



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 13 of 2023

Dated 01.04.2024

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

1. Southern Power Distribution Company of Telangana Limited,
6-1-50, Corporate Office, Mint Compound, Hyderabad,
Telangana State 500 063.
2. Northern Power Distribution Company of Telangana Limited,
Corporate Office, H. No.2-5-31/2, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal 506 001. ... Petitioners

AND

M/s Singareni Collieries Company Limited,
Kothagudem Collieries,
Bhadradi Kothagudem District 507 101. ...Respondent

The petition came up for hearing on 05.06.2023, 10.07.2023 and 21.08.2023. Sri. D. N. Sarma, OSD/TSDISCOMs representing for petitioners has appeared on 05.06.2023, 10.07.2023 and 21.08.2023. Sri. G. V. Brahmananda Rao, Advocate for respondent has appeared on 05.06.2023, Sri. P. Shiva Rao, Advocate along with Sri. G. V. Brahmananda Rao, Advocate for respondent has appeared on 10.07.2023 and 21.08.2023 and having stood over for consideration to this day, the Commission passed the following:

ORDER

Southern Power Distribution Company of Telangana Limited (TSSPDCL) and Northern Power Distribution Company of Telangana Limited (TSNPDCL)

(TSDISCOMs) (petitioners) have filed a petition under Sections 86(1)(b) and (f) of the Electricity Act, 2003 (Act, 2003) seeking directions to M/s Singareni Collieries Company Limited (respondent) in respect of procurement of power pricing charged by Singareni thermal power plant (STPP) towards procurement of power from 2x600 MW for FY 2021-22 to till the date of operationalization of Naini coal block and later to adopt the Central Electricity Regulatory Commission (CERC) input price determination methodology in the interest of end consumers. The averments in the petition are extracted below:

a. It is stated that the present petition is filed by petitioners against the unilateral imposition of additional charge of 20% on the notified basic price of coal applicable to power sector, being supplied by respondent to its own STPP under the memorandum of understanding (MoU) dated 16.04.2021 and supplementary MoU dated 28.03.2022, subsisting between respondent and STPP, without seeking the consent of petitioners or the Commission and which has been causing additional financial burden on the petitioners and consequently burdening the end consumers, in violation of the mandate of Section 61(d) of the Act, 2003, safeguarding of consumers' interest as explained below:

b. It is stated that the background of the coal supply arrangement under the MoUs between STPP and respondent, coal supplier is as below:

i. It is stated that petitioners had entered into a long term PPA with respondent on 18.01.2016 for supply of electricity generated by respondent from its 2x600 MW coal based STPP.

ii. It is stated that respondent declared the commercial operation date (COD) of STPP project on 02.12.2016.

iii. It is stated that the long term PPA entered by petitioners with respondent was based on long term fuel supply agreement (FSA) under which the respondent's project, STPP, would get the coal supply from the coal supplier, respondent itself at the notified price of coal applicable to power sector for the corresponding grade of coal being supplied whereas the Ministry of Coal (MoC), Government of India (GoI) had allocated captive coal block/mine (NAINI) to STPP/respondent in the year 2016. The coal produced from the Naini block in the state of Odisha would be utilized at STPP being the specified end use plant.

iv. Since the policy of granting long term coal linkages was dispensed with, the MoC, GoI, had allocated a captive coal block at Naini in the state of Odisha to the respondent/STPP on 13.08.2015. To facilitate the immediate requirement of coal to STPP, a short term linkage was

granted under the policy of bridge linkage, till the commencement of coal supply to STPP from its captive coal block (Naini).

- v. The bridge linkage policy guidelines dated 08.02.2016 stipulated that 'bridge linkage' shall act like a short-term linkage to bridge the gap between the requirement of coal of a specified end use plant of central and state PSUs and the commencement of production from the linked allotted coal block.
- vi. The bridge linkage guidelines further stipulated that the bridge linkage would be granted for a fixed period of 3 years from the date of allotment of coal mine/block and further extension would not be granted under normal circumstances. It was also stipulated that
"The shorter duration of bridge linkage shall act as an incentive for allottees to expedite production from coal mines/block"
and FSA shall not be signed between the end use plant (EUP) and coal company and coal would be supplied under bridge linkage on best effort MoU basis.
- vii. It is stated that respondent estimated the normative coal requirement of 5.0256 million tons (MMT) under G-11 grade as submitted to the MoC. As per the minutes of standing linkage committee (SLC) under the MoC, Gol dated 18.03.2016, the bridge linkage granted to respondent/STPP would be valid from 13.08.2015 till 12.08.2018. The expected date of production of coal from the captive coal block Naini was December, 2020.
- viii. It is further stated that respondent could not commence coal production from its captive coal block even after 3 years of bridge linkage allocation, which is a clear violation of bridge linkage guidelines. Instead, respondent had requested the MoC for further extension of bridge linkage till March 2021, stating that the mining plan for the Naini block would be submitted during May 2018 and production from Naini Block was scheduled to start in February 2021 and also the peak rated capacity (PRC) of the Naini block shall be achieved by the year 2023, which shall be on tapering basis from 2021 to 2023 as per the approved plan, implying that as the production and supply of quantum from Naini coal block increases, the corresponding bridge linkage quantity shall have to be reduced and the corresponding additional financial burden of bridge linkage pricing on petitioners gets reduced.
- ix. It is stated that as per the bridge linkage granted to it, respondent entered MoU with STPP dated 01.11.2017 for supply of 6.00 million metric tons of coal (MMT) per annum to STPP with the price initially charged with additional 20% of the notified basic price applicable for power sector for 100% requirement and subsequently vide supplementary MoU dated 06.04.2018 the respondent revised the coal price making it applicable to non-power sector, for the quantity required beyond 75% of requirement applicable for the period FY 2018-19 to FY 2019-20, without seeking consent of petitioners or the Commission, thus caused additional financial burden on petitioners.
- x. It is stated that the unilateral action of respondent in revising the price with additional 20% on the notified basic price applicable to non power sector for the quantity required beyond 75% of requirement, was

opposed by petitioners and respondent contested the same in the petition, O.P.No.8 of 2021 and the Commission vide order dated 21.11.2022 held that generation of power using high priced coal is not permissible as extracted below:

“Utilization of additional coal beyond the agreed quantum at a higher rate is neither permissible nor within the ambit of the agreed conditions between the parties. Propriety would require that the parties should adhere to the act, 2003, rules, regulation and the clauses in the PPA to the extent they are applicable”.

- xi. It is stated that subsequently the respondent revised its MoU dated 30.03.2020 vide supplementary MOU-I dated 12.11.2020 by limiting the coal price to the notified basic price without any premium applicable to power sector during FY 2020-21 from 01.06.2020 to 31.03.2021 upto 100% agreed quantities.
- xii. It is stated that however, respondent vide MoU amendment dated 16.04.2021 once again revised the coal price applicable for entire FY 2021-22, by levying with additional charge of 10% initially on the notified basic price of coal for power sector and further revised the coal price by additional 20% over and above the notified basic coal price, vide supplementary MoU dated 28.03.2022, making it applicable for entire FY 2022-23, causing additional financial burden on petitioners for the two years that is for FY 2021-22 and FY 2022-23 which act is against the TSERC Generation Tariff Regulations, 2019 (Regulation No.1 of 2019), wherein the energy charge computation formula at clause 21.6.1 stipulated the basic price of coal including statutory taxes and transportation applicable to the corresponding grade of coal but not stipulated to levy additional 20% premium on the basic coal price. This additional coal pricing leads to higher payment of energy charges to respondent/STPP.
- xiii. It is stated that under the pretext of bridge linkage extension, respondent attempted to enrich itself at the cost of petitioners by enhancing the coal price with additional 20% price over and above the notified basic price applicable to power sector, without seeking the consent of petitioners or the Commission, and also the MoU was made for a full quantity of 6.00 MMT, without linking it to the tapered production from Naini block where the coal production was scheduled to commence from February 2021, as claimed by respondent, which is also against the bridge linkage guidelines.
- xiv. It is stated that in this context, it is pertinent to state that as per the project status reported in the website of Ministry of Statistics and Programme Implementation (MoSPI), GoI being the report for January 2023, the Naini coal mine execution work achieved a meager progress of 30% as on 13.12.2022, that is, even after 7 years of grant of bridge linkage, which clearly establishes that respondent could not achieve the operationalization of Naini block by February 2021 nor can it achieve the PRC by the year 2023 as submitted by respondent to SLC of MoC. The respondent failed to adhere to its own mining plan to commence production at Naini coal block by February 2021.

- xv. It is stated that the abnormal delay in operationalization of Naini coal block is solely attributable to respondent since it has failed to commence production at the Naini captive coal block by February 2021 and reduce the equivalent quantum of coal from bridge linkage, which would partially reduce the additional 20% charge levied on coal being supplied by respondent under the bridge linkage.
- xvi. It is stated that respondent has taken undue advantage of the delay in operationalization of its captive Naini coal block by revising the price under the MoU with STPP, initially with 10% additional price over and above the notified basic price for FY 2021-22 and further revising to 20% additional price over and above the notified basic price for FY 2022-23, without seeking the consent of petitioners or the Commission, since levying additional 20% price on basic coal price being supplied to STPP is also not in consonance with Regulation No.1 of 2019.
- xvii. It is stated that as already submitted, the bridge linkage shall act as a short term linkage but respondent has rendered it into a long term linkage under MoUs with additional 20% pricing over and above the notified basic coal price since the project COD that is 02.12.2016, which has been causing additional financial burden by Rs. 430 Crore per annum approximately.
- xviii. It is stated that by revising the coal price with additional 20% on notified basic price under MoU with STPP through bridge linkage, The respondent has ensured the profitability of its coal business as well as its power business by generating power with high plant load factor (PLF) that is around 90% at the cost of petitioners and eventually burdening the end consumers, which is also in violation of the mandate of Section 61(d) of the Act, 2003, that is the Section 61(d) emphasized the safeguarding of consumers' interest while the recovery of cost of generation in a reasonable manner.
- xix. It is stated that for the abnormal delay caused beyond the normative date of operationalization of its captive coal mine at Naini by February 2021, the respondent ought to supply coal to its power project, STPP, at the notified price of coal, since the abnormal delay in commissioning of its captive mine/block is solely attributable to itself and petitioners have no role in it. Thus, respondent's action of charging of additional 20% pricing of coal under the bridge linkage has deprived petitioners of the benefit of lower cost of captive coal and at the same time burdened petitioners with additional coal pricing of 20% over and above the notified basic price of coal applicable to power sector. Under the pretext of obtaining extension of bridge linkage, it is not justifiable for respondent to charge the coal supplied to its own power plant, STPP with additional 20% charge on the notified basic coal price. In fact, it is a violation of the bridge linkage guidelines beyond 3 years, which had stipulated to expedite the coal production at the captive coal block, within 3 years of sanction.
- xx. It is stated that the additional financial burden on petitioners on account of additional 20% charge of coal supplied works out to approximately 50-80 paise/kWh, considering coal cost per metric ton at the rate of Rs. 5539.78 as claimed by respondent in the monthly energy bills and the

additional financial burden would be around Rs. 430 crores per annum for the annual energy of 8629 MU at the rate of 87% PLF, which levy is solely intended to enrich the respondent at the cost of petitioners/ consumers and therefore not tenable.

- xxi. It is stated that respondent had claimed the increase in coal prices at the rate of 7% per annum in the MYT petition vide O.P.No.5 of 2019 for the control period FY 2019 to FY2024, but it is now claiming at 20% additional price, which act is totally unjustified.
- xxii. It is stated that as per the MoC, the captive coal mines are earmarked for power sector, with the twin objective of increasing generation of power along with providing cheaper coal from captive coal block, for the benefit of power consumers'. The methodology prescribed by MoC vide order dated 26.12.2014 stipulated to bidders to quote lower than the ceiling of price of Coal India Limited (CIL) notified price fixed for each coal block, such that it would ensure that the benefit of lower bid price is passed onto the consumers, throughout the tenure of PPA of 25 years.
- xxiii. It is stated that contrary to the above, respondent has burdened the petitioners by way of 20% additional charge on notified basic price of coal for power sector and is continuing to burden petitioners, for its own failure to expedite the commissioning of Naini coal block under the extended bridge linkage transforming the short-term linkage into a long term linkage with additional 20% pricing on the basic coal price of the respective grade.
- xxiv. It is stated that the bridge linkage was granted to respondent only to facilitate the immediate supply of coal requirement to its STPP till the commencement of production from its captive mine at Naini, but not for undue financial gain by it, on the pretext of further extension of bridge linkage by the MoC.
- xxv. It is stated that in this context, the attention of the Commission is drawn to the CERC Tariff Regulations, 2019 (CERC regulation), wherein CERC has specifically notified that the energy charge component of tariff of the generating station having got allotted captive coal block/mine, shall be determined based on the Input price of coal from such integrated mines, computed in accordance with the regulations to be notified separately by the Commission.
- xxvi. It is stated that the CERC has further stipulated in the said regulations that till the regulation for computation of Input price of coal from integrated mines is notified, the generator shall continue to adopt the notified price of coal as fixed by the CIL, commensurate with the grade of the coal from the integrated mine.
- xxvii. It is stated that the CERC had also stipulated that after it notified separate regulation for computation of input price of coal, the same shall be applicable from 01.04.2019 or the date of commercial operation of the integrated mine, whichever is later and the difference between the input price of coal so determined and the input price of coal for the quantity already billed, shall have to be adjusted in accordance with the regulations to be notified.

xxviii. It is stated that subsequently, CERC has notified a separate regulation vide dated 19.02.2021, prescribing the procedure for determination of input price of coal supplied from the integrated mines under CERC (terms and conditions of Tariff) (Second Amendment) Regulations, 2021 (CERC amendment regulation).

xxix. It is stated that the relevant portions of CERC regulation are extracted as below:

“

CHAPTER-9 COMPUTATION OF INPUT PRICE OF COAL AND LIGNITE FROM INTEGRATED MINE

“36(1) Input Price of coal and lignite for energy charges: (1) Where the generating company has the arrangement for supply of coal or lignite from the integrated mine(s) allocated to it, for use in one or more of its generating stations as end use, the energy charge component of tariff of the generating station shall be determined based on the input price of coal or lignite, as the case may be, from such integrated mines computed in accordance with the regulations to be notified separately by the Commission.

