coal linkages obtained coal at this notified price. There is no publicly available information that SCCL and CIL sell coal at a price other than notified price under FSAs and/or linkages. Only at e-auctions, introduced through later policy developments, prices other than notified prices are discovered.

- (7) Coal was removed from the purview of Essential Commodities Act, 1955 in 2006. Coal mines were subsequently allocated through auction by the Ministry of Coal for specific end uses under the Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development & Regulation) Act, 1957 following the decision of this Hon’ble Court in ML Sharma v Union of India, (2014) 9 SCC 516.
- (8) Distribution of coal mined by the coal companies was allocated to end users by the Ministry of Coal under various policy issued from time to time. The policy relevant to the facts of this case was the New Coal Distribution Policy, 2007 (“**NCDP**”). Power generators continue to have coal linkages allocated under the NCDP where price of coal is the Notified Price of the coal companies.

A copy of the New Coal Distribution Policy, 2007 dated 18.10.2007 issued by Ministry of Coal, Government of India is attached herewith and marked as **Annexure - A-2 (Page 128-136)**.

- (9) At present, the NCDP is now replaced by the Shakti Scheme and new linkages for end users are required to be granted through e-auction or linkage by the Ministry of Coal under the Shakti scheme.

Facts leading up to the Bridge Linkage

- (10) STPP and the Appellants signed a Power Purchase Agreement dated 18.01.2016 (“PPA”) for sale and purchase of 2x600 MW capacity from the STPP. The PPA states that the terms and conditions of the PPA are as per the prevailing State Commission regulations. The State Commission notified Generation Tariff Regulations in 2019 and 2021. The Appellate Tribunal in the Impugned Judgment has rendered findings that Appellants have accepted at the time of signing of the PPA that cost of coal shall be determined by SCCL itself, though the facts leading up to the signing of the PPA was not brought before the Appellate Tribunal.

A copy of the PPA dated 18.01.2016 between Singareni Collieries Company and Telangana Southern Power Distribution Company Limited is annexed hereto and marked as **Annexure - A-3 (Page 137-175)**.

- (11) To bridge the gap between the requirement of coal for a specified end use plant of Central and State Public Sector Undertakings and the start of production from the linked allotted coal mine/block, the Ministry of Coal notified a Bridge Linkage Policy by way of office memorandum dated 08.02.2016. The Bridge Linkage Policy provided that the Standing Linkage Committee of Ministry of Coal (which earlier used to allocate all coal mines to end users) would approve bridge linkage upon an application of the end use plant. Such bridge linkage could only be obtained for 3 years and further extension would not be granted under normal circumstances.

A copy of the Office Memorandum issued by Ministry of Coal, Government of India dated 08.02.2016 on Bridge Linkage Guidelines is annexed hereto and marked as **Annexure – A4 (Page 176 to 184)**.

- (12) The STPP applied for and obtained approval for Bridge Linkage from the Standing Linkage Committee of Ministry of Coal on 18.03.2016. The Bridge Linkage provided that, for supply to STPP, the source from which

coal may be procured was to be decided by SCCL in consultation with the Railways. The initial Bridge Linkage was granted for the period between 13.08.2015 to 12.08.2018, and it was anticipated that coal production from NAINI coal block would commence in December 2020. However, the same was not within the knowledge of the Appellants at the time of obtaining bridge linkage.

A copy of the SLC Minutes dated 11.04.2016 for the Meeting dated 18.03.2016 approving bridge linkage along with a copy of the letter from Ministry of Coal to SCCL dated 30.08.2016 providing details of the Bridge Linkage quantification is annexed hereto and marked as **Annexure - A-5 (Page 185-187)**.

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STPP achieved commercial operation (COD) on 02.12.2016 (Unit I on 25.09.2016 and Unit II on 02.12.2016). The capital cost and generation tariff of the STPP was approved by the State Commission vide its Order dated 19.06.2017 in Petition No. OP No. 9 of 2016 filed by SCCL on 03.02.2016. Only through this Petition OP No.9 of 2016, the fact of allocation of the Naini coal block to STPP was made known to the State Commission and to the Appellants. SCCL further informed the State Commission that it had requested for bridge linkage from the Ministry of

Coal. In this petition also, the landed price of coal was as per the SCCL notified prices and there was no mention of premium thereon. The State Commission considered the norms of operation as specified in the CERC (Terms and Conditions of Tariff) Regulations, 2014 in the determination of Energy Charges for SCCL TPP (Para 4.13.2). The State Commission further directed the STPP to swap the Naini captive coal mine allotted to STPP with SCCL coal mines to mitigate costs associated with transportation and loss of GCV to reduce burden on the consumers and to safe guard consumer interest.

A copy of the Order dated 19.06.2017 by the Telangana State Electricity Regulatory Commission on Determination of Capital Cost and Generation Tariff for 2x600 MW Thermal Power Project is annexed hereto and marked as **Annexure - A-6 (Page 188-266)**.

- (13) Pursuant to the Bridge Linkage, SCCL executed a Memorandum of Understanding (MoU) dated 01.11.2017 with STPP, which was after the signing of the PPA. The MoU was in essence an agreement executed between two wings of the same company. Notably, the MoU mentions that the coal is being supplied to STPP as part of the mandate to sell 10% of production under e-auction as New Coal Distribution Policy (NCDP). The MoU does not make any reference to the Bridge Linkage and the Appellants were neither parties nor privy to the MoU. The MoU is not a

publicly available document or notified like the other price notifications of the coal companies. The pricing for G5- G8 grades coal & washery grade G9 coal was to be at notified price of power sector and for G9 to G15 grade, the notified basic price plus 20% of notified basic price of power sector.

A copy of the Memorandum of Understanding (MoU) dated 01.11.2017 between STPP and SCCL is annexed hereto and marked as **Annexure - A-7(Page 267-285)**.

- (14) However, the entire time there was hardly any progress in the development of the Naini mine. The Naini Coal Block was initially supposed to be commissioned by December 2020. However, it was not ready to be commissioned due to various reasons, none of which have been substantiated in any proceedings thus far. STPP went on delaying the captive coal block and obtaining extensions of the bridge linkage from time to time. The STPP has used the bridge linkage, which was only supposed to be for 3 years, for more than 8 years.
- (15) It obtained extensions for bridge linkage periodically on some or the other basis. Risks and delays are not unknown in mine production and have to be accounted for in project planning and can only be the risk of the mine

developer, they cannot be loaded on the end consumer endlessly. For the first extension, it stated to the Standing Linkage Committee that the production from the Nani block was scheduled to start in February 2021 and also the Peak Rated Capacity (PRC) of the mine would be achieved by 2023.

Background on imposition of premium by STPP

- (16) On 06.04.2018, SCCL and STPP (i.e., two wings of the same company) entered into a supplementary MoU modifying the pricing structure creating two new slabs namely, bridge linkage and non-bridge linkage for F.Y. 2018-19 w.e.f. 01.04.2018. Under the MoU, for coal supply up to 75% of agreed quantity the tariff payable was notified basic price of coal applicable for power sector with a premium of 20% and for supply beyond 75% of agreed quantity the tariff payable was notified basic price of coal applicable for non-power sector with a premium of 20%. Subsequently, the MoUs were amended from time to time only with revisions to the pricing. The below table depicts the changes in pricing in the MoUs from time to time.

A copy of the Supplementary MoU dated 06.04.2018 is annexed herewith and marked as **Annexure – A – 8(Page 286-288)**.

| MoU | Date | Pricing (for normal coal) | Period |
|--------------------------|------------|---|--------------------------------|
| Original MoU | 01.11.2017 | <p>Clause 3:</p> <p>3.1 G5 to G8 grades coal shall be at Notified price of Power sector.</p> <p>3.2 Washery Grade G9 coal shall be at Notified price of Power sector as per price notification.</p> <p>3.3 For G9 to G15 grades, the price shall be Notified Basic Price plus 20% of the notified basic price for Power sector.</p> <p>3.4 Coal supplied from cost plus mines / Blended coal shall be at notified price of the mine / CHP as the case may be, for power sector</p> <p>3.5 All the above prices shall be as per SCCL price notification.</p> | 01.11.2017 to 31.03.2020 |
| Supplementary MOU | 06.04.2018 | * Up to 75% Agreed Quantity 20% over notified basic price of Power for all grades of coal. | Modified w.e.f |

| | | | |
|---------------------------|------------|---|---|
| | | * Beyond 75% Agreed Quantity 20% over and above notified basic price of Non-Power Sector | 01.04.2018 to 31.03.2020 |
| 2nd MoU | 30.03.2020 | * Up to 100% Agreed Quantity 20% over notified basic price of Power for all grades of coal. * Beyond 100 % Agreed Quantity 20% over and above notified basic price of Non-Power Sector. | 01.04.2020 to 31.03.2021 |
| Supplementary MoU | 12.11.2020 | * SCCL dispensed with pricing of Non-Power Sector Coal from 01.06.2020 on account of the objections raised by the Appellants. * 10% premium till 4.52 MT G15 grade it shall be notified basic price of Mine/ CHP of power sector * Notified price for entire quantity, if coal supplies are beyond 4.52 MT | Modified w.e.f 01.06.2020 till 31.03.2021 |

| | | | |
|--------------------------|------------|--|--------------------------------|
| 3rd MoU | 16.04.2021 | For 6 MMTPA quantum of coal - 10% over notified basic price of Power for all grades of coal. | 01.04.2021 to 31.03.2024 |
| Supplementary MoU | 28.03.2022 | For 6 MMTPA quantum of coal - 20% over notified basic price of Power for all grades of coal. | 01.04.2022 to 31.03.2023 |
| Supplementary MoU | 29.03.2023 | <ul style="list-style-type: none"> •Up to 75% agreed quantity – 20% over notified power sector price • And beyond 75% agreed quantity – 30% over notified power sector price | 01.04.2023 to 31.03.2024 |

*Agreed quantity- 4.52 MMTPA

(17) It is pertinent to state that while the price notifications includes other kinds of premiums, e.g., premium on cost of coal from particular mines, it does not mention or refer to any premium on bridge linkage.

- (18) Further, it is evident that SCCL obtained bridge linkage extensions on representations that production will commence, since the extensions were all granted on tapering basis. But even first coal had not been touched as late as April 2025. Details of extensions in Bridge Linkage provided to STPP are set out herein below:

| Date of linkage | Duration | Particulars |
|------------------------|-----------------|---|
| 18.03.2016 | 3 years | 13.08.2015 to 12.08.2018 |
| 10.04.2018 | 5 years | 2018 – 2021 2021 to 2023 on tapering basis |
| 21.02.2023 | 1 year | 2023 – 2024 on tapering basis |
| 28.02.2024 | 1 year | 2024 – 2025 on tapering basis |
| 27.06.2025 | 1 year | 2025 – 2026 on tapering basis |

Copy of the approved minutes in respect of the meeting held on 10.04.2018 was forwarded on 15.05.2018 are annexed herewith and marked as **Annexure - A-9(Page 289-302)**.

- (19) Hence, as can be seen from the above, the Appellants had no control over commissioning of the Naini mine, no participation in the extension of the

bridge linkage, and was not privy to the frequent changes in the MoU. However, the above had a cascading effect on the variable charges being paid by the Appellants, as the cost of fuel forms the most significant element of the variable charges of the electricity supplied.

- (20) Had the Naini block come in time, the entire coal price would have been determined by the State Commission itself since even under the Electricity Act, 2003 the generating companies having captive coal blocks get the coal tariff also determined by the Regulatory Commission only.

PPA terms and disputes before the State Commission

- (21) Under Sections 61 read with Section 86(1)(a) & (b), the State Commission has notified the TGERC (Terms and Conditions of Generation Tariff) Regulations, 2019 and the TGERC (Multi Year Tariff) Regulations, 2023. Regulation 21 of the TGERC (Terms and Conditions of Generation Tariff) Regulations, 2019 deals with computation & payment of capacity charges and energy charges for thermal generating stations.

A copy of the TGERC (Terms and Conditions of Generation Tariff) Regulations, 2019 is attached herewith and marked as **Annexure - A-10(Page 303-308)**.

(22) SCCL revised the terms of supply of bridge linkage with STPP and entered into another MoU on 30.03.2020 as revised by the Supplementary MoU dated 12.11.2020.

A copy of the second MoU dated 30.03.2020 and Supplementary MoU dated 12.11.2020 is attached herewith and marked as **Annexure - A – 11(Page 309-331)**.

(23) SCCL again revised the terms of supply of bridge linkage with STPP and entered into another MoU on 16.04.2021. A copy of the third MoU dated 16.04.2021 is attached herewith and marked as **Annexure - A – 12 Page to 332-351**).

(24) The PPA stipulates in its Recital that the terms and conditions of the PPA shall be as per the prevailing TGERC Regulations and any change in the TGERC Regulations that may occur in future shall be applicable for all operating norms or any other parameters. The PPA is valid for a period of 25 years from the COD of the Project, which was declared as 02.12.2016.