(2) Till the regulation for computation of input price of coal is notified, the generating company shall continue to adopt the notified price of Coal India Limited commensurate with the grade of the coal from the integrated mine:

Provided that after notification of the regulation for input price of coal, the same shall be applicable from 1.4.2019 or the date of commercial operation of the integrated mine, whichever is later, and the difference between the input price of coal so decided and the input price of coal for quantity billed shall be adjusted in accordance with the regulations to be notified.”

xxx. It is stated that as could be seen from the aforesaid CERC regulation, till the regulation for computation of input price of coal is notified the energy charge rate (ECR) computation formula shall adopt the notified price of coal as fixed by CIL for the relevant grade from integrated coal mine.

xxxi. It is stated that in the present case, since Regulation No.1 of 2019 has not prescribed the procedure for determination of input price of coal obtained from integrated coal mines, therefore the Commission is requested to adopt the methodology prescribed by CERC regulation and CERC amendment regulation, in terms of Section 61(a) of the Act, 2003 for applying the coal price to calculate the energy charges.

c. It is stated that summing the above, the petitioners state that the coal mine allocations by the MoC as well as the CERC regulation stipulated that the coal price to be considered shall be either at notified basic coal price as fixed by CIL for the corresponding grade of coal of coal mine or the input price of coal determined for the coal mine, for the purpose of ECR computation after COD of integrated mine but not the arbitrary, high pricing under the bridge linkage as claimed and billed by respondent.

- d. It is stated that the Commission may note that if the coal production from Naini coal block had commenced by February/March 2021 considering it as normative date/month, then the price of coal supplied would have been at the notified basic price of coal of the relevant grade of respondent but not at the additional 20% price as claimed by respondent. It is only due to abnormal delay in commissioning of the Naini captive block, respondent is taking undue advantage of the delay which was caused for its own failure but respondent hiked the coal price by 20% over and above the notified basic coal price for the corresponding coal grade, which act is absolutely untenable as it leads to unjust enrichment of respondent and therefore not to be allowed, since it is impacting the consumer tariff.
- e. It is stated that in this context, the attention of the Commission is drawn to the petition filed by respondent under petition O.P.No.8 of 2020 relating to business plan along with other petitions, filed for MYT tariff determination for the period FY 2019-20 to FY 2023-24, respondent had submitted before the Commission, that it was also considering the possibility of swapping of Naini coal block with its coal mines in the State of Telangana, considering its distance from STPP. The Commission in its order dated 28.08.2020 in O.P.No.4 of 2019 and O.P.No.5 of 2019 had reiterated its earlier directive that

“SCCL should actively pursue the issue of coal allocation for its generating station with the Ministry of Coal so that the cumbersome task of transportation of coal from Naini coal block in Odisha and associated losses in quantity and GCV could be mitigated by procuring coal from its own mines which are closer to its generating station.”

However, till date, respondent has not initiated any steps for swapping of coal mines in the State of Telangana, despite the specific direction by the Commission in the order in O.P.No.9 of 2016, as well as the specific recommendation of the Comptroller and Audit General (CAG) Report, in their Report No.1 of 2020.

- f. It is stated that the petitioners would like to extract the observations of the Hon'ble Supreme Court in the case of a civil appeal in C.A.No.5881-5882 of 2016 in the matter of All India Power Engineer Federation and others. Vs. Sasan Power Limited and others, as below:

“... ..

25. on the facts of this, it is clear that the moment electricity tariff gets affected, the consumer interest comes in and public interests gets affected.”
- g. It is stated that as could be seen from the above, the ratio decidendi of the above judgment equally applies to this case also for the reason that by increasing the fuel cost that is coal price by 20% over and above the notified basic price of coal under the bridge linkage, the ECR or the variable charge, which is a component of tariff, gets increased by additional 50 paise/kWh and consequentially the energy charges payable to respondent also increases by around Rs.430 crore per annum, which eventually burdens the consumers at large.
- h. It is stated that further, the additional 20% levy on coal price by respondent till the bridge linkage extension period also leads to unjust enrichment of respondent for its own failure to adhere to its own mining plan and is against the mandate of Section 61(d), which stipulated the safeguarding the consumers’ interest while the recovery of cost of generation shall be in a reasonable manner.
- i. It is stated that in view of the above, the interference of the Commission is warranted in terms of the Section 86(1)(b) to regulate the power purchase cost and Section 86(1)(f) of the Act, 2003 to adjudicate, in order to safeguard the interests of consumer at large.
2. Therefore, the petitioners have sought the following relief in the petition.
- “To direct SCCL to change 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 operationalization of Naini Coal Block and later to adopt the CERC input price determination methodology, in the interest of end consumers.”*
3. The respondent has filed counter affidavit as extracted below:
- a. It is stated that at the outset, the issue involved in the instant matter is whether or not the petitioners are liable to pay the cost of the bridge linkage coal being utilised by the generator STPP for the period FY 2021-22 until the expiry of the extended bridge linkage period which was granted by MoC.

- b. It is stated that both petitioners and respondent are aware of the bridge linkage of coal to the project from source of undeveloped Naini coal block in the state of Orissa until the said mine is brought into stage of full coal production, considering the interest of the petitioners/State of Telangana as was being done in similar circumstances where bridge linkage coal was granted by the MoC to power plants where the linked mines could not coal production. Further, as per the orders of SLC/MoC, the respondent had determined the price of the bridge linkage coal for supply of such coal to power sector that is STPP project at Mancherla and other projects of Maharashtra Generation Corporation (MAHAGENCO), National Thermal Power Corporation (NTPC). Therefore, respondent from time to time since 2016 has been determining the price of such category of coal to STPP and other projects of MAHAGENCO, NTPC.
- c. It is stated that the petitioners cannot project their innocence of supply of such category of coal to STPP or the price that is being determined in general by respondent for such category of coal. Having had the benefit of availing the power from STPP under the approved terms of PPA including the condition of change in law clause, the claim of the petitioners seeking orders to direct the respondent to supply coal of the linkage coal category with the notified price is not tenable, in particular considering the change in law clause having regard to the additional price for such category of coal.
- d. It is stated that the Hon'ble Supreme Court of India in the Civil Appeal No.2908 of 2022 between Uttar Haryana Bijli Vitran Nigam Limited Versus Adani Power (Mundra) Limited has held that CIL is an instrumentality of the GoI and price notifications of CIL to be considered as change in law. Similar considerations need to be made for the coal pricing of bridge linkage made by respondent.
- e. It is stated that the respondent being public sector undertaking jointly owned by the state government and central government, the notification of determining price of coal time to time comes under change in law and the petitioners as long as they are intending to procure power from STPP under the PPA is bound to pay the price of coal as is being decided by respondent for such category of coal which is applicable to all power projects which are availing such bridge linkage coal. Therefore, the petition is not maintainable at law, facts on record, and deserves to be dismissed at threshold.

f. It is stated that further, the Commission in STPP's midterm review order dated 23.03.2023 has ordered the following in respect of energy charge:

“3.15.11 Any variation in fuel prices on account of change in the GCV of coal or gas or liquid fuel shall be billed in accordance with the provisions under clause 21.10 and 21.11 of Regulation No.1 of 2019.”

g. It is stated that MoC, Gol has allocated captive coal block/mine, Naini to STPP/respondent in the year 2016. The coal produced from the Naini block in the state of Odisha would be utilized at STPP, being the specified end use plant. To facilitate the immediate requirement of coal to STPP, a short term Linkage was granted under the policy of bridge linkage, till the commencement of coal supply to STPP from its captive coal block of Naini.

h. It is stated that respondent supplies coal to STPP as per recommendation of SLC, MoC, Gol by entering into memorandum of understanding (MoU). The extension of bridge linkage will be decided by SLC, MoC after deliberation in the meeting and after careful observations and recommendations from Ministry of Power (MoP).

i. It is stated that the respondent is supplying coal to power sector, bridge linkage and non-bridge linkage holders by regulating supplies to non power (NRS) customers. Sales realization from NRS is more by Rs.1,628/T than sales realization from bridge linkage and non bridge linkage supplies. Therefore, by foregoing revenues, respondent is supplying coal to bridge linkage and non bridge linkage customers considering the request, recommendation of MoP, MoC and importance of the power sector in Telangana and India.

j. It is stated that as per the instructions of SLC given in the bridge linkage allotment order of 2016, the respondent has to decide the source of coal supply for meeting the bridge linkage quantity that is the mines, coal grade and the quantity along with the price there from. Further, in the most recent order of SLC it was clearly stated that the price of such bridge linkage supply has to be solely decided by the respondent/CIL. The relevant portion is quoted below:

“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.”

Accordingly, time to time price changes of bridge linkage coal has to be considered as '*change in law*' event.

- k. It is stated that the PPA entered between petitioners and respondent contains the provision for coal supply based on FSA, which is not correct and hence denied.
- l. It is stated that the delay in production of Naini coal had various legitimate uncontrollable factors and hence the delay is not attributable to STPP/respondent.
- m. It is stated that the pricing of coal supplied through bridge linkage to any generator is made in accordance with the terms and conditions contained in the MoU entered between the coal producer, the respondent and the power generator.
- n. It is stated that all the MoU's and supplementary MoU's entered by respondent and STPP from FY 2020-21 to FY 2022-23 were forwarded to Telangana State Power Coordination Committee (TSPCC) containing the pricing structure of coal at the starting of respective financial years of power supply for the year. The petitioners never raised this objection about the pricing structure as per MoU entered between respondent and STPP from FY 2020-21 to FY 2022-23.
- o. It is stated that the respondent and STPP MoU contains provisions similar to the provisions contained in other MoUs of similar nature entered by respondent with other power generators. The said fact can be verified from the MoU entered between NTPC and the respondent for bridge linkage coal.
- p. It is stated that it is clear that neither the pricing structure as claimed by petitioner, nor the terms of MoU are discriminatory against petitioners. Further, it is stated that respondent/STPP followed the same pricing methodology as being followed with other DISCOMs. Therefore, submissions of the petitioners lack merit.
- q. It is stated that the Commission in any part of order dated 21.11.2022, did not mention that it has disallowed the claim of STPP towards payment of bills towards additional cost of coal for FY 2018-19 as claimed by petitioners. In contrast, para 12 (m) provides that petitioners are liable to pay cost of coal for the quantum of power generated up to scheduled generation, without deducting

any amount for premium pricing. The relevant part of the final para 12 (m) of the Commission's order dated 21.11.2022 is quoted below:

"12(m)

... ..

the petitioner is eligible for payment of energy charges for ex-bus charges sent out corresponding to schedule generation.

The liability of the respondents to pay shall be only to the extent of coal cost corresponding to schedule generation and not for the energy generated over and above of the scheduled generation.

... ..

the Petitioner is not entitled to receive additional coal cost beyond scheduled generation."

Therefore, the submissions of the petitioners are refuted.

- w. It is stated that many companies which were allotted mines in year 2016 could not start coal production due to different uncontrollable factors.
- r. It is stated that the reasons for delay in materializing coal supply from Naini coal block were seriously deliberated in the SLC under MoC, and the committee after considering the representation made by the respondent had recommended extension of bridge linkage of STPP up to 2023 in the form of tapering linkage in synchronization with production from Naini coal block. This fact proves that the delay in production of Naini coal had various legitimate uncontrollable factors and hence the delay is not attributable to the respondent/STPP. The submission of petitioners in this respect lacks merit.
- s. It is stated that the MoU premiums, time to time, are determined based on the prevailing market condition and implemented through MoU amendments of pricing structure. When such revision happens, it happens for all the consumers and not for any specific consumer.
- t. It is stated that for the FSA customers, coal will be supplied on notified price as per the linkage given by MoC and there will be a penalty on both seller and buyer on short supply or short lifting as per FSA. However, for the bridge linkage customers there will not be any price regulation and the supply of coal is on best effort basis. There will not be any penalty on both the parties regarding supply and lifting in bridge linkage coal supply. However, the quantity will be decided by MoC, Gol.

- u. It is stated that respondent is supplying coal to power sector, bridge linkage and non bridge linkage holders, by regulating supplies to non power (NRS) customers. Sales realization from NRS is more by Rs. 1,628/T than sales realization from bridge linkage and non bridge linkage supplies. Therefore, by foregoing revenues, respondent is supplying coal to bridge linkage and non bridge linkage customers considering the request, recommendation of MoP, MoC and importance of the power sector in Telangana and India.
- v. It is stated that the petitioner submission that respondent failed to adhere to its own mining plan to commence production at Naini coal block by February 2021. It is stated that the delay in production of Naini coal had various legitimate uncontrollable factors as stated above.
- x. It is stated that the petitioners have canvassed a financial burden of Rs.430 crore per annum due to charging of premium. However, it is submitted that whenever the coal price increases the impact of that comes in the merit order and consequently the scheduled energy of the plant gets affected. In essence when coal prices go up, the generating plant get lesser schedule thereby automatically neutralize the effect of such price increase. However, nothing of this sort is observed in the case of 2x600 MW STPP. In fact, STPP was always among the top positions in merit order among the state thermal generators.
- y. It is stated that respondent/STPP, as per the direction of the Commission vide order dated 28.08.2020, is making efforts to swap the Naini coal mines with Tamil Nadu Generation and Distribution Company (TANGEDCO) and NTPC to minimise the energy charge and to mitigate the problem of coal supply from long distance.
- z. It is stated that however, the proposal for swapping is kept in abeyance by TANGEDCO and NTPC as the production from Naini coal block is yet to start and further, the swapping has to be granted by MoC/MoP on establishing the optimum utilisation of coal mine, cost efficiencies and public interest.
- aa. It is stated that coal production from Naini coal block is yet to be started. Once the production has commenced a petition for determination input price of coal will be filed.

- ab. Accordingly, the objections raised by the petitioners lacks merit and deserves to be rejected.
 - ac. Therefore, the respondent prays the Commission to dismiss the petition under reply with costs.
4. The petitioners have filed rejoinder as extracted below:
- a. It is stated that the subject petition has been filed before this Commission for the reason that the respondent/SCCL has been taking undue advantage of the bridge linkage facility granted to its power plant by the SLC for coal linkages of the MoC, Gol, in the year 2016, which was granted to facilitate the coal supply to STPP on short term basis, till the coal production commences from its captive coal mine/block, Naini coal block, which was expected to be in commercial production of coal by 2020.
 - b. It is stated that since, the bridge linkage is a short term linkage prescribed for 3 years fixed period, unlike the regular long term linkage, as per the bridge linkage guidelines dated 08.02.2016, no FSA would be required to be signed between the parties that is coal supplier and generator to be known as MoU need to be signed.
 - c. It is stated that as stated in the foregoing paragraphs, the purpose of bridge linkage is to bridge the coal supply demand gap and to expedite the coal production from the captive coal mine, by ramping up the production and reduce the equivalent quantum from bridge linkage coal supply, so that there will not be additional burden of coal pricing on the thermal power plant.
 - d. It is stated that the respondent had entered into MoU with its STPP on 01.11.2017, for supply of 6 million tons of coal per annum to STPP, with the price initially charged with additional 20% over and above the notified basic price applicable for power sector for 100% coal requirement.
 - e. It is stated that however, respondent modified the MoU with STPP, within 6 months on 06.04.2018, revised the coal price by creating two slabs that is upto 75% coal requirement with additional 20% pricing over and above the notified basic price applicable for power sector and for above 75% coal requirement, the additional 20% pricing over and above the notified basic price applicable for

non-power sector and made applicable for the period FY 2018-19 and FY 2019-20, without seeking the prior consent of petitioners or the Commission.

- f. It is stated that this arbitrary modification of MoU with additional 20% pricing of coal applicable to non-power sector has caused additional financial burden on petitioners by way of increased energy charges for the power supplied, which has been resisted by the petitioners in the earlier petition filed by the respondent that is O.P.No.8 of 2021 and the Commission was pleased to issue orders disallowing the claim of respondent by recording at paragraph 12(h) as below:

“

Utilization of additional coal beyond the agreed quantum at a higher rate is neither permissible nor within the ambit of the agreed conditions between the parties. ”

- g. It is stated that the respondent having realized that the charging of coal pricing by additional 20% over and above the notified basic price of coal applicable to non-power sector, above 75% coal requirement was not justified, since its STPP is supplying power to power sector, dispensed the non power sector pricing and revised the MoU vide dated 30.03.2020, with pricing of coal of 100% requirement at the notified basic price applicable to power sector, without any additional premium, for the part of FY 2020-21, from 01.06.2020 to 31.03.2021 comprising of 10 months. This pricing of coal at notified basic price without premium applicable to power sector, is the stipulation in the PPA.
- h. It is stated that however, respondent did not continue the aforesaid pricing and further revised the MoU on 16.04.2021, with additional 10% price over and above the notified basic price applicable to power sector for the year FY 2021-22 and again revised the MoU on 28.03.2022 for FY 2022-23, by levying 20% additional price over and above the notified basic price for power sector for 100% coal requirement and thus caused additional financial burden on the petitioner. Recently, the respondent vide MoU dated 29.03.2023, for FY 2023-24 again created two slabs, that is upto 75% coal requirement priced at additional 20% premium over the notified basic price and for coal requirement above 75%, priced at additional 30% premium over the notified basic price, applicable to power sector.
- i. It is stated that the respondent has been taking undue advantage of its dominant position as a coal supplier and collecting the additional premium of

20% and 30% over and above the notified basic price applicable to power sector, from its own power plant, STPP and claiming the monthly energy bills based on high priced coal, which would be eventually passed on to the end consumers.

- j. It is stated that this arbitrary pricing of coal with additional premium under the bridge linkage scheme, is not only contrary to PPA provisions, tariff regulations, but also a violation of the Act, 2003 provision under Section 61(d) that is safeguarding of consumer's interest, since power sector is a regulated sector.
- k. It is stated that the only defence put forth by respondent is that it is not discriminating against petitioners and it is treating all the bridge linkage consumers like NTPC, MahaGenco etc., on equitable basis. This is not a plausible justification. The real issue is whether respondent is entitled to levy additional premium of 20% and 30% over and above the notified basic price, contrary to PPA provisions as well as provisions regulations and the Act, 2003.
- l. It is stated that the Commission may kindly consider that the additional coal pricing adopted by respondent under the pretext of bridge linkage, has to be dispensed forthwith, otherwise it would cause serious financial implications on the petitioners.
- m. It is stated that the Naini captive coal mine, which was supposed to be operationalized by February 2021, has just completed 30% of its construction work, as per the status report of MoSPI, GoI, even after 7 years of allotment of coal mine to respondent.
- n. It is stated that instead of expediting the construction work of Naini coal block, the respondent is obtaining regular extensions of bridge linkage coal from the MoC and thus causing additional financial burden on petitioners by way of increased energy charges, which act is absolutely not tenable.
- o. It is stated that the PPA entered by petitioners with the respondent was for 25 years of duration from COD of the project that is from 02.12.2016. The long term PPAs normally allow the usage of concessional coal, applicable for power sector, for generating power with least cost, since power sector is a regulated sector and power generation is given priority over other sectors. The Commission may consider that the pricing notifications issued by CIL or its

subsidiaries and the respondent being the coal supplier notifies separate coal prices for power sector and non-power sector and the coal prices for power sector are invariably lesser than the non-power sector by 20% to 30%.

- p. It is stated that the Gol allocated captive coal mines to PSU thermal power plants, through which cheaper priced coal would be available to power producers so that the power generation will be affordable. However, the respondent has failed to operationalize the Naini coal block even after 7 years of allotment and continue to collect additional premium of 20% and 30% on the notified basic price of coal under the extended bridge linkage, which act tantamount to enrichment at the cost of petitioners.
- q. It is stated that regarding the coal price regulation from integrated captive coal mine, the CERC has notified its tariff regulations for FY 2019-24, 2nd amendment dated 19.02.2021, wherein it has stipulated to adopt the notified price of CIL, for the corresponding coal grade in the computation of monthly energy charges, till the captive coal mine commences production and then it would determine the input price of coal from the captive coal mine. Since the Regulation No.1 of 2019, did not provide for such consideration of coal price from integrated coal mine, the petitioners urged the Commission to adopt the aforesaid CERC tariff regulations 2nd amendment dated 19.02.2021 in terms of Section 61(a) of the Act, 2003, for adjudicating the matter.
- r. It is stated that with the aforesaid background, the question that emerges is whether the respondent is justified in levying additional 20%/30% price over the notified basic price on STPP, even for the extended bridge linkage period from FY 2021-22 to till date, duly considering the provisions of the Act, 2003.
- s. It is stated that the respondent has already violated the Act, 2003 provisions, particularly the clause (d) of Section 61, tariff regulations as notified by CERC or TSERC, under the shelter of extended bridge linkage and interference of the Commission as a tariff regulator is warranted in the coal price regulation, in the interest of consumers.
- t. Now coming to the counter affidavit filed by the respondent, each of the statement made is analyzed based on factual and legal position as below:

- i. It is stated that both petitioners and respondent are aware of the bridge linkage to STPP, which was granted by the MoC, till the linked mine is brought into the stage of full coal production.
- ii. It is stated that as per the orders of the SLC and MoU, the respondent has determined the price of bridge linkage coal for supply of such coal to power sector such as STPP project, MAHAGENCO, NTPC etc.
- iii. It is stated that the respondent has been determining the price of such category of coal to STPP and other projects.
- iv. It is stated that PPA contains the change in law condition. The claim of petitioners seeking orders to direct the respondent to supply linkage coal of notified price is not tenable, particularly considering the change in law clause, having regard to the additional price for such category of coal.
- v. It is stated that the respondent referred to a cases decided by Hon'ble Supreme Court vide Civil Appeal No.2908 of 2022 in the matter of Uttar Haryana Bijli Vitaran Nigam Limited., VS Adani Power (Mundra) Limited wherein it was held that the CIL is an instrumentality of GoI and the price notifications of CIL are to be considered as change in law.
- vi. It is stated that the statement of the respondent that similar considerations need to be given for the coal pricing of bridge linkage made by the respondent, since the respondent is jointly owned by Government of Telangana (GoTS) and GoI and the price notifications issued by the respondent come under change in law and petitioners are bound to pay the price of coal as decided by the respondent for such category of coal, applicable to all power projects, which are availing bridge linkage coal.
- u. It is stated that as could be seen from the counter affidavit filed by the respondent, it is stated that the respondent has filed this reply as a coal supplier, oblivious of its role as a generator/power seller under the PPA with petitioners.
- v. It is stated that the respondent as a coal supplier may be right in justifying that it is also a government instrumentality and its price notifications would also come under the provisions of change in law, analogous to CIL.
- w. It is stated that however, the respondent is also a generator selling power to petitioners under the PPA, which would automatically come under the jurisdiction of the Commission and is bound by the provisions of the Act, 2003, regulations made by the Commission or CERC on tariff etc. Whereas, CIL is not a generator unlike SCCL. Therefore, the decision cited by the respondent is not relevant in this case.
- x. It is stated that the SLC's MoC recommendation, while granting extension of bridge linkage stated that

“The rate for coal supplies against extended bridge linkage would be decided by CIL/SCCL”,

is not a mandatory direction, since it does not contain the word ‘*shall*’, without which, the claim of the respondent as a generator is not legally sustainable.

- y. It is stated that as per the MoC, coal pricing was de-controlled in the year 2000 by the Gol and coal companies can directly fix the prices of different coal grades, depending on its sustainability and the role of MoC/SLC is limited to the extent of granting coal linkages only.
- z. It is reiterated that the respondent has ignored that there is a separate coal pricing for power sector in its own price notifications, wherein prices for power sector are lesser than coal prices for non power sector, to enable power generation to be cheaper and affordable.
- aa. It is stated that regarding the claim of the respondent that its price notifications would amount to change in law, it is stated that petitioners are also praying the Commission to direct the respondent to charge the coal being supplied to STPP at the notified basic prices, without additional premium of 20% or 30%. The respondent should accept the same.
- ab. It is stated that even the PPA defined the cost of coal as ‘*cost of coal means at which coal is transported and priced for respective grades, as per the respondents’ coal marketing department*’. This clearly demonstrates that only notified basic price shall be considered, without any additional premium.
- ac. It is stated that the arbitrary levy of additional premium on the notified basic coal price by the respondent on STPP/petitioners under the pretext of bridge linkage is absolutely not tenable.
- ad. It is stated that the counter affidavit filed by the respondent is not reflecting the factual and legal position and lacks merit.
- ae. It is stated that in the earlier paragraph that the respondent achieved meager progress of Naini coal block at 30% of total works, as per the MoSPI, Gol, even after 7 years of mine allotment.
- af. It is stated that the PPA’s duration is 25 years, out of which nearly 7 years have already been completed without availing concessional coal, which is a basic

requirement as per PPA and petitioners are deprived of the benefit of concessional coal.

- ag. It is stated that the respondent is the owner of Naini coal mine/block. If the delay occurred in operationalization of Naini captive mine is not attributable to the respondent, then to whom it is attributable? Whether to petitioners? The respondent ought to have persuaded with the MoC, Gol for granting regular coal linkage to its STPP project on similar lines of NTPC Telangana STPS Phase-I, which was granted regular linkage from the respondent under the SHAKTI scheme.
- ah. It is stated that the respondent under the pretext of extended bridge linkage is enriching at the cost of petitioners by arbitrarily levying additional premium of 30% over the basic coal price, which need to be regulated, in terms of Section 61(d) of the Act, 2003.
- ai. It is stated that the respondent has failed to distinguish its role as a coal supplier and a generator under the PPA, whose arbitrary levy of coal pricing need to be regulated by the Commission u/s 61(d) and 86(1)(b) of the Act, 2003.
- aj. It is stated that in paragraph 18 of the respondent's counter affidavit "... .. *The petitioner has canvassed a financial burden of Rs.430 crore per annum due to changing of premium. However, it is to kindly state that whenever the coal price increases the impact of that comes in the merit order and consequently the scheduled energy of the plant gets affected. In essence when coal prices go up, the generating plant get lesser schedule thereby automatically neutralize the effect of such price increase. However, nothing of this sort is observed in case of 2x600 MW STPP. In fact, STPP was always among the top positions in merit order among the state thermal generating stations.*
-
- ak. It is stated that as could be seen from the respondent's counter affidavit, the Commission may consider that the respondent has not disagreed on the financial burden of Rs. 430 crore per annum worked out by petitioners on account of additional premium of coal pricing at 20% over and above the notified basic price of coal for power sector, which construes, upon the

converse reading that the respondent has accepted that there will be additional financial burden on petitioners.