(25) Article 4.1.1 provides that “(T)he Tariff for the electricity supplied from the Project would be as determined under the Tariff Regulations of TSERC and tariff order thereof from time to time.” The tariff consists of two components – the fixed charges and the variable charges. The present

dispute is on the inclusion of premium in the variable charges. The PPA initially contained Annexures III & IV which provided for computation of variable charges. The State Commission by its Orders dated 22.10.2021 in O.P. No. 08 of 2016, directed for the above clauses to be deleted and replaced as under:

- (a) Replacement of Article 4.3 that Variable Charges shall be determined as per TERC Regulation

“For any billing month, the variable charges shall be determined as per TGERC Regulations”.

- (b) Deletion of Annexure III (Computation of Variable Charges)& Annexure IV (Computation of Delivered Cost of Coal – Thermal Plants)

A copy of the relevant extracts of the Order dated 22.10.2021 in O.P. No. 08 of 2016 passed by the State Commission is attached herewith and marked as **Annexure - A-13(Page 352-385**).

- (26) The Third MoU dated 16.04.2021 was again revised vide the Supplementary MoU dated 28.03.2022. A copy of the Supplementary

MoU dated 28.03.2022 is attached herewith and marked as **Annexure - A-14(Page 386-387)**.

- (27) Thereafter, when SCCL raised a supplementary invoice after completion of F.Y. 2018-19 (when power had already been scheduled and utilized based on merit order), claiming 20% additional premium on the notified prices applicable to the non-power sector for supply of coal beyond 75% of agreed quantity, Appellants objected to such levy, the same being contrary to the Tariff Regulations. In lieu of the bridge linkage, if there had been a long-term coal linkage, the coal would have been supplied only at the notified price and no premium would have been applicable.
- (28) SCCL in the above background had filed **O.P. No. 8 of 2021** and same came to be disposed vide Order dated 21.11.2022 by the State Commission. A copy of the Order of the State Commission dated 21.11.2022 in OP No. 8 of 2021 is attached herewith and marked as **Annexure - A-15 (Page 388-465)**
- (29) Even as late as December 2022, the progress on the coal block was only 30%, as is noted in the January 2023 Project Status Report of the Ministry of Statistics and Programme Implementation (MoSPI). That is, even after 7 years of grant of bridge linkage and 2 years after the expected

commencement date, SCCL was nowhere close to operationalising the mine. Hence, the very basis on which the bridge linkage extension was obtained was incorrect. Relevant extract of the Project Summary *vide* reports dated 12.05.2022 and 09.06.2022 are annexed herewith and marked as **Annexure - A-16**(Page 466-468).

(30) SCCL obtained another extension of its bridge linkage on 21.02.2023 for one year. A copy of the approved minutes for the meeting held on 21.02.2023 of the SLC was forwarded on 10.04.2023. True copy of the approved minutes for the meeting held on 21.02.2023 of the SLC was forwarded on 10.04.2023 is attached herewith and marked as **Annexure - A-17**(Page 469-488).

(31) SCCL revised the bridge linkage terms yet again *vide* the Supplementary MoU dated 29.03.2023. A copy of the Supplementary MoU dated 29.03.2023 is attached herewith and marked as **Annexure - A-18**(Page 489-491 to).

(32) The Appellants had independently filed **O. P. No. 13 of 2023** questioning the premium pricing of coal in the MoU dated 16.04.2021 and Supplementary MoU dated 28.03.2022 a result of the abnormal delay in commissioning of the Naini Block beyond February 2021 . The petition

O. P. No. 13 of 2023 was filed challenging the imposition of the premium from FY 2021 – 2022 as being contrary to the PPA and the Regulations under Section 86(1)(f). The prayer of the Appellants in O. P. No. 13 of 2023 was as under:

“.....TSDISCOMs humbly pray the Hon’ble Commission to direct SCCL to charge the Coal supply being made to its Thermal Power Plant (STPP) at the Notified Basic Price corresponding to the Coal grade being supplied, without any additional charge/ premium for the period FY 2021-22 to till the date of operationalisation of Naini Coal Block and later to adopt the CERC Input Price Determination methodology, in the interest of end consumers.”

A copy of the Petition in O. P. No. 13 of 2023 is annexed herewith and marked as **Annexure - A- 19**(Page 492-506).

- (33)** SCCL obtained another extension of its bridge linkage on 13.02.2024 for one year on tapering basis. A copy of the approved minutes for the meeting dated 13.02.2024 of the SLC was forwarded *vide* letter dated 28.02.2024 which is annexed herewith and marked as **Annexure - A- 20**(Page 507-521).

- (34) While the Orders in O. P. No. 13 of 2023 were reserved, SCCL had filed a petition in **O.P. No. 04 of 2024** seeking approval of Multi Year Tariff (MYT) for the control period FY 2024-25 to FY 2028-29 and True-up for FY 2022-23. In the petition filed, SCCL had taken into consideration the premium coal price instead of the notified basic coal price, its entitlement to the same pending adjudication by the State Commission in O. P. No. 13 of 2023.
- (35) SCCL subsequent thereto had filed an application seeking clarification of the Order dated 21.11.2022 in O.P. No. 8 of 2021 and the same came to be disposed of vide Order dated 01.04.2024. Vide the clarification Order dated 01.04.2024, the State Commission despite recording that the earlier order suffered from an ambiguity, held that SCCL has an alternate remedy under Section 111 of the Electricity Act. A copy of the Order of the State Commission dated 01.04.2024 in I.A. No. 4 of 2023 in O.P. No. 8 of 2021 is attached herewith and marked as **Annexure - A-21(Page 522-547)**.
- (36) The Hon'ble Commission disposed of O.P. No. 13 of 2023, in favour of the Appellants, categorically holding as under:
- “22.....In the instant case also, the tariff is payable as agreed by the parties and approved by the Commission, which is incorporated in the PPA. Nothing more can be read into such arrangement beyond what is*

accepted by the parties. Therefore, the action of the respondent in determining not only the coal price but also including premium to the said price is beyond the agreement. As such, the petitioners have rightly pointed out the respondent is acting beyond the agreed terms of the PPA.

This is more so in the context of the amendment made to the relevant annexure in the PPA by the Commission.

.....