- al. It is stated that the only point put forth by the respondent is that “... .. *In essence coal prices go up, the generating plant get lesser schedule thereby automatically neutralize the effect of such price increase*”.
- am. It is stated that in this regard that state power grid of Telangana being state periphery receives power from generating plants, like the respondent, Power Generation Corporation of Telangana Limited (TSGENCO) located within the state, also called intrastate generators and also from generators like NTPC, Madras Atomic Power Station, NLC etc., located outside the state also called interstate generators.
- an. It is stated that for intrastate generators, like the respondent/STPP, TSGENCO, there will not any levy of point of connection (POC) losses payable to Power Grid Corporation of India Limited (PGCIL) for usage of interstate transmission lines for power conveyance from one state to another state, since these plants are supplying power directly to state grid, therefore the energy charges billed by intrastate generators are relatively cheaper than interstate generators, where there will be additional POC losses on the energy charges, despite the price hike of coal by 20% to 30% charged by the respondent. Therefore, TSSLDLDC will schedule the power from Intrastate generators at first, followed by interstate generators, to meet the assessed demand/load.
- ao. It is stated that considering the zero PoC losses for intrastate generator, the respondent is confident that its STPP power will be fully scheduled despite its levy of additional premium on coal prices and therefore claims that “*STPP was always among the top positions in the merit order among the state thermal generating stations.*” But this does not authorize the respondent to levy additional premium on the notified basic price under the pretext of bridge linkage, which is getting extended periodically.
- ap. It is stated at paragraph 14(c) and (d) of the respondent’s counter affidavit
“... ..
(c) *All the MoU’s and supplementary MoU’s entered by SCCL and STPP from FY 2020-21 to FY 2022-23 were forwarded to TSPCC containing the pricing structure of Coal at the starting of respective financial years*

of power supply for the year. The petitioners never raised the objection about the pricing structure as per MOU entered between SCCL-STPP from FY 2020-21 to FY 2022-23.

- (d) *The SCCL-STPP MOU contains provisions similar to the provisions contained in other MoUs of similar nature entered by SCCL with other power generating company. The said fact can be verified from the MOU entered between NTPC and SCCL for bridge linkage coal.”*

aq. It is stated by the petitioners as below:

- i) The petitioners from time to time have been vehemently objecting to the arbitrary charging of additional premium. The latest pleadings were in petition, O.P.No.8 of 2021 and even this Commission also recorded the version of TSDISCOMs, opposing such hike.
- ii) Further, in the recent MoU dated 29.03.2023 for FY 2023-24, levying additional 30% price over the notified basic price, has also been opposed by the petitioners.
- iii) Regarding the claim that that respondent entered similar MoUs with MAHAGENCO and NTPC, which contained similar provisions on bridge linkages, it is stated that if additional price is levied on NTPC projects in the State of Telangana, then NTPC would simply pass on the same to petitioners and the ultimate burden will be on petitioners but not on NTPC. Therefore, NTPC would be least impacted by such additional levy of coal pricing.
- iv) If there is a price increase of basic price of coal under the respondent's notification, then petitioners will not have any objection on such price increase in notified basic price.
- v) The objection of the petitioners is only on the additional premium (20%/30%) priced by the respondent over and above the notified basic price of coal, under the extended bridge linkage.

ar. It is stated that the respondent has failed to justify the additional premium being levied on the notified basic coal price and there is no valid legal point stated by the respondent in its counter affidavit.

as. In light of the above, the petitioners pray the Commission to allow the prayer made in the petition and pass necessary orders in the matter.

5. The Commission has heard the representative of the petitioners as also counsel for the respondent. It has also considered the material available on record. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 05.06.2023:

“... . The representative of the petitioners stated that the matter is coming up for the first time and counter affidavit has to be filed in the matter. The advocate representing the counsel for respondent stated that he needs four weeks time

to file counter affidavit. The matter may be posted in the month of July, 2023. The representative of the petitioners stated that an opportunity may be given to the petitioners to file rejoinder after filing of the counter affidavit. The Commission observed that the respondent shall file counter affidavit as expeditiously as possible and not later than the next date of hearing. If required further time will be given for filing rejoinder. In view of the above, the matter is adjourned.”

Record of proceedings dated 10.07.2023:

“... .. The representative of the petitioner has sought time for filing the rejoinder in the matter. The counsel for respondent has no objection. The Commission has directed the representative of the petitioner to file rejoinder on or before 21.08.2023 by serving a copy of the joinder to the respondent. Accordingly, the matter is adjourned.”

Record of proceedings dated 21.08.2023:

“... .. The representative of the petitioner has stated and explained the need for filing the present petition. The petitioners are mainly aggrieved by the non-application of CERC Regulation of 2019 and the changes effected thereof. The representative of the petitioners has explained in detail the sourcing of coal, the cost involved therein as also the benefits of applying the proper regulation and thereby considering proper price for the coal.

The representative of the petitioners stated that the respondent has been allocated captive coal mine in Naine block, which is exclusively meant for generation of power by the respondent herein. It is treated as captive coal mine insofar as respondent herein. Though allocation was made in the year 2017 as the production has not been started from the said mine, bridge linkage facility has been allowed to the respondent to draw coal from the western coal fields initially and later its own coal production. The respondent has not been taking effective steps for getting the coal mine into operation for the past several years.

The representative of the petitioners stated that the respondent has been postponing the drawl coal from the captive coal mine which would be cheaper than the coal price being paid towards bridge linkage. Such coal cost would be much less even after including the transportation charges also. The coal cost of such coal mine is in accordance with the CERC Regulation and would be beneficial to the petitioners. In fact, the present coal price being paid is more than three times the coal price accepted as normative by the CERC, which is burdening the end consumer with additional cost. The petitioners are at the receiving end for the reason at the coal price being the fuel cost is a pass through and has to be paid for under the PPA.

The representative of the petitioners brought to the notice of the Commission that the coal price having been deregulated is subject to the whims and fancies of the coal companies. It has been provided that the coal price that has been notified by the coal company would be the price for power sector and non-power sector consumption. The respondent through its marketing wing had notified the coal price at more than three thousand rupees which is far in excess of the accepted normative of Rs. 1,100/- as approved by the CERC. As stated earlier, if the transportation cost from the captive coal mine is also included to the CERC normative, the cost of coal would be much less than the present cost of fuel demanded by the respondent. It could be only 30% of the present cost and

thus, the petitioners would be making substantial savings towards fuel cost and also reduce the burden of the end consumer of electricity.

The representative of the petitioners stated that the attitude of the respondent seems to be to enrich itself at the cost of the power consumers. It has not been making efforts to start production in the captive coal mine and draw coal for generation of power. The petitioners seek to rely on Section 61 of the Act, 2003, which provided that reasonable cost of generation be made available to the generators and at the same time, the interest of the consumers be protected. Due to exorbitant fuel cost, the consumers of the power are being mulcted with unnecessary cost.

The representative of the petitioners, therefore, sought favourable orders from the Commission by determining the coal price that is payable to the generator towards drawls from the bridge linkage or from the captive coal mine allotted to it, thereby reducing the overall impact of fuel cost. The Commission may consider adopting the CERC Regulation in this regard, as no similar provision is made in the regulation made by the Commission in its regulation.

The counsel for respondent vehemently opposed the petition by stating that the Commission has no authority to tinker with the coal price or to determine the same. No provision in the Electricity Act, 2003 has enabled the Commission to interfere with the coal price as notified by the concerned department that is the Ministry/Department of Coal. The coal prices have been deregulated and it is for the coal companies to notify the same towards power sector consumption and non-power sector consumption.

The counsel for respondent stated that the determination of market price of coal has been left to the coal companies and as such, the marketing wing of the respondent also notified the coal price for both power and non-power sector consumption. Pursuant to the notification, the petitioners' power unit has entered into MoU for drawl of coal at the rates notified. Such MoU has been entered in the year 2017 for the first time and brought to the notice of the petitioners also. Subsequently in the year 2018, the MoU was amended to include coal cost at non-power consumption tariff. This aspect has been objected by the petitioners and therefore, another amended MoU has been entered for FY 2019-20 onwards, wherein the coal price required to be considered has been limited to power consumption coal rate along with premium in case of additional quantum of capacity.

The counsel for respondent stated that the MoU entered by the respondent with its marketing division is similar to all the MoUs entered with NTPC and others and any modification by the Commission in this case would gravely affect the said MoUs also. The other entities have no query on the said MoU, as also they have not questioned the respondent on the coal pricing. In such a situation, the petitions cannot allege any discrimination contrary to the PPA. It is strange that the petitioners have chosen to raise the issue of coal pricing after lapse of 7 years of the project becoming operational, they having derived the power without any demur and accepted the invoices raised by the respondent.

The respondent had been achieving excellent PLF and supplying energy to the petitioner at a PLF of 94% for installed capacity of 1200 MW. Despite keeping the DISCOMs in a safe condition of not losing energy and not being required to shut down supply, the petitioners are now seeking to denigrate the capacity. It is also strange that the petitioners are due to the respondent about Rs. 20,000

crores on several counts and yet are seeking to relieve themselves from coal cost which is agreed to under the PPA and is liable to be paid to the respondent. In fact, the petitioners have already lost some amount of revenue due to limitation imposed by the Commission by the charges are payable to the extent of scheduled energy and not the actual energy delivered and thus, it has lost amount to the tune of 1.6% which is achieved beyond the PLF and the scheduled capacity allowed in the tariff order.

The counsel for respondent stated that the petitioners have not shown any authority under law by which the Commission could have interfered with the coal pricing and determine the same to the detriment of the liberty given to the coal companies to notify the coal price under the policy of the Government of India. Inasmuch as even the Government of India did not make any rules or regulation conferring such powers to the Commission on the coal pricing.

The counsel for respondent stated that the tariff is neither static nor specific, but it is dynamic be it the case of coal pricing or energy charges. The only limitation for energy charges is that it has to be in accordance with the PPA, where specific methodology of computation or formula for arriving at tariff for generation has been set out. The respondent is required to enter into FSA for procuring the coal and the tariff is subject to such agreement only. The petitioners have an issue with regard to coal pricing over and above the 75% of the coal required for generation of power beyond the PLF. In any case, the petitioners cannot now, having agreed to fuel cost as pass through in the tariff, allege that onerous charges are being imposed on them. If they had any issue with the coal pricing, nothing precluded them from raising an issue at the earliest point of time and settle the matter.

The counsel for respondent stated that at any rate having suffered orders at the hands of the Commission with regard to the tariff, it is now not open to the petitioners that the coal pricing and the consequential tariff are burdening the end consumers. In the guise of the above grievance, they cannot put the clock behind to the detriment of the respondent. The alleged cost escalation and imposing of higher coal price are misconceived as the respondent is at liberty to fix the coal price under the policy of the Government of India. Therefore, the petitioners have not made out any case for interference by the Commission on the issue.

The representative of the petitioners sought to emphasize that the thermal power plant of the respondent is not a separate entity so as to concede that it has separate expenditure towards fuel procurement. It is part and parcel of the respondent only. Contrary to the CERC normative the coal pricing is pegged at very high rate for the quantum upto 75% of the energy scheduled to be generated and beyond that at a rate of 20% premium higher than the normal rate of power consumption coal price as notified by the respondent. Instead, if the coal is drawn from the captive mine at the normative rate of the CERC and adding 40% premium thereof along with transportation charges, the coal cost would be a third of the coal price that is being levied by the respondent. The respondent is seeking to misinterpret the provisions of CERC Regulation, thereby denying the benefit of cheaper coal price to the petitioners. It is strange that the respondent being a state entity would attempt to enrich itself at the cost of other state entity in the name of commercial operation.

The representative of the petitioners stated that the allegation of no jurisdiction cannot be sustained as the coal price being levied by the respondent would be part of the tariff payable for the generation by the petitioners and they have every right to question and seek to minimize such cost. It is not appropriate on the part of the respondent to secure coal from its own choice despite the fact that it has been specifically allotted captive coal mine for generation of power and since the said mine has not been brought into operation by the respondent, it is being provided with bridge linkage. The coal pricing under bridge linkage is much higher than the production cost and transportation of coal from its own captive mine. Thus, the petitioners are now seeking determination of the coal price so as to off set the onerous cost involved thereon at present.

The representative of the petitioners on a question by the Commission regarding the maintainability of the petitioner as having without jurisdiction, stated that the fuel cost is part of the O&M expenses of the generator and for the petitioners it is a variable cost paid by them to the respondent. As such, these components being part of the tariff, any of the ingredients also would attract the jurisdiction of the Commission to entertain such issues upon filing of the appropriate petition thereof. Since, the Commission had provided in the regulation itself that the tariff would be regulated based on the several components, fuel being one of them, the Commission would invariably step in to set right any condition which would amount to onerous situation. The representative of the petitioners thoroughly explained the various material documents being relied upon by them. Thus, he sought complete relief to the petitioners by rejecting the contentions of the respondent.

Having heard the parties to the petition, the matter is reserved for orders.”

6. The respondent has filed written submissions and the same are extracted below:
 - a. It is stated that the issue involved as per the prayer sought in the instant matter is to direct that the respondent shall supply coal by charging the cost of coal of the bridge linkage coal being utilized by the generator STPP, during the period FY 2021-22 until the expiry of the extended bridge linkage period, as per notified price of linkage of coal without charging additional charges/premium.
 - b. It is stated that at the outset that at first instance it has to be decided that whether the Commission has jurisdiction to give such direction to a coal supplier which comes directly under the MoC in the matter of coal pricing to supply coal at a particular price to a generator which supplies the power to state DISCOMs?
 - c. It is stated that admitted facts are that PPA by STPP with the petitioners was approved much later than allocation of bridge linkage to STPP by the Commission. As per condition in said PPA that the coal price shall be as may be decided by marketing department of the respondent. Further it was made

clear to petitioners by then that there is no linkage coal available for this project and it is to be operated with bridge linkage coal and that the linkage coal will be made available only after development of Naini coal block in Odissa by the respondent, which was expected in three years to come.

- d. It is stated that at the time of procurement of power during FY 2016-17 and FY 2017-18 the coal price of such bridge linkage was decided by the marketing department of the respondent as 20% more of notified price of linkage coal to power sector. The petitioners accepted the same without demur.
- e. It is stated that after considering that the real difficulties in commencing the coal production in Naini block the SLC (LT), MoC extended the bridge linkage time to time to the subject project, which establishes that the delay in bringing Naini block to operation is not attributable to the respondent. It is infact a force majeure, not attributable to any party to PPA. SLC (LT) also stated in minutes that rate for bridge linkage coal supplies would be decided by CIL/the respondent. The relevant part of minutes of meeting is quoted below:
“The rate for coal supplies against extended Bridge Linkages would be decided by CIL/SCCL”.
- f. It is stated that in compliance of said directions of MoC the respondent has been supplying bridge linkage coal to STPP so as to ensure regular coal supplies from the respondent to cater the needs of electricity consumers in the State of Telangana. As STPP is already allocated Naini mine, it is disentitled to apply for long term linkages under Shakthi B (II) scheme of 2017. Therefore, in absence of bridge linkage coal/dispensing the bridge linkage, the STPP requires to obtain coal from e-auction basket which will be more costly than bridge linkage coal.
- g. It is stated that assuming without admitting that the bridge linkage coal as is charged by marketing department of the respondent is dispensed with, there will be no other category of coal available for supply to STPP. Supply of coal under normal linkage is not in the domain of the respondent. Although the respondent is owner of land having the coal mine, but extraction of coal from it and supply of coal is, as per the directions of MoC in particular the linkage of coal. But MoC has given only bridge linkage coal to this STPP project.

- h. It is stated that both petitioners and respondent are aware of the bridge linkage of coal to this project is from the sources of the respondent mines in State of Telangana until the mine in Naini block is brought into stage of full coal production, This decision was taken by MoC considering the interest of the petitioners/State of Telangana, as was being done in similar circumstances where bridge linkage coal was granted by the MoC to power plants in other states where the linked mines could not commence the coal production.
- i. It is stated that further, as per the orders of SLC, MoC, the respondent had determined the price of the bridge linkage coal for supply of such coal to power sector viz. STPP project at Mancherial, other projects of MAHAGENCO and NTPC. Therefore, the marketing department of the respondent from time to time since 2016 has been determining the price of such category of coal to STPP and other projects of MAHAGENCO, NTPC. Since the respondent being company owned by GoTS and GoI, and the Board of Directors of the respondent comprised of representatives from both governments, it is too much for petitioners to plead that price decided by the marketing department of the respondent charging premium over notified basic price of coal is arbitrary.
- j. It is stated that the petitioners cannot portray their innocence of supply of such category of coal to STPP or the prices that are being determined in general for such bridge linkage coal by the respondent. Having had the benefit of availing the power from STPP under the approved terms of PPA including the condition that coal price as may be decided by marketing department of the respondent and the change in law clause, the claim of the petitioners seeking orders to direct the respondent to supply the bridge linkage coal with the notified price is not only not tenable, in particular considering the change in law clause having regard to the additional price for such category of coal, it amounts to anticipatory breach of PPA as per Section 39 of Indian Contract Act. Section 39 contract reads as under.
- “When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promise may put an end to the contract, unless he has signified by words or conduct his acquiescence in its continuance”.*
- k. It is stated that considering the condition of price of coal as may be charged by the marketing department of the respondent and change in law clause the

respondent is in absolute compliance of terms of PPA and there is no iota of material to show that charging of coal price time to time by the respondent from FY 2021-22 is in violation of PPA. Further, the petitioner although obliged under PPA to open letter of credit for payment mechanism of monthly bills, miserably failed to do so, whereas the petitioners have opened LC in favour of NTPC. As such said acts/defaults of petitioners amounts to utter violation of terms of PPA.

- I. It is stated that the Hon'ble Supreme Court of India in the Civil Appeal No.2908 of 2022 between Uttar Haryana Bijli Vitran Nigam Limited Versus Adani Power (Mundra) Limited has held that CIL is an instrumentality of the GoI and price notifications of CIL to be considered as change in law. Therefore, the said proposition of law needs to be applied for the coal pricing of bridge linkage made by the respondent as change in law.
- m. It is stated that considering the said proposition of law and the terms of PPA that coal price shall be as per the decisions of marketing department of the respondent being public sector undertaking jointly owned by the GoTS and GoI, the notification of determining price of coal time to time comes under change in law. Therefore, petitioners as long as they are intending to procure power from STPP under the PPA is bound to pay the price of coal as is being decided by marketing department of the respondent for such category of coal which is applicable to all similar power projects that are availing such bridge linkage coal. Therefore, the petition is not maintainable at law and facts on record and deserves to be dismissed at threshold.
- n. It is stated that the respondent is a government company and adopts uniform policy on coal pricing across all generators. The premium charges over notified price for bridge linkage to MAHAGENCO are also applicable to STPP having bridge linkage with the respondent. Any differential treatment between generators will be hit by article 14 of Constitution of India.
- o. It is stated that CIL is charging a bridge linkage coal with a premium of flat 40% to all its bridge linkage customers. Memo showing the MCL (CIL subsidiary) charging 40% flat premium for bridge linkage consumers is submitted in this regard during hearing on 21.08.2023 before the Commission.

- p. It is stated that for starting coal production from Naini coal block, all approvals have been obtained including stage - I and stage - II of forest clearances. The respondent is only awaiting handing over of forest land by the state government of Odisha. As and when forest land is handed over, grounding of mine and coal production will start. Efforts are on at the highest level to get forest land from the state government of Odisha. There is no default on the part of the respondent, which fact is established by the extension of bridge linkage by the MoC.
- q. It is stated that regarding Naini block coal swapping, as per the directives of the Commission, the respondent has been actively pursuing the issue of coal allocation for STPP from its own mines in Telangana, due to various factors involved, such swapping process is delayed.
- r. It is stated that a proposal for swapping of coal with TANGEDCO/NTPC has already been formulated and is kept in abeyance as the coal production from Naini coal block is yet to start. On acceptance of the said proposal by TANGEDCO/NTPC, the application for swapping arrangement will be submitted to MoC, Gol for their approval.
- s. It is stated that primarily clause 15 of CERC regulation enables the CERC to decide adhoc price after COD of coal mine and before deciding input price. Further, scope of subjects to issuing regulations by CERC is different to that of State Commissions. The input price of coal for captive use is an exclusive jurisdiction of CERC, but not to Commission. Further to state that even though Tadicherla coal block is allotted to TSGENCO and though COD of said mine is over, never the TSGENCO sought for decision of input price of such coal, with this Commission. The reason is obvious that this Commission has no jurisdiction.
- t. It is stated that accordingly, as the grounds canvassed by the petitioners lacks merit and deserves to be rejected. In view of the above facts, the respondent prays the Commission to dismiss the petition filed by petitioners with costs.
7. The petitioners have filed additional written submissions and the same are extracted below:

- a. It is stated that before advertizing to the issues raised by the respondent in the written submissions filed now, the petitioners would like to submit reply to the query raised by this Commission during the hearing held on 21.08.2023, as to *“Whether this Commission has the jurisdiction to determine the input price of coal produced at NAINI coal block in Odisha”*. In this regard, it is stated that the MoC, GoI had allotted the Naini captive coal block located in state of Odisha STPP in the State of Telangana designated as specified end use plant, whereunder the coal produced from Naini coal block is transferred to the respondent’s STPP power plant in Telangana and power would be produced by consuming coal from Naini captive mine. Since the coal produced at Naini captive coal mine is dispatched to State of Telangana for consumption by STPP, therefore this Commission is having jurisdiction to determine the input price of coal from integrated captive mine of Naini block, since Naini block is dedicated to STPP only. Even the respondent in its counter filed on 06.07.2023 has confirmed the jurisdiction of this Commission on Naini captive coal as extracted below:

“... ..

20) Re :Sl. No.2 (XXV) to (XXXi)

It is to submit that coal production from Naini coal block is yet to be started. Once the production is commenced a Petition for determination input price of coal will be filed.”

- b. It is stated that now coming to the written submissions filed by the respondent after the conclusion of the arguments on the date of hearing that is 21.08.2023, the respondent has raised a fundamental question as to *“Whether this Hon’ble TSERC has jurisdiction to give such a direction to a coal supplier, which comes directly under the MoC in the matter of coal pricing to supply coal at a particular price to a generator, which supplies the power to state DISCOMs”*.
- c. It is stated that advertizing to the aforesaid issue raised by the respondent, the petitioners state that though the respondent is a coal supplier company in the State of Telangana, yet it is also a generator supplying power to the petitioners under a long term PPA dated 18.01.2016 and has been raising monthly invoices on petitioners for the power supplied by its thermal power plant.
- d. It is stated that since the generating plant/STPP is not a legal entity but owned by the respondent, the coal supplier/respondent has been raising monthly

invoices on petitioners and also filing petitions before the Commission for determination of multiyear tariff as well as for dispute resolutions under the various provisions of the Act, 2003, tariff regulations issued by this Commission and also the CERC.

- e. It is stated that it has already been submitted that the respondent is performing dual functions, being as a coal supplier and also a generator. Since STPP, not being a legal entity, therefore it cannot be made a party in the proceedings before the Commission. As such, the respondent has been made party in the present petition, as a generator cum coal supplier.
- f. It is stated that the Regulations No.1 of 2019 has not provided for computation of input price of coal from integrated coal mines. Hence, the petitioners have prayed the Commission to adopt the CERC Tariff Regulations, 2019, for 2019-2024, in terms of Section 61(a) of the Act, 2003 in regard to computation of input price of coal and lignite from integrated mine provided in Chapter-9. The clause 36(2) of CERC Tariff Regulation, 2019, stipulated that "*Till the regulation for computation of input price of Coal is notified, the generating company shall continue to adopt the notified price of Coal India Limited commensurate with the grade of the Coal from the Integrated mine.*".
- g. It is stated that as could be seen from the said CERC Tariff Regulations, 2019, the price of coal supplied to a generating station, is also being regulated, which parameter will be used in the energy charges rate (ECR) computation formula for computing the energy charges during the previous month as a part of tariff.
- h. It is stated that as STPP is not a legal entity, therefore, the Commission cannot give a direction to STPP for adopting the notified prices of coal issued by the respondent in the ECR computation for STPP generation, as such, the petitioners prayed the Commission to give a direction to the respondent being the owner of STPP to charge the coal supply under bridge linkage at notified price of the coal for the corresponding grade.
- i. It is stated that whereas the respondent is trying to insulate itself under the pretext of coal supplier, so as to circumvent the jurisdiction of the Commission by stating that "*The respondent comes directly under the MoC in the matter of coal pricing to supply coal at a particular price to a generator which supplies the*

power to state DISCOMs". This averment of the respondent is misleading. It is stated that the MoC only accords coal linkages, be it long-term or short-term, to consumers as per the recommendations of the SLC, but coal pricing exercise is in the exclusive domain of coal companies CIL/the respondent and the MoC, Gol, has no powers on coal price fixations, since the coal prices were decontrolled by the Gol in the year 2000. The coal supply companies are permitted to fix the coal prices for power sector, regulated sector and non-regulated sector being, steel, cement etc. based on its sustainability.

- j. It is stated that since the respondent is also a generator having entered into a long term PPA with petitioners, it would automatically come under the jurisdiction of the Commission, which the Commission can exercise powers under Section 86(1)(b) of the Act, 2003, that is regulation of power purchases including the price at which the electricity shall be procured from the generating company through agreements. Therefore, the issue raised by the respondent on jurisdictional aspect regarding giving directions to a coal supplier in the matter of coal pricing, is absolutely misleading and lacks merit.
- k. It is stated that further, the respondent in its written submissions stated that for the period FY 2016-17 to FY 2017-18, the petitioners had accepted the price of bridge linkage as decided by the marketing department of the respondent at the rate of additional 20% over and above the notified basic price of linkage coal price applicable to power sector without demur and therefore expecting petitioners not to raise any objection now.
- l. It is stated that adverting to the aforesaid statement of the respondent, it is stated that initially petitioners were of the view that the price of coal produced from Naini captive coal mine would be cheaper since the respondent projected in the detailed project report (DPR) that the operational efficiency parameter, viz. stripping ratio of Naini captive block open cost coal would be 2.58 Cum/ton, very low compared to other mines, and high quality grade of coal would be produced viz. G-10 grade at the Naini block high quality coal results in lesser consumption of coal for power generation and consequent savings in energy charges and the cost of Naini coal works out to Rs. 1034 per ton, as per the respondent's price notification) for G-10 grade cheaper coal vis-à-vis the respondent's G-10 grade coal priced at the rate of Rs. 2910 per Ton. Even after

factoring transportation cost from state of Odisha to State of Telangana, the Naini coal will be still cheaper, which would help reduce the energy charges of STPP considerably and reduce the burden on petitioners. Since the period of bridge linkage was strictly 3 years from the date of allotment that is 13.08.2015, hence petitioners had allowed the additional 20% cost over the notified price for power sector. However, the respondent could not commence the Naini captive mine coal production, even after its normative date of operationalization, which was projected as December 2020. The respondent has been periodically obtaining extensions of bridge linkage till the year 2024, which is on tapering basis only, which means that, as the Naini coal production gets ramped up, the equivalent quantum of high cost bridge linkage coal utilization shall get reduced.