26. Having considered the material on record, the Commission is of the view that pricing of coal is the exclusive forte of the Respondent. However, it cannot without exercising the statutory or regulatory mechanism overstep and fix premiums also contrary to the agreement entered by it with the petitioners. There is no such liberty provided to the respondent in the PPA and as such, it cannot go beyond the provisions of the PPA. The petitioners were absolutely right in their submissions that the respondent had the authority being a coal company to determine the tariff for the sale of coal but that itself would not mean that it has liberty to act beyond such authority by seeking to impose premium on the coal price by 20% or 30% as the case may be. To this extent, the petitioners would succeed and the respondent is estopped from collecting any premium over the coal price fixed by it.”

....

... the petitioners are entitled to the relief as prayed for, whereby the respondent is estopped from levying any premium on the coal price for whatever quantities agreed to be supplied in terms of the PPA. The respondent also shall continue to desist from levying any premiums

henceforth until it has started production from the Naini coal block allotted to it as it is denuding the petitioners the benefit of cheaper coal availability through the variable cost paid by the petitioners, which is ultimately beneficial to the end consumers.

A copy of the Order of the State Commission dated 01.04.2024 in O.P. No. 13 of 2023 is annexed hereto and marked as **Annexure - A-22**(Page to 548-613).

- (37) On an appeal being filed by SCCL against the Order of the State Commission in OP 8 of 2021, the Appellate Tribunal disposed of the same vide Order dated 30.07.2024 in DFR No. 252 of 2024. The Appellate Tribunal held that the remedy of an appeal is not an alternative to the remedy availed by SCCL seeking clarification and it set aside the clarification order and remanded the matter to the State Commission for passing appropriate orders in the clarification petition. The remanded petition for clarification is pending adjudication by the State Commission.

A copy of the Order of the Appellate Tribunal dated 30.07.2024 in DFR No. 252 of 2024 is annexed hereto and marked as **Annexure - A-23**(Page to 614-616).

The remand proceedings are still pending before the State Commission.

- (38) SCCL also preferred an appeal against the order dated 01.04.2024 in OP 13 of 2023 in Appeal No. 256 of 2024. A copy of the Appeal No. 256 of 2024 (without annexures) of SCCL filed before the Learned Appellate Tribunal is attached herewith and marked as **Annexure A-24**(Page to 617-734
- (39) Separately, pursuant to the directions of the State Commission on revising the terms of the PPA, the amended PPA was signed by the parties on 22.05.2024. Therefore, SCCL can claim variable charges only in terms of the Tariff Regulations. A copy of the agreement dated 22.05.2024 amending PPA dated 18.01.2016 is annexed herewith and marked as **Annexure - A-25**(Page 735-753).
- (40) The State Commission disposed of O. P. No. 4 of 2024 vide its Order dated 28.06.2024 approving energy charge rate and fixed charges taking into consideration premium coal price instead of notified basic coal price contrary to its own Order dated 01.04.2024 in O. P. No. 13 of 2024. Further, the R & M expenses approved by Impugned Order were contradictory to its earlier orders dated 28.08.2020 (MYT Order) and 23.03.2023 (mid-term review order in O. P. No. 77 of 2022). Relevant extracts of the Order of the State Commission dated 28.06.2024 in O. P.

No. 4 of 2024 are attached herewith and marked as **Annexure - A-26**(Page 754-847).

- (41) The Appellants, in view of the error apparent on the face of the record in the Order dated 28.06.2024, had filed a petition seeking its review in R.P.(SR) No.53 of 2024 in O.P.No.4 of 2024. The review petition of the Appellants came to be dismissed vide Order dated 28.10.2024, wherein the State Commission noted that there was a contradiction between its own two orders, but at the same time it directed the Appellants to act in a manner as to give effect to both orders, as under:

7. Basically, as the review petitioners and the generator have entered into an agreement for undertaking power purchase/sale inter se, they are bound by the clauses of the agreement. Suffice it to state any issue which runs contrary to the regulation would invariably fall in line with the regulation as it is settled by the Hon'ble Supreme Court. No doubt in the instant case the Commission had taken different stands and consequently there arose a dichotomy in the calculation of coal price, but however it is for the review petitioners to act in a manner whereby they have to give effect to both the orders and implement payment mechanism over coal price in a way which is beneficial to them."

A copy of the State Commission's Order dated 28.10.2024 passed in R.P.(SR) No.53 of 2024 in O.P.No.4 of 2024 is annexed hereto and marked as **Annexure - A-27(Page 848-864)**.

(42) In the above background, the Appellant aggrieved by the contradictory stand of the State Commission on the issues of imposition of premium by STPP as part of the landed cost of fuel in the variable charges and other issues, preferred Appeal No.19 of 2025 before the Appellate Tribunal. A copy of the Appeal No. 19 of 2025 of the Appellants filed before the Learned Appellate Tribunal is attached herewith and marked as **Annexure - A-28(Page 865-896)**.

(43) Both appeals were taken together by the Learned Appellate Tribunal and the matter proceeded in a conflated manner, namely SCCL arguing that the State Commission lacks complete jurisdiction to even look at the components of coal price. Parties filed detailed written submissions. Written Submissions filed by the parties before the Learned Appellate Tribunal dated nil attached herewith and marked as **Annexure - A-29(Page 897-944)**.

(44) The Appellate Tribunal passed the Impugned Judgment erroneously holding that the Tariff Regulations on landed cost of fuel includes the

premium while at the same time holding that the State Commission does not have jurisdiction to exclude any premium from the landed cost of fuel or examine the authority of SCCL in imposing the premium, while itself rendering a factual finding that SCCL is authorised to impose such premium.

(45) If the State Commission had not jurisdiction, at the very least, the Appellate Tribunal need not have examined the State Commission's Regulations or interpreted it favourably to SCCL – the generator since delegated legislation cannot override the parent act.

(46) In the circumstances and aggrieved by the Impugned Judgment, the Appellants have preferred the instant appeal.