- m. It is stated that whereas the progress of Naini captive coal block even after 8 years of allotment is 30% only, as per the MoSPI, Gol. STPP plant (2x600 MW) requires 6.00 million tons per annum for 100% PLF generation, while Naini coal block production is estimated at the rate of 10 Million tons per annum. Due to its own failure, the respondent could not commence Naini captive coal production even after 8 years of allotment, but the respondent is continuing the charging of additional 20% to 30% premium on notified basic price for STPP, which is nothing but unjust enrichment at the cost of petitioners/end consumers, which is violation of Section 61(d) of the Act, 2003 that is safeguarding of consumers' interest. Therefore, petitioners are praying the Commission to give a direction to the respondent u/s 86(1)(b) of the Act, 2003 to charge the coal price at notified price of the coal, in terms of the relevant CERC Tariff Regulations, 2019, after adopting the same by the Commission.
- n. It is stated that the Commission may appreciate that bridge linkage was granted to the respondent/STPP by Gol, which is a short-term linkage for 3 years, to facilitate coal supply to the respondent/STPP project, till the production commences from the Naini captive mine, otherwise the STPP project would become '*stranded*' and leads to investment loss to the respondent. However, the respondent has been taking undue advantage of this short term linkage and charging additional 20% to 30% premium on STPP, initially on the price applicable to non-power sector, the basic price of coal for non-power sector is

very high and now on power-sector, instead of charging at notified prices, which need immediate intervention of the Commission, to curb the profiteering by the respondent in the name of additional pricing on bridge linkage coal.

- o. It is stated that now, the individual issues replied by respondent in the written submissions are discussed below:
- p. It is stated that delay in coal production in Naini block is not attributable to the respondent. It is a force majeure event not attributable to any party to PPA. SLC (LT) also stated in minutes that rate for bridge linkage coal supplies would be decided by CIL/the respondent.
- q. It is stated that if bridge linkage coal is dispensed with there will be no other category of coal available for supply to STPP and STPP requires to obtain coal from e-auction basket, which will be more costlier than bridge linkage, hence MoC has given only bridge linkage coal to this STPP project.
- r. It is stated that the respondent contended that abnormal delay in Naini coal block operationalization is a force majeure event and not attributable to any party to PPA. The respondent though being the owner of Naini captive mine, is absolving itself from the delay in commercial operation of Naini coal block and the respondent further averred that it is not attributable to any party to PPA. The respondent has rightly accepted that the delay of production from Naini block is also not attributable to petitioners who are also a party to the PPA. Then respondent should desist from levying additional premium of 20%/30% on the notified price of coal for the grade supplied, applicable to power sector.
- s. It is stated that further, the respondent's version that SLC (LT) recorded in the minutes "*to decide the rate for coal supplies against extended bridge linkage by CIL/SCCL*" is misleading and need to be construed conversely that SLC (LT) would not decide the rate for coal supplies against bridge linkages and the discretion of fixation of coal price has been given to the respondent/CIL only. However, the respondent has misinterpreted this statement in its favour and averred that it is fixing rate of coal supplies against bridge linkages as per SLC (LT), which is absolutely false. As already stated in the foregoing paragraphs, price fixation is in the exclusive domain of coal companies and the Gol has no role in it, since the coal prices were decontrolled in the year 2000.

- t. It is stated that the respondent further averred that if bridge linkage coal is dispensed with, there will be no other category of coal available for supply to STPP and STPP is required to obtain coal from e-auction basket, which is still costlier. Even in this case also, the respondent tried to mislead the Commission. The petitioners are seeking directions to the respondent to dispense the additional coal pricing of 20%/30% over and above the notified price but not seeking to dispense with the entire bridge linkage coal.
- u. It is stated that since the delay in commissioning of Naini coal block is entirely attributable to the respondent, being the owner, the respondent cannot be permitted to shift its inefficiency on to petitioners by not adhering to the completion schedule in respect of Naini coal block.
- v. It is stated that the respondent can still continue to supply coal supplies to STPP under the bridge linkage but dispense the additional charging of 20%/30% premium over and above the notified price of the corresponding coal grade for power sector. This act would be in consonance with the provisions of the u/s 61(d) of the Act 2003. It is once again stated that the MoC only accords granting of linkages to consumers from Coal companies, but it has no role in price fixation of coal.
- w. It is stated that the respondent had determined the price of bridge linkage coal for supply of such coal to power sector viz., STPP, MAHAGENCO and NTPC.
- x. It is stated that the respondent's marketing department has been determining the price of such category of coal to STPP and other projects since 2016.
- y. It is stated that the respondent's Board of Directors comprised of representatives from GoTS and Gol. Therefore, petitioners pleading that "*the price decided by the SCCL's marketing department, charging premium over notified basic price of coal is arbitrary*" is not tenable.
- z. It is stated that the respondent stated that the approved PPA contained the condition that coal price as may be decided by marketing department read together with change in law clause particularly with regard to the additional price for bridge linkage category of coal, hence the claim of petitioners amounts to anticipating breach of PPA as per Section 39 of Indian Contract Act, which reads that when a party to a contract has refused to perform or disabled himself

from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified by words or conduct his acquiescence in its continuance.

- aa. It is stated that the respondent is ignorant of the modifications taken up by the Commission while according consent to the PPA entered between petitioners and the respondent, vide order dated 22.10.2021 in O.P.No.8 of 2016, whereunder the Commission directed for deletion of annexure-IV of PPA, which contained the definition of cost of coal as per the respondent's coal marketing department. Consequently, the respondent's reliance on the condition of "*price as may be charged by SCCL marketing department*" is no longer valid and not sustainable.
- ab. It is stated that the respondent has attempted to invoke the Section 39 of the Indian Contract Act. As per the said Section, when a party to a contract has refused to perform its promise in its entirety, the promisee may put an end to the contract. The respondent has contended that parties agreed to the condition in the PPA that "*coal price as may be decided by marketing department of SCCL*", but now petitioners are seeking orders to the respondent to supply bridge linkage coal at notified price is not tenable, particularly, considering the change in law clause in the PPA having regard to the additional price for such category of coal, therefore, averred that the prayer of petitioners amounts to anticipatory breach of PPA as per Section 39 of Indian Contract Act.
- ac. It is stated that the respondent is misconceived in invoking the Section 39 of Indian Contract Act, as the power generation activity under a PPA is regulated activity, the terms and conditions of the PPA including the tariff have been regulated by the Commission u/s. 86(1)(b) and also in terms of the Regulation No.1 of 2019 as well as CERC tariff regulations.
- ad. It is stated that under the Section 39 of the Indian Contract Act, there will be two parties to a contract, a promisor and promisee whereas in case of a PPA, though there will be two parties to the PPA, viz. a buyer and a seller, there will be a third party also, that is the Commission, which will exercise powers for tariff determination u/s 62 regulatory powers under Section 86(1)(b)) and also adjudicatory powers u/s 86(1)(f) of the Act, 2003.

- ae. It is stated that the Hon'ble Supreme Court in Civil Appeal No.1843 of 2021 in the matter of M/s Maharashtra State Electricity Distribution Company Limited Vs. Maharashtra Electricity Regulator Commission and Others had observed that "*The Regulatory Commissions continue to exercise continuous regulatory supervision over the parties (Licensees) especially over Tariff.*". In the present case, the respondent, being the generator supplying power to petitioners under a long term PPA, would also be treated as a regulated entity, since the Commission has been determining the multiyear tariff payable to the respondent by petitioners from time to time in respect of its STPP.
- af. It is stated that further, the PPA at preamble stipulated that "*The terms and conditions of the Power Purchase Agreement are as per prevailing TSERC Regulations any changes in TSERC regulations that may occur in future shall be applicable for all operating norms or any other parameters.*".
- ag. It is stated that since fuel cost being coal cost is recovered through energy charges by the generator, which is a component of tariff, CERC tariff regulations, 2019 have also put a cap on the coal price to be considered in the energy charge rate (ECR) computation formula. By adopting the relevant CERC Regulation for integrated mine coal price determination, the energy charges payable to the respondent can also be regulated by the Commission.
- ah. It is stated that in terms of the aforesaid provision, the respondent is bound by the tariff regulations issued by this Commission, since tariff comprises of two components, viz., capacity charges being fixed charges and energy charges being variable charges/fuel cost. The Commission has prescribed a methodology for computing ECR per kWh, at clause 21.6 of the Regulation No.1 of 2019, wherein the price of primary fuel being coal has to be substituted in the formula stipulated. Since the Regulation No.1 of 2019 have not provided for integrated captive mine coal price determination, the petitioners urge the Commission to adopt the relevant clauses of CERC Generation Tariff Regulations, 2019. The CERC tariff regulations stipulated only two cases in respect of generating stations having been allotted captive mine, viz. (i) prior to COD of captive coal mine, adoption of notified price of coal for the corresponding coal grade of Coal India Limited (CIL), (ii) After COD of captive coal mine, CERC determined price of coal from captive coal mine.

- ai. It is stated that the respondent's claim that "*charging of additional price for bridge linkage customers amounts to change in law*" is totally misleading as the price notifications issued by the respondent do not provide the coal pricing for bridge linkage customers. The Commission may kindly verify the same. petitioners have no objection for adopting notified basic prices of coal supplied to STPP but objecting only on the additional premium of 20 to 30% on the notified basic price by the respondent.
- aj. It is stated that further, for claiming change in law benefit, the PPA at Article 8.1 has stipulated certain conditions to be followed by the respondent such as issuing a notice in writing to petitioners regarding the change in law event and both parties should agree to an amendment to the PPA to pass the impact of such an event to petitioners within the timelines prescribed therein. It is on record that the respondent has never fulfilled the conditions stipulated under the change in law provision. As such, the claim of the respondent is not sustainable even in terms of PPA provisions.
- ak. It is stated that in view of the above, the submissions of the respondent in bringing parity to a general agreement under Section 39 of the Indian Contract Act vis-à-vis the regulated PPA, governed under the Act, 2003 is not appropriate and also not tenable. As such, the submission of the respondent claiming anticipatory breach of PPA under Section 39 of the Indian Contract Act is not relevant in case of regulated PPAs.
- al. It is stated that in view of the above legal position, the respondent's submissions, including invoking of Section 39 of the Indian Contract Act lacks merit.
- am. It is stated that the respondent stated that considering the condition of price of coal as may be charged by the marketing department of the respondent under the approved terms of PPA and also the change in law clause, there is no material to show that changing of coal price time to time by the respondent from FY 2021-22 is violation of PPA.
- an. It is stated that the respondent further stated that although the petitioners are obliged under the PPA, to open letter of credit (L.C) for payment mechanism of monthly bills, petitioners failed to do so but opened LC in favour of NTPC. The

respondent contended that the said acts/default of petitioners amount to utter violation of terms of PPA.

- ao. It is stated that the respondent is firmly relying on the condition stipulated at annexure-IV of PPA that the coal price shall be as may be decided by marketing department of SCCL, together with change in law clause of PPA, to justify its action of charging additional 20%/30% premium on the notified basic price of coal for bridge linkage customers like STPP etc.
- ap. It is stated that the respondent is ignorant of the modifications taken up by the Commission while according consent to the PPA entered between petitioners and the respondent vide order dated 22.10.2021 in O.P.No.8 of 2016, whereunder the Commission directed for deletion of annexure-IV of PPA, which contained the definition of cost of coal as per the respondent's coal marketing department.
- aq. It is stated that consequently, the respondent's reliance on the conditions of "*Price as may be charged by SCCL marketing department*" is not sustainable.
- ar. It is stated that the respondent is also relying that its price notifications would become change in law, therefore it can levy any additional premium of 20%/30% on the notified basic prices of coal for bridge linkage customers, is also not sustainable, since price notifications issued by the respondent as a coal supplier may come under change in law but not the additional premium charged on bridge linkage customers.
- as. It is stated that the MoU between the respondent and STPP on charging additional premium of 20%/30% is an internal arrangement within the respondent and the bridge linkage prices are not published in the price notifications issued by the respondent from time to time.
- at. It is stated that to counter the prayer of petitioners in the present petition, the respondent has made a counter allegation that petitioners act of not opening L.C in favour of the respondent amounts to utter violation of terms of PPA. This issue raised by the respondent has no relevance to the present dispute raised by petitioners. The respondent is at liberty to seek remedies in accordance with law, in case it is aggrieved.

- au. It is stated that the respondent referred to a case law of the Apex court under Civil Appeal No.2908 of 2022 between Uttar Haryana Bijli Vitran Nigam Limited vs Adani Power (Mundra), wherein it was held CIL is the instrumentality of Govt and price notifications of CIL to be considered as change in law. Applying the said proposition of law, the respondent's coal pricing of bridge linkage would also become change in law.
- av. It is stated that applying the proposition of law and considering the terms of PPA that coal price shall be as per the decisions of the marketing department of the respondent, the price notifications issued by the respondent will also come under change in law. The petitioners are bound to pay the price of coal as being decided by the marketing department of the respondent for such category of coal, which is applicable to all similar power projects availing bridge linkage coal.
- aw. It is stated that the respondent averred that the petition is not maintainable at law and facts on record.
- ax. It is stated that the respondent further stated that it being a government company, adopts a uniform policy on coal pricing across all GENCOs, including STPP. The respondent averred that any differential treatment between GENCOs will be hit by Article 14 of the Constitution of India.
- ay. It is stated that the petitioners have already submitted that the price notifications issued by the respondent may come under the change in law but the additional premium 20%/30% being charged by the respondent for coal supplied to STPP under bridge linkage do not come under change in law, since the price notifications issued by the respondent do not publish coal prices applicable for bridge linkage customers.
- az. It is stated that the respondent is relying on the terms of PPA that "*Coal Price shall be as per the decisions of SCCL marketing department*" for binding the petitioners on STPP to pay price of coal as is being decided by the marketing department of the respondent is misleading, since the Commission had already deleted the annexure-IV of the PPA, which contained the aforesaid condition that the marketing department's decision of the respondent on coal pricing, vide Commission's order dated 22.10.2021 in O.P.No.8 of 2016.