(a) **GROUND**S

The Appellant is filing the present appeal based on substantial questions of law set out hereinabove and, on the following, amongst other grounds:

Jurisdiction of the State Commission

- A.** BECAUSE the Appellate Tribunal has failed to consider that the State Commission is a creature of the Electricity Act, 2003 established and functioning under the jurisdiction granted to it by the legislature under the provisions of the Electricity Act, 2003. The tariff of any generating company using conventional sources of generation is determined in two parts – one, fixed charges and two variable charges. The variable charges are nothing but the manner in which the cost of fuel being utilised in the generating station is to be recovered from beneficiaries. Since the inception of State Commissions, they have been determining and exercising plenary jurisdiction on the manner in which the fixed charges and variable charges are to be designed as a passthrough between the generating company and a distribution licensee. This does not mean they regulate the cost of coal in any manner. However, the very purpose for which the State Commissions were established, namely to check the prudent costs to be passed on in tariff to consumers through distribution licensees cannot be ignored while deciding the dispute of this nature by the Appellate Tribunal.
- B.** BECAUSE without there being any amendment in the Electricity Act, 2003, all regulatory commissions including the Central Electricity Regulatory Commission and various other State Commissions are determining the price of coal as well, when the coal mine is allocated to

the generating company. Delegated legislation in the form of regulations have been framed by several commissions to decide the manner in which the coal cost or coal tariff would be determined. No amendment has been introduced in the Electricity Act, 2003, by the legislature in order to enable regulatory commissions to determine the price of coal as and when mined by the generating company. If so, it would stand to no reason that when STPP establishes its captive coal mine, the State Commission would have a plenary jurisdiction to determine the cost of coal or tariff of coal but in the interregnum when the generating company is taking its coal through bridge linkage, the State Commission becomes powerless to even examine as to whether any incorrect charges are being passed on to the consumers in the State by way of premiums, which is actually being levied by one wing of a company on the other.

- C. BECAUSE the State Commission has been envisaged as an independent authority to ensure that generation, transmission and distribution of electricity is done on commercial principles. By the erroneous and pedantic interpretation given by the Appellate Tribunal in the Impugned Judgement, the State Commission will be powerless even to look at the components of variable charges or coal cost being billed by a generating company on a distribution licensee since this power has not been specifically granted to it by the legislature.

- D.** BECAUSE it is well settled that an interpretation preserving jurisdiction ought to be adopted instead of an interpretation denuding the authority of such jurisdiction. In the present case, the very purpose of constitution of a regulatory commission, is to ensure that only just and legal costs get passed on in tariff to consumers through the distribution licensee. One of the major components of tariff of thermal generating station is the variable tariff which directly depends on the manner of charging of coal cost. Sections 61, 62 and 64 read with Section 86 of the Electricity Act, 2003, cannot by any stretch of imagination be interpreted denude the regulatory commission of its jurisdiction to either determine or examine the costs/components of variable charges. This by extension does not mean that the regulatory commission is actually determining the coal cost but only that it is ensuring that no unnecessary costs are camouflaged and passed on to the consumers in the form of variable charges.
- E.** BECAUSE, the regulatory commissions are bound to consider the interest of consumers in performing its regulatory and adjudicatory functions. Under Section 61(d) of the Electricity Act, 2003, the regulatory commissions are bound to consider consumer interest in tariff determination process and the action of the State Commission in not allowing the premium in perpetuity, without any visibility on the

operationalisation of the Naini coal mine, is in furtherance of its functions and within its jurisdiction.

F. BECAUSE the Appellate Tribunal has taken a restrictive view of the scope of the powers and functions of the regulatory commissions. The status of coal companies is no different than any other vendor or service provider that states a price for its product/service. As part of ‘regulating’ electricity purchase and procurement, the State Commission has inherent subject matter jurisdiction on all components of electricity price and the authority to determine and conduct a prudence check on all components of price of electricity. Components which can be passed through can be incorporated in the PPA, which is subject to approval of the State Commission, or referred back to the relevant regulations of the State Commission. Even in the absence of any regulation, the State Commission can conduct the same exercise guided by Section 61. Authorities relevant to the scope of the functions of the State Commissions are:

- a. Municipal Corporation of Delhi v Gagan Narang, 2025 SCC OnLine SC 19
- b. PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603

- c. Power Grid Corporation of India Limited v Madhya Pradesh Power Transmission Company Limited and Others (2025 SCC OnLine SC 1128)

G. BECAUSE the Appellate Tribunal has created an artificially strict test, ignoring all precedent, that State Commissions will have jurisdiction if the same can be specifically traced back to the Electricity Act, 2003 and because it does not mention regulation of price of coal specifically, the State Commissions will not have jurisdiction (Para 87). Whether the State Commission conducts the prudence check under Regulations framed or in the absence of Regulations, the source of its power is under Section 62 read with Section 86 of the Act only. The power to determine tariff and in the process either allowing and disallowing any costs is inherent to this regulatory power for which the Commission has been statutorily constituted. Of course, even when the State Commission exercises its powers under Section 86 (1) (f), it is not that it loses its power for tariff fixation or the principles contained under Section 61, 62 or 64 of the Act. The input price of captive coal mines, allocated under the Coal Mines Special Provisions Act 2015, is also being determined by the Appropriate Commission. The same is being done under the aegis of the Electricity Act, 2003 to ensure that the transfer price of coal from mine to power plant is not arbitrary or inflated. This reinforces the position that the Appropriate Commission not only has the jurisdiction, but the obligation

that all components of electricity price are reasonable – regardless of whether the coal is procured through linkage, auction, or captive sources. In the context of the present appeal, the State Commission is not determining the price which the coal mining companies may charge to its consumers, but determining the pass through of prudent costs which the STPP may charge to the Discoms. This is precisely what has been done vide its Regulations, where the State Commission has designed a formula for what all can be included in the fixed and energy (variable) charges, and what will be the manner in which it will form part of the total cost.

Conflicting and circular reasoning on jurisdiction and interpretation of the regulation

- H.** BECAUSE the Appellate Tribunal has made held conflicting findings that (a) Premium is part of the ‘price’ of coal since the State Commission does not have the jurisdiction to deny premium (Para 92); and (b) Definition of landed cost of fuel is an inclusive definition and must include the premium also (Para 71 – 73). These two findings are mutually inconsistent. If the State Commission, and consequently the Appellate Tribunal, does not have jurisdiction to examine the premium, then the content of the regulation is irrelevant. Conversely, if the premium is included based on the interpretation of the regulation itself, then the State Commission does

have jurisdiction to interpret and apply that regulation, including determining whether such premium is reasonable or allowable under the tariff regulation.

- I.** BECAUSE the fundamental error in the approach of the Appellate Tribunal is that, it has held the State Commission as a body having extremely limited jurisdiction by holding that the regulatory commission has no power to adjudicate on the pass through of the coal costs without appreciating that the regulatory commission has neither fixed nor tinkered with the coal cost. All that the State Commission has done is to refuse a pass through of a premium being levied by the same company (as a coal supplier) on its power plant by way of a bilateral MoUs.
- J.** BECAUSE on one hand, the Appellate Tribunal has held that the State Commission has acted beyond its jurisdiction in curbing the coal cost of the generating company and on the other hand has read Regulation 21.8 as including the premium to be levied as a passthrough in variable charges. It does not stand to any reason that the Electricity Act, 2003 does not give any power to the regulatory commission to determine coal cost but the Tariff Regulations, which are delegated legislation framed under the Electricity Act, 2003 by the very same State Commission would be read in an inclusive manner so as to permit premium to be levied

bilaterally between two wings of the same company as a passthrough in tariff.

K. BECAUSE the Appellate Tribunal has applied a circular reasoning in holding that premium is included in the landed cost of fuel. The Appellate Tribunal has held that Regulation 21.8 to be an inclusive definition (Para 73). Even assuming that it was an inclusive definition, then the second level of analysis must follow, that whether the definition actually includes the premium. The Appellate Tribunal has held that Regulation 21.8 is an inclusive definition and because SCCL can *fix* the price (Para 47), the definition included premium, sidestepping the issue of jurisdiction of the State Commission. The reasoning is circular and devoid of merits. If the definition is held to be inclusive, then the burden was to demonstrate how the premium is part of the landed cost of fuel, which burden has not been met as explained in the next ground.

L. BECAUSE the Appellate Tribunal has incorrectly determined that premium is part of the landed cost of fuel only on the basis that it is applied to other bridge linkage consumers. It is stated that the premium has been imposed by the coal companies through a MoU which is only between generators and coal companies and not publicly available. This is compounded by the fact that in the present case, the coal company and

the generating company are one and the same. The fact that it is applied by coal companies on all bridge linkage consumers is not within the knowledge of the State Commission and in any case, not relevant for the State Commission in interpreting regulation. The application of premium is based on the terms of the Regulations and the contracting terms in the facts at hand.

- M.** BECAUSE the Appellate Tribunal has failed to consider that the premium does not form part of the basic price itself and, by nomenclature, it is a charge levied over the cost of coal, though the purpose itself is not clear. This notified price is universally considered to be the default price of coal save any terms agreed contractually or any price discovered in the spot market. For example, as per Regulation 37 of the CERC (Terms and Conditions of Tariff) Regulations, 2024, pending the input price determination, the applicable cost of coal will be the Notified Price. A perusal of the price notifications reveal that the basic price is indicated separately for power and non-power sector and wherever there is a premium to be levied, that is indicated separately (@ Paras 4, 24). However, there is no mention of any premium for bridge linkage consumers. Further, all other components of the landed cost – whether loading charges, royalties, taxes, sampling charges, etc. are indicated separately (Para 7 – 23, 25 – 31).

True Copies of sample price notifications issued by SCCL and CIL dated 1.3.2020 are attached herewith and marked as **Annexure - A-30**(Page to 945-954).

Findings on irrelevant considerations

N. BECAUSE the Appellate Tribunal has made an unwarranted extrapolation of the effect of the deregulation of coal pricing under the Colliery Control Order, 2000 and the Minutes of the Meeting of SLC dated 28.02.2024 and read the same as giving SCCL an authority to ‘fix price’ (Para 47, 79). Be that as it may, the same does not erode the regulatory powers under Section 61 and Section 81(1)(a) & (b). All that the 2000 Order did was removing pricing from the functions of the Government of India in relation to coal. There was no positive function assigned to the coal companies, nor a judicial/regulatory bar on its oversight. Coal suppliers now function like any other supplier to a power plant, subject to the same regulatory framework. It is important to clarify that all entities involved in the establishment, operation, and maintenance of a power plant—such as vendors, labourers, suppliers, service providers, and lenders—are free to set their own prices for the goods and services they provide. However, the State Commission retains the

authority to determine the permissible parameters and to establish normative benchmarks for both financial and operational aspects.

- O.** BECAUSE the Appellate Tribunal has given undue weight to the fact that premium is applicable on all bridge linkage consumers and failed to consider the enviable position SCCL has created for itself (Para 85). First, as stated above, this ground alone cannot be a basis for restricting State Commission's jurisdiction under Section 61. Secondly, the fact of unjust enrichment from everyone cannot be used to deny the fact of unjust enrichment in the first place. It is stated that SCCL has been supplying coal for 100% availability requirement to the STPP even though it was required to supply only on best efforts basis and that too to the extent of 75% of the Agreed Requirement which is 90% of normative requirement of the plant at 85% PLF (80% being the Target PLF in the PPA between STPP & Appellants). The STPP has therefore been able to declare availability and recover its entire fixed costs and substantial incentive passing on premiums over and above the notified price of coal at its will.
- P.** BECAUSE the Appellate Tribunal has relied solely on SCCL's status as a government company to satisfy itself that the premium is fair (Para 76). It has failed to consider the higher burden of transparency and accountability of government companies. The Appellate Tribunal has

ignored the Appellant's contentions that the premium was imposed through private MoUs, unlike the normal practice of published price notifications. Further, SCCL being a government company, its pricing needs to be transparent and made available in the public domain. It cannot be the case that the ultimate beneficiary would be rendered without any recourse to challenge the pricing of the coal companies. The price notification, being in the public domain, may be challenged in the appropriate forum. However, a pricing term in a contractual arrangement between parties cannot be challenged by a third party to the contract. Hence, it cannot be the case that landed price includes a cost component over which there is no oversight, let alone the oversight of the State Commission.

Prudence check on costs is not 'fixing' the cost

- Q.** BECAUSE the Appellate Tribunal has misconstrued the scope of the dispute between the parties and has erroneously framed the issue to “*whether such regulatory oversight/control can be extended to the price of coal charged by coal companies on the end consumer under Bridge Linkage*” (Para 47) when there was no dispute that the coal companies can fix their own prices, and the contention being that it was well within the

scope of the State Commission to conduct prudence check and pass through only costs incurred in accordance with its regulations.

- R.** BECAUSE the Appellate Tribunal has not considered that the State Commissions routinely approves or reject cost elements upon prudence check. For each of the components, the State Commission does not act as a mere post office and approve all cost components claimed by the generator without any verification or prudence check. It cannot be the case that the State Commissions are restrained from evaluating what is or what is not a reasonable cost for a particular service, whether it was prudently incurred and deny pass through of the same. The affected party – which is the generator – would be free to avail of any remedy available in law to address the costs. Illustrations of the same are given below:
- a. For example in the Order dated 19.06.2017 for determination of the capital cost and generation tariff for the STPP, the State Commission has considered various cost elements (@ Internal Page 18, Table 3.2) like land cost, boiler turbine & generator (BTG) cost, water supply cost, etc. The State Commission in this case is not impinging on the authority of BHEL Limited, the manufacturer of the BTG, but examining whether the costs discovered are prudently incurred by the STPP.
 - b. Similarly, in Regulation 21.1., the fixed cost is computed based on norms specified in the Regulations. When a norm is specified, it is not an

exercise in fixing a price, but in specifying what kinds of cost may be incurred and what is the prudent level at which a particular cost may be incurred.