- ba. It is stated that the respondent is comparing with CIL, which is a coal supplying company owned by Gol and CIL has no other business. Whereas SCCL being a coal company as well as a power generator, under the PPA with petitioners is also bound by the Commission's tariff regulations, which override the PPA provisions.
- bb. It is stated that the respondent since performing dual functions and STPP having no legal identity, is obligated to supply coal to STPP at notified basic prices of coal in terms of CERC Tariff Regulations, 2019 since the respondent has failed to operationalize Naini captive block even after 8 years of allotment and the respondent should not be permitted to enrich at the cost of petitioners by charging additional pricing under the bridge linkage scheme.
- bc. It is stated that the respondent is trying to invoke the Article 14 of the Constitution of India, which mandates the principles of equality among equals. However, the very concept of equality requires providing differentiation for persons not situated equally. Apart from being a coal supplier, the respondent is also a generator, unlike CIL and is bound by the tariff regulations issued by the Commission and can adopt CERC tariff regulations to the extent of requirement.
- bd. It is stated that petitioner allowed the additional premium on notified prices of coal on STPP for almost 7 years despite burdensome coal pricing, in anticipation of cheaper coal to be produced from Naini captive mine but after having noted the meagre progress of Naini captive block at the rate of 30% even after 7 years of CoD of the STPP project, would not like to continue to bear the burden of additional charging of coal being supplied to STPP by the respondent under the bridge linkage, hence filed the present petition seeking intervention of the Commission under its regulatory powers. The respondent having got benefitted for considerable period under the bridge linkage scheme with additional pricing of coal, cannot now be permitted to invoke Article 14, since it is against the principle under Section 61(d) of the Act, 2003 that is safeguarding of consumers' interest.
- be. It is stated that CIL is charging bridge linkage coal with additional premium of flat 40% on the notified price of coal to all its bridge linkage customers.

- bf. It is stated that a memo showing MCL (CIL subsidiary) charging additional premium of 40% flat premium for bridge linkage consumers was submitted during hearing on 21.08.2023 before the Commission.
- bg. It is stated that the respondent has tried to mislead the Commission by averring that MCL, a subsidiary of CIL is charging additional 40% premium flat on the notified price of coal for bridge linkage customers, whereas it is charging only 20% premium on the notified price of coal, by which SCCL is trying to make believe the Commission that it is charging lesser premium on the notified coal price, thereby lesser burden is imposed on petitioners.
- bi. It is stated that the respondent has simply stated about MCL's 40% flat premium on notified coal price which is an absolute figure, without mentioning the CIL/MCL notified coal prices for similar grades of coal for power sector. The petitioners submit the MCL/CIL's notified coal prices vis-à-vis the SCCL's notified coal prices for G-9 to G-12 grade of power sector which are as below:

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	358.40	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/-

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-11	2420.00	484/-	726/-	Rs.2904/-	Rs.3146/-
G-12	2150.00	430/-	645/-	Rs.2580/-	Rs.2795/-

bj. It is stated that as could be seen, the CIL/MCL notified basic prices are cheaper vis-à-vis the respondent's notified coal prices by Rs.1800 to Rs.1254 per metric ton and even after adding 40% flat premium on MCL's notified prices, the CIL/MCL prices for bridge linkage customers are still cheaper whereas the respondent's basic notified prices for respective coal grades are exorbitant and additional 20% and 30% premium on the notified prices would be still higher and burdensome on petitioners and hence, the claim of the respondent is misleading and not in consonance with Section 61(d) of the Act, 2003 that is safeguarding consumers' interest, hence not tenable and not sustainable.

bk. It is stated that the respondent is awaiting the handing over of forest land by the state of Odisha and efforts are on at the highest level to get forest land from Government of Odisha. It is stated that as and when forest land is handed over, grounding of mine and coal production will start. It is stated that there is no default on the part of the respondent, which fact is established by the extension of bridge linkage by the MoC.

bl. It is stated that the Commission may see the submission of the respondent in paragraph 4 of the written submissions, which is extracted below:

Para-4 (SCCL Written Submissions)

*"... .. it is, infact, a force majeure, not attributable to any party to PPA.
... .."*

bm. It is stated that since the respondent itself has admitted that the delay in bringing Naini Block to operation is not attributable to any party to PPA, which means that delay is also not attributable to petitioners. Therefore, the respondent is not

justified in penalizing petitioners with additional 20% premium on notified basic coal price for corresponding grade of coal on STPP, as petitioners are in no way connected to this abnormal delay. Based on this the respondent's averment alone, the Commission can regulate the pricing of coal supplied to STPP by the respondent under the bridge linkage scheme and dispense the additional pricing being charged by the respondent.

- bn. It is stated that the other justification given by the respondent that extension of bridge linkage to the respondent's STPP established the fact that there is no default on the part of the respondent, also lacks merit, since extension of bridge linkage given to the respondent/STPP is only to facilitate the coal supply to the respondent/STPP, till the coal production is commenced from Naini coal block, otherwise the the respondent's STPP project would become stranded asset. This extension of bridge linkage by the SLC (LT) ought not to be seen as an endorsement of additional pricing of coal by the respondent.
- bo. It is stated that further the respondent itself has committed that forest land was not handed over to it by the Government of Odisha, inspite of efforts put in by highest level. As already submitted the progress of Naini coal block as per MoS&PI is 30% as on date even after 8 years of captive mine allotment to the respondent. At this pace of works progress, Naini coal block operationalization cannot be achieved even in next 5 years. Till such time, SCCL appears to enrich itself at the cost of petitioners by continuing the additional levy of 20%/30% on the notified basic price for power sector, which is not permissible in terms of the Act, 2003.
- bp. It is stated that the respondent has been actively pursuing the issue of coal allocation to STPP from the respondent mines as per the directions of the Commission. It is stated that the respondent has already formulated a proposal for swapping of coal with TANGEDCO/NTPC but kept in abeyance as the coal production from Naini coal block is yet to start. It is stated that on acceptance of the said proposal by TANGEDCO/NTPC, the application for swapping arrangement will be submitted to MoC for their approval.

- bq. It is stated that though the respondent claims to have been actively pursuing the issue of coal allocation to STPP from the respondent's mines, it has not resulted in any tangible benefit/relief to STPP.
- br. It is stated that the respondent appears to have been comfortable with the bridge linkage, since it can sell coal to STPP at an additional premium of 20%/30%, so long as the bridge linkage is continued and it can also generate power upto the normative level, as approved by the Commission in the multi-year tariff order and achieve highest PLF. Thus, the respondent is ensuring profitability both in coal business and power business, which is nothing but profiteering and the respondent should not be allowed to continue with the additional pricing under the bridge linkage scheme.
- bs. It is stated that the CERC regulation enables the CERC to decide adhoc price after COD of coal mine and before deciding input price. It is stated that the scope of subjects for issuing regulations by CERC is different to that of the State Commissions. It is stated that the input price of coal for captive coal is in exclusive jurisdiction of CERC, but not to the Commission.
- bt. It is stated that even though Tadicherla coal block is allotted to TSGENCO and though COD of said mine is over, TSGENCO never sought for decision of input price of such coal, with the Commission. It is stated that respondent averred that the reason why TSGENCO not sought for Input price computation of Tadicherla mine, is obvious that the Commission has no jurisdiction.
- bu. It is stated that the respondent contended that the Commission has no jurisdiction to decide the Input price of Naini captive coal mine by citing the case of TSGENCO, which was allotted Tadicherla captive coal block, but claimed that TSGENCO never sought decision of the Commission for Tadicherla coal, hence SCCL inferred that this Commission has no jurisdiction. It is stated that petitioners would like to state that the counter filed by the respondent in the present petition at paragraph 20 as extracted below:
- “... .. It is sated that coal production from NAINI Coal block is yet to be started. Once the production is commenced a Petition for determination input price of Coal will be filed.”*
- bv. It is stated that as could be seen from the above, the respondent is blowing hot and cold simultaneously, which is contrary to the settled law that a party cannot

be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands Reference may be paid to 2018 (10) SCC 707 in the matter of SUZUKI Parasrampuriah Suitings Private Limited vs. Official Liquidator of Mahendra Petrochemicals Limited and Others.

- bw. It is stated that on one side, the respondent is averring that the Commission is not having jurisdiction but on the other side it is submitting that it would file a petition before the Commission for determination of input price of coal once production is commenced at Naini block. The respondent is contradicting its own submissions, which is not tenable in law.
- bx. It is stated that since electricity is a concurrent subject of central government and state governments, the generation tariff regulations are being issued by CERC and other state ERCs under Sections 178 and 181 of the Act, 2003 respectively. However, Section 61(a) of the Act, 2003 mandated that state ERCS shall be guided by the principles and methodologies specified by the CERC for determination of tariff applicable to generating companies and transmission licensees.
- by. It is stated that in view of the aforesaid legal position, the Commission is also empowered to determine the tariff of generators, which include energy charge rate, in terms of its tariff regulations. Since, the Regulation No.1 of 2019 have not provided for computation of coal price from integrated captive mine, therefore, petitioners are urging the Commission to adopt the relevant CERC tariff regulations, 2019 for applying the methodology in determination of input price of coal from captive mine. It is stated that the statement of the respondent is misconceived on the legal position.
- by. It is stated that the CERC Tariff Regulations, 2019 regulates the primary fuel cost, coal cost for computation of ECR by stipulating the price of coal to be considered in the ECR formula, before CoD and after CoD of the integrated coal mine, such as adopting the notified basic coal price before CoD of the captive mine and after CoD of mine, to consider the actual price of coal from captive mine as determined by the CERC. No other price of coal has to be considered in the ECR computation.

- bz. It is stated that since this CERC methodology, adoption of the notified basic price of coal till the CoD of the integrated mine in the ECR formula, is not favouring the respondent for considering the bridge linkage coal price in the ECR computation, obviously the respondent is opposing the same, which is not tenable in law.
- ca. It is stated that the submission regarding the Tadicherla coal mine, since the Regulation No.1 of 2019 has not provided for computation of input price of coal from Integrated captive mine, therefore, TSGENCO might not have sought for input price determination in respect of Tadicherla coal block but not the jurisdictional aspect, as alleged by the respondent. The Commission can still direct TSGENCO, being a regulated entity under long term PPAs signed with the petitioners, to submit the details of Tadicherla coal block under its regulatory powers u/s 86(1)(b) of the Act, 2003.
- cb. It is stated that the respondent's contention that only CERC has jurisdiction to compute the input price of coal from Naini captive coal block is a misconception. The respondent might be under the impression that since the Naini coal block is located in Odisha outside the State of Telangana, therefore, the Commission may not have jurisdiction, to decide the input price of coal from captive coal mine.
- cc. It is stated that in this regard, the MoC, GoI, had allotted captive coal mines to central and state PSUs for achieving twin objectives, that is firstly to augment power generation in the country, Secondly, to generate power at cheaper prices, since the price of Naini captive coal produced will be cheaper, as compared to the coal supplied by the respondent/CIL, especially the respondent's notified prices of coal grades.
- cd. It is stated that since, the Naini coal block was allotted to the respondent's STPP project, STPP is designated specified end use plant (SEP), whereunder the coal produced from Naini coal block is transferred from state of Odisha to State of Telangana and consumed by STPP project. As the coal produced from Naini coal block would be consumed by STPP project in Telangana and tariff for the power delivered by STPP is being decided by the Commission, therefore even Orissa State ERC will not have jurisdiction, much less CERC, since there is no

Interstate power transmission from state of Odisha to State of Telangana and STPP is generating power in Telangana and petitioners are totally consuming power generated in the State of Telangana only. As such, the Commission will have jurisdiction to decide the input price of coal transferred from Naini coal block to STPP.

ce. It is stated that in the light of the above, there is no valid justification given by the respondent in its written submissions. The petitioners pray the Commission to allow the petition and issue necessary directions to the respondent as prayed for.

8. Before adverting to the rival contentions, it is appropriate to notice the provisions of the PPA. The appropriate provisions of the PPA are extracted below:

“4.1 Terms and Conditions

4.1.1 The 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.

4.1.2 Tariff for sale of electricity from the Project would be based on prevailing TSERC Regulations time to time.

... ..

6.1 Billing

6.1.1 All charges for supply of electricity under this agreement shall be billed by SCCL as determined time to time by the TSERC and of any other Competent Authority and the same shall be paid by TSSSPDCL and TSNPDCL in accordance with the following provisions.

6.1.2 SCCL shall present the bills for electricity supplied to TSSPDCL and TSNPDCL from the project for the previous month based on Energy Account issued by Telangana State Load Dispatch Centre or any other competent authority as per TSERC regulations applicable from time to time.

... ..

8.1 Change in law: In the event of any new law, regulation or tax or in the event of any change, amendment, modification or repeal of any law, regulation or tax (including without limitation, any withholding taxes, cess, duties, environmental taxes, sales taxes, property taxes, import fees or assessments) of any Government Authority after the date of effectiveness of this agreement, detrimentally or beneficially affects SCCL, then SCCL shall send a notice in writing to TSSSPDCL and TSNPDCL regarding such an event and both parties shall meet and endeavour to agree to an amendment to this agreement to pass on the impact of such an event to TSSPDCL and TSNPCL, which shall be settled through supplementary invoice. If within 90 (ninety) days after such notification, the parties are unable to reach agreement on such amendment, or in the event that an agreement to amend has been

reached but no amendment has been executed within 30 (thirty) days after reach of such agreement to amend, either party shall have the right to commence the dispute resolution procedures set forth in Article 12 to determine the appropriate amendment to this agreement.