- c. Regulation 21.6 specifies the formula for energy charge rate (ECR) and the components of the formula.
 - d. If there is a water cess that is imposed, then the State Commission is entitled to verify how much is the water cess and accordingly allow the cost.
 - e. If the GCV of coal is very low then the State Commission may allow the cost of only high grade GCV coal. As stated above, the State Commission has subject matter jurisdiction to determine the cost components.
- S.** BECAUSE the Appellate Tribunal has considered an entirely new case in appeal namely that coal companies have exclusive right to fix coal price that is to be recovered from consumers and the State Commission could not have *determined* the coal cost itself. The tariff payable to the STPP division of SCCL for the power generation by the STPP is determined by the State Commission under Section 62 of the Electricity Act, 2003. The cost of coal along with other cost elements – like loading charges, transportation charges, washery charges, etc., constitute part of the variable charges and are determined by the State Commission under Section 86(1) (a) read with Section 62. As stated above, the State

Commission determined the capital cost and generation tariff for the STPP in its Order dated 19.06.2017. The tariff so determined for the STPP is passed on to the distribution licensee and form part of the cost of power purchase in determination of retail supply tariff under Section 86(1)(a)& (b), and to the end consumers through the retail tariffs. The Appellants had challenged the imposition of premium in the landed cost of fuel as being contrary to the PPA and the Regulations under Section 86(1)(f). The State Commission was cognizant of the PPA and the TGERC Regulations in holding that the Premium on the price of coal was imposed beyond the agreement between the Parties. The State Commission, in exercise of its powers under Section 86(1)(f), has determined that the Premium could not form part of the coal cost.

Incorrect interpretation of regulations

- T.** BECAUSE the Appellate Tribunal has adopted a pedantic and hyper technical approach in its interpretation of the Tariff Regulations. The Appellate Tribunal has held that Regulation 21.8 must be read as being an inclusive definition only because the definition contains ‘includes/inclusive’ twice and when the word appears twice in a statute then it must be given the same meaning (Para 67 – 70). It is stated that the rule of statutory interpretation is for words which have to be more specifically defined in the particular context of a legislation. In Bhogilal

Chunilal Pandya v State of Bombay (AIR 1959 SC 356) the issue in question was the meaning of the word ‘statement’ in Code of Criminal Procedure. Similarly, in Suresh Chand v Gulam Chisti (1990) 1 SCC 593, the phrase was ‘commencement of the Act’ in the UP Rent Control Act. However, include being a general phrase cannot be subject to such a hyper technical approach. Further, rules of interpretation of statutes cannot be applied rigidly to extreme ends, they are only aids for construction and not binding rules. Regulation 21.8 defines the landed cost of fuel as follows:

“21.8 The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means (all these parameters to be shown separately), and, for the purpose of computation of energy charge, and in case of coal shall be arrived at after considering normative transit and handling losses as percentage of quantity of coal dispatched by the coal supply company during the month as notified by the Central Electricity Regulatory Commission, for respective Year unless specifically approved by the Commission;

Provided that any refund of taxed and duties along with any amount received on account of penalties from fuel supplier shall be adjusted in the fuel cost.”

- U. BECAUSE the Appellate Tribunal has failed to consider the Appellant's submissions that as per the definition in Regulation, landed cost of fuel includes the following components, which are included in the price notifications of the coal companies:
- (a) Price of fuel corresponding to the grade and quality of fuel
 - (b) Royalty and taxes as applicable
 - (c) Transportation cost by rail/road or any other means
 - (d) Normative transit and handling losses

Further, when the State Commission wished to expand the elements of cost in the regulation, the same was added in the subsequent Tariff Regulation. For example, the 2023 Tariff Regulation (Regulation 46.4 , 2nd Proviso) expanded the categories to include washery charges and sampling charges, as follows:

*“21.8.....Provided further that the landed cost of fuel shall mean the total cost of coal delivered to the generating station and shall include the **base price of fuel corresponding to the grade/quality/calorific value of fuel** inclusive of royalty, taxes and duties as applicable, washery charges as applicable, transportation cost by rail/road or any other means, charges for third-party sampling, and, for the purpose of computation of*

energy charges, shall be arrived at after considering normative transit and handling losses as percentage of the quantity of fuel dispatched by the fuel supply company during the month”

Further, the TGERC Tariff Regulations, 2019 at Article 21.11 specifically stipulated as below:

21.11.....The Generating entity shall separately indicate rate of energy charges in its bills at base price of Primary and Secondary fuel specified by the Commission

Any ‘Premium’ on the coal price is not contemplated either in the 2019 or the 2023 Regulations and only the base price of coal is to be considered in the cost of coal. SCCL, as a generating entity is bound to comply with the Tariff Regulations. The Appellate Tribunal has failed to consider the aforesaid provision (21.11) and wrongly held at Para 92 of its order that there is “*no specific provision with regard to determination of coal price while considering landed cost of coal in Energy Charge Rate.*”

- V. BECAUSE the provisions of the Tariff Regulations have to read harmoniously. Article 21.6 (dealing with ECR computation) up to Article 21.11 of the TGERC Tariff Regulations, 2019 have to be read together,

harmoniously to ascertain the true essence of the Regulation, which is considered as part of the Statute. It is settled law that provisions in a statute must not be read in isolation. Reliance is placed on the judgment of this Hon'ble Court in Kailash Chandra v. Mukundi Lal & Ors. (2002 (2) SCC 678) wherein it was held as follows:

“...A provision in the Statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject matter dealt with in different Sections or parts of the same Statute is the same or similar in nature.”

W. BECAUSE the base price of fuel is commonly understood only to mean the notified price of coal. For instance,

- a. as per the Model Coal Supply Agreement issued by Coal India Ltd., (CIL), Base Price is defined as follows:

*“1.1(e) “Base Price” shall mean, **in relation to a Declared Grade of Coal produced by Seller, the Pithead price notified from time to time by CIL or Seller, as the case may be;** and in relation to Imported Coal, wherever applicable, shall mean its landed cost till the Delivery Point and service charges intimated by CIL or the Seller, as the case may be; in relation to Cost Plus Projects, wherever applicable, shall mean its cost plus price as per the provisions under the Cost Plus Agreement.”*

- b. as per the CERC Tariff Regulation for 2019-2024, the definition of 'Landed Fuel Cost' is as follows:

“the total cost of coal (including biomass in case of co-firing), lignite or the gas delivered at the unloading point of the generating station and shall include the base price or input price, washery charges wherever applicable, transportation cost (overseas or inland or both) and handling cost, charges for third party sampling and applicable statutory charges.”