.....

Annexure – IV

1.

2. Cost of Coal: Total Cost of Coal* delivered at each Thermal Power Station shall constitute the price paid to the coal supplier, all incidental duties and taxes paid to the State or Central Government and cost of optional transportation.

* Cost of coal means at which Coal is transported and priced for respective grades as per SCCL's Coal Marketing Department.

.....”

The above provisions have bearing in deciding the matter upon the prayers of the petitioners.

9. The core issue based in the present petition is with regard to determination coal price by the respondent in the petition as also collecting additional charges over and above the coal price at 20% or 30% depending on the quantum of coal supplied to the generator. The PPA was originally signed in the year 2016, consent was sought from the Commission on 27.01.2016. Public consultation process was initiated on 28.03.2016. Ultimately after thorough examination, an order according consent has been passed on 22.10.2021 suggesting some amendments to the PPA. The clauses relating to amendments have been identified at Table – 1 of paragraph - 13 in the order dated 22.10.2021.

10. It is appropriate to state here that the clauses referred above did not undergo amendment except for the clauses, which are extracted below along with amendments.

“Annexure–IV	Computation of delivered cost of coal–Thermal Plant	To be deleted”
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This clause is the crux of the case and it has been deleted by the Commission, based on which the respondent is claiming the charges.

11. The petitioners have entered into PPA to avail power supply from the project established by the respondent under STPP for a capacity 2x600 MW. The said project became operational in FY 2016-17. The respondent had obtained coal linkage for undertaking generation of power from the project. Though, it itself is coal company, necessary permission had been obtained from MoC. The MoC had allotted Naini coal

block to the respondent and since it is a captive mine and has to be established, bridge linkage of coal has been provided with coal supply from the respondent's mines itself.

12. The coal supply has been allowed under the policy of the GoI providing bridge linkage till the captive mine for coal production becomes operational for supply of coal. For this purpose, a notification had been issued in office memorandum No.23021/3/2015–CPD of MoC dated 08.02.2016. It is appropriate to notice the conditions set out in the policy for better appreciation of the matter.

- “(i) 'Bridge Linkage' shall act like a short-term linkage to bridge the gap between requirement of coal of a specified end use plant of Central and State PSUs and the start of production from the linked allotted coal mine/block.*
- (ii) 'Bridge Linkage' may be granted for a fixed period of three years from the date of allotment of coal mine/block. No further extension thereafter will be entertained under normal circumstances. The shorter duration of Bridge Linkage shall act as an incentive for allottees to expedite production from coal mines/blocks.*
- (iii) Only Schedule-III coal mines and coal blocks allotted under MMDR Act will be considered. Since mines included in Schedule-II of the CM(SP) Act, 2015 are "producing" or "ready to produce" coal mines, no 'Bridge Linkage' shall be granted to specified EUPs of such mines under any circumstances.*
- (iv) Specified end use plants which have been allotted coal mines/blocks under 'Allotment' route to Central and State PSUs only shall be eligible for grant of 'Bridge Linkage'.*
- (v) No 'Bridge Linkage' shall be provided to specified end use plants of private sector which have won coal mines/blocks after bidding under auction route since it would amount to change in bid conditions of coal mines/blocks and there was no such condition to provide tapering linkages in bidding documents of coal mines/blocks auctioned.*
- (vi) 'Bridge linkage' shall come to an end after a period of three years from the date of allotment of coal mine/block. (It is presumed that as per the present situation, speedier clearances will result in expeditious commencement of production from coal mines/blocks within the stipulated timeframe).*
- (vii) As there are constraints in availability of coal and in view of negative coal balance, CIL/SCCL shall endeavour to supply 75% of 'Agreed Requirement' of coal where 'Agreed Requirement' is calculated at 90% of normative requirement of the plant at 85% PLF. There shall be no minimum assured quantity. Coal will be supplied on "best effort basis" after meeting existing contractual obligations of coal companies.*
- (viii) There shall be no penalty for supply of coal below Agreed Requirement.*
- (ix) Fuel Supply Agreement (FSA) shall not be signed between the EUP and coal company. The coal will be supplied on best effort MoU basis.*

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."*

There is nothing in the office memorandum of MoC, which would enable the coal company to notify the schedule of tariff for the coal supply particularly in respect of bridge linkage. The coal companies may have authority otherwise under the relevant Acts and Rules on coal to notify the price for the sale of coal. It is not clear from the record as to whether the respondent has been authorized to notify the tariff, even for bridge linkage coal supplied to the end use plants this aspect is considered elsewhere in this order.

13. The Commission notices that prior to providing bridge linkage coal supply, the MoC, Gol by order dated 26.12.2014 in Memorandum bearing No.13016/9/2014–CA –3 had specified the ‘Methodology for fixing Floor/Reserve Price for Auction and Allotment of Coal Mines/Blocks’. The relevant clause is extracted below:

“1. For generating capacity having cost plus PPAs or generation capacity to be contracted through cost plus PPAs in future:- For the purpose of determining the fuel cost for cost plus PPAs, the Appropriate Commission will allow bid price of coal along with subsequent escalation as provided in coal block bid document as being equivalent to the Run of Mine (ROM) cost of coal together with other allowable expenses and levies, provided that it shall not lead to higher energy charge throughout the tenure of PPA than that which would have been obtained as per the terms and conditions of the existing PPA.”

This methodology may be applicable in the present case.

14. It is noticed that the pleadings set out by the parties would show that the respondent had, upon obtaining bridge linkage of coal, been determining the coal price in accordance with the authority vested in it. It is also entering into MoU with its unit undertaking generation of power. In the said understanding, it appears that the respondent had factored in the coal price that is to be paid by the generating unit to the respondent for the supply of coal under bridge linkage formula. In this context, it is noticed that the respondent had entered MoU with its generating unit on 01.11.2017 for the period from 01.11.2017 to 31.03.2020 towards supply of coal under the bridge linkage scheme. It provided for the tariff as below:

- “3.1 For G5 to G8 grades coal shall be at notified price of power sector.
- 3.2 Washery grade G9 coal shall be at notified price of power sector as per price notification.
- 3.3 For G9 to G15 grades, the price shall be notified basic price plus 20% of the notified basic price for power sector.
- 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.
- 3.5 All the above prices shall be as per SCCL price notification.

....

Annexure

PRICING STRUCTURE FOR THE FY 2018-19

Sl. No.	Type of customer	Mine	Quantity	Price
1	Bridge Linkage	Normal	Up to 75% Agreed Quantity	20% over notified basic price of power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Up to 75%	Notified Price of the Mine/Blended/CHP/washed coal or 20% over notified

Sl. No.	Type of customer	Mine	Quantity	Price
			Agreed Quantity	basic price of the power whichever is higher
		Normal	Beyond 75% Agreed Quantity	20% Over and above notified basic Price of Non-Power Sector.
		Cost Plus Mine/Blended CHP/Washery	Beyond 75% Agreed Quantity	Notified basic Price of the Mine/Blended CHP/washed coal or 20% over notified basic price of the non-power whichever is higher
2	Non - Bridge Linkage/MOU customer	Normal	Upto MOU Quantity	20% over notified basic price of non-power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Upto MOU Quantity	Notified basic Price of the Mine/Blended CHP/washed coal or 20% over notified basic price of the non-power whichever is higher

The respondent further extended the understanding for the period from 01.04.2020 to 31.03.2021 and provided in the MoU as below:

“3.0 The purchaser agrees to pay the prices for supply of coal as per the price structure enclosed as annexure. The notified basic prices of power & non-power are as per SCCL price notification.

PRICING STRUCTURE FOR THE FY 2020-21

Sl. No.	Type of customer	Mine	Quantity	Price
1	Bridge Linkage	Normal	Up to 100% Agreed Quantity	20% over notified basic price of power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Up to 100% Agreed Quantity	Notified basic Price of the Mine/Blended/CHP/washed coal or 20% over notified basic price of the power whichever is higher
		Normal	Beyond 100% Agreed Quantity	20% Over and above notified basic Price of Non-Power Sector.
		Cost Plus Mine/Blended CHP/Washery	Beyond 100% Agreed Quantity	Notified basic Price of the Mine/Blended CHP/washed coal or 20% over notified basic price of the non-power whichever is higher
2	Non - Bridge Linkage/MOU customer	Normal	Upto MOU Quantity	20% over notified basic price of non-power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Upto MOU Quantity	Notified basic Price of the Mine/Blended CHP/washed coal or 20% over notified basic price of the same grade of raw coal of non-power sector whichever is higher

... ..”

However, there is an amendment to the above fixation as shown in the table below:

“PRICING STRUCTURE FOR COAL SUPPLIES TO STTP DURING FY 2020-21 W. E. F. 01.06.2020

Sl. No.	Total coal quantity drawn by STTP	Mine	Price
1	Upto 4.52 MT	Normal	**Entire quantity at 10% over notified basic price of power sector For G 15 grade it shall be notified basic price of mine/CHP of power sector.
		Cost Plus Mine/Blended CHP/Washery	**Entire quantity at notified price of the mine/blended CHP/washed coal or 10% over the notified basic price of the same grade of raw coal of power sector whichever is higher. For G 15 grade it shall be notified basic price of mine/CHP of power sector.
2	Beyond 4.52 MT	Normal	**Entire quantity at notified basic price of power
		Cost Plus Mine/Blended CHP/Washery	

*Total quantity is reckoned from 01.04.2020 to 31.03.2021

**Entire quantity is reckoned from 01.06.2020 to 31.03.2021

Note Billing shall be done at notified basic price of power with effect from 01.06.2020 and reconciliation will be done at the end of the year against the total supplied/drawn quantity of coal as per the pricing terms mentioned above.

The other terms and conditions of MoU dated 30.03.2020 remain unchanged
... ..”

The respondent further extended the understanding for the period from 01.04.2021 to 31.03.2024 and provided in the MoU as below:

“3.0 The purchaser agrees to pay the price for supply of coal as per the price structure enclosed as annexure – I. The notified basic prices of power & non-power are as per SCCL price notification.

PRICING STRUCTURE FOR STTP IN THE FY 2021-22

Type of customer	Mine	Price
Bridge Linkage/MoU	Normal	10% over notified basic price of power for all grades of coal
	Cost plus Mine/Blended CHPO/Wastery	Notified basic price of the Mine/Blended/CHP/Washed coal or 10% over notified basic price of power whichever is higher

15. It is not clear from the record as to and under what authority, the respondent had been fixing the tariff for the coal supply made by it to its generating unit. It is relevant to state that the proceedings notified by the MoC on coal linkage did not specify the method or the factors which need to be considered for such determination

and if so, it had discretion to factor any premium charges. Even the MoU on a cursory reading would not divulge any of the aspects in this regard. The respondent appears to have overstepped its authority in determination of the tariff and not only fixed the tariff for the coal supplied but also added the premium to be paid for supply of such coal.

16. The petitioners on their part having come across the determination of the tariff and also levy of premium ought to have raised an issue at first instance with regard to determination of tariff as also the premium provided by the coal company being the respondent. Having suffered imposition of premium over tariff for the period FY 2017-18 to FY 2020-21, now the petitioner has turned to the Commission when the respondent sought to levy premium on the original quantity and extended quantity of coal also for the period FY 2021-22 onwards. Nothing prevented the petitioners to agitate the issue before the Commission even prior to the said period also.

17. A strange argument has been set forth that the petitioners were awaiting operationalization of the Naini coal block allotted to the respondent for power generation and thereby, the generator would avail cheaper coal by producing the same from the said captive mine. But, according to the pleadings set out by the parties, the said captive coal mine did not come into operation even till the time the matter was heard by the Commission. It is noticed that the SLC (LT) of MoC had twice extended the bridge linkage of coal to the respondent's generating unit for the reason that the captive coal mine has not become operational. The petitioners failed to recognize or take remedial measures forth right upon the knowledge of non-operation of the coal mine within the initial stipulated period wherein it has been specifically mentioned at clause 2 of office memorandum dated 08.02.2016 as extracted above, '*for a fixed period of three years from the date of allotment of coal mine/block*'. That being so, also the petitioners were not prevented from raising their concern as to the fuel price aspect for generation.

18. Another argument has been made by the petitioners by placing material on record that the tariff determined by the respondent towards coal supplies is excessive compared to the other coal companies in the country. The petitioners were not prudent enough to agitate this aspect at the first instance as this information is accessible as and when the respective companies have notified the coal price in terms of the

authority vested in them under the relevant Act and rules. Having not done so, turning to the Commission at this point of time and basing their argument that the coal price is excessive as determined by the respondent and further adding premium to it would amount to unjust enrichment at their cost and that too after it has happened for a period of five years prior to April 2023, has to be deprecated. Thus, the petitioners could have only claimed relief of levying premium prospectively and not otherwise.

19. While placing a gamut of correspondence, the parties have sought to rely upon the judgments of the Hon'ble Supreme Court as well as regulations of the CERC. Insofar as applicability of regulations of CERC, the Commission is of the firm opinion the same are to be applied only to the extent where the regulations made by the Commission itself is silent or does not provide for the methodologies/parameters to be considered. The petitioners have extensively relied upon Section 61 particularly clause (d) of the Act, 2003. Section 61 itself has provided that State Commission shall be guided by the principles and methodologies enumerated