- c. As noted above, the price notifications published by both SCCL and CIL, there is no mention of premium. The Central Commission also publishes the CIL coal price notification on its website, wherein there is no mention about premium in the CIL prices but only basic price of coal and applicable statutory charges are notified.

Hence, it is clear that the Tariff Regulations do not contemplate inclusion of premium in the variable components of the cost. Further, the definition makes it clear that any further cost or service charges need to be intimated by CIL.

A copy of the Model Coal Supply Agreement of CIL dated nil is attached herewith and marked as **Annexure - A-31(Page 955-999)**.

- X. BECAUSE the Appellate Tribunal has misunderstood the scope of the submission of the Appellants with respect to Regulation 21.9. The Appellate Tribunal has rejected the Appellant's contention by stating it to mean that the Appellants were seeking their consent for the fuel to be purchase by the STPP (Para 51). However, what the contention of the Appellant was that there is no unbridled power of the STPP to purchase any fuel at any cost for its plant and the same is demonstrated by Regulation 21.9, where in case of procurement of fuel from sources other than as agreed by the generator and the beneficiary, the State Commission is entitled to make a prudence check in approving the price of alternative fuel and if there is an increase in price of fuel above the stated threshold (i.e., any increase in variable charge above 20%) then prior consultation with the beneficiary is required. Hence, generators do not have unchecked power to decide prices in any situation.

Rewarding SCCL for its own default in setting up of its captive coal mines

- Y. BECAUSE the Appellate Tribunal has made unwarranted and incorrect findings on the reasons for delay in operationalization of the Naini coal block (Para 42 – 43). The issue of delay in operationalisation of the mine

remains to be adjudicated with due application of judicial mind and will be done so by the appropriate commission at the time of determination of the input coal price. However, the Appellate Tribunal has effectively condoned such delay, without examination of any material or hearing of any arguments on the same, by stating that the authority granting the linkage would have considered all the relevant factors. As can be seen from the Minutes of Meeting of the SLC dated 27.06.2025, the extension was granted to avoid loss of generation of the STPP even while noting that there has been a delay in mine operationalisation.

A copy of the Minutes of Meeting of the SLC dated 27.06.2025 is attached herewith and marked as **Annexure - A-32(Page 1000-1008)**.

- Z.** BECAUSE the Appellate Tribunal has misconstrued the import of the observations of the State Commission and made a sweeping finding that the State Commission had no jurisdiction to make any observations on the delay in operationalization of the Naini mine. As detailed above, the State Commission was entitled to make note of the fact that the delay in the mine operationalisation was benefitting only SCCL and that Bridge Linkage was originally envisaged only for 3 years but has been continuously extended for more than 8 years, with the cost impact being borne by the Appellants and the consumers. The regulatory commissions are tasked with balancing interests of all stakeholders in tariff

determination under Section 61 and are entitled to take note of all relevant considerations.

AA. BECAUSE the Appellate Tribunal has failed to consider that if the STPP had a long-term linkage from SCCL instead of bridge linkage it could have claimed only the notified price. Further, the purpose of allocation of captive mines was that the cost of coal would be lower than that available in the market or obtained through MoUs/FSAs. However, only because of the abnormal delay in operationalising the mine, SCCL has been claiming the premium, though the responsibility of operationalising the mine lies with SCCL.

BB. BECAUSE the Impugned Judgment has been passed without consideration of submissions of the Appellant and judgments of this Hon'ble Supreme Court on the scope of regulatory jurisdiction of the State Commissions, is misconceived and gives weight to irrelevant considerations, is hyper technical in interpretation of the regulations, passed without understanding the import of the Appellant's submissions, leads to a situation of unbridled power to only coal companies to unilaterally determine its price and is hence violative of Article 14 and is hence liable to be set aside.

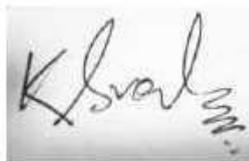
- (b) That the Appellant craves leave to add grounds mentioned above and submits that the contentions are in the alternative and without prejudice to one another.
- (c) That the Appellant has not filed any other appeal or petition before this Hon'ble Court or any other Court against the Impugned Judgment dated 28.08.2025 passed by the Appellate Tribunal in APL No. 256 of 2024 and APL No. 19 of 2025.
- (d) That the Annexures filed along with the present appeal are true and correct copies of the pleadings/documents which formed part of the record of the case in the Court / Tribunal below against whose Orders the present appeal is filed.
- (e) That the Appellant has paid the requisite court fees in the appeal.

PRAYER

In the facts and circumstances mentioned above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Admit and allow the Civil Appeal filed by the Appellant under Section 125 of the Electricity Act, 2003, and set aside the Impugned Judgment dated 28.08.2025 passed by the Appellate Tribunal in APL No. 256 of 2024 and APL No. 19 of 2025 to the extent stated above;
- (b) Pass any such order or orders as this Hon'ble Court may deem just and proper in the circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE APPELLANT AS
DUTY BOUND SHALL EVER PRAY**



FILED BY:

Sravan Kumar Karanam

Advocate for Appellants

Filed on : 24.10.2025

PLACE: New Delhi

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2025

IN THE MATTER OF:-

Southern Power Distribution Company of

Telangana Limited & Anr.

...Appellant(s)

Versus

Singareni Collieries Company Limited & Anr.

...Respondent(s)

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Hon'ble High Court whose Order is challenged, and other documents relied upon in those proceedings. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition, applications are necessary to answer the questions of law raised in the Petition or to make out the Grounds urged in the Special Leave Petition for the Consideration of this Hon'ble Court. This certificate is given on the basis of instructions given by the Petitioner whose Affidavit is filed in support of the Special Leave Petition.



Sravan Kumar Karanam

Advocate for the Petitioner

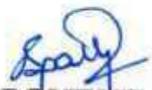
Date: 24.10.2025

Place: New Delhi

3. That the Annexures filed with the captioned Civil Appeal are true copies of their respective originals.
4. That the contents of this Affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed herein.

VERIFICATION:

Verified at Hyderabad, Telangana on 23rd of October, 2025 that the contents of the above Affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing has been concealed therein.


DEPONENT
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ATTESTED

G. BALA KOTESWARA RAO
M.A., L.L.M.
ADVOCATE & NOTARY
GOMs. No. 2746/2011
16-11-1/B, Gruhashilpi Nivas,
Saleem Nagar, Malakpet, Hyderabad-36. T.S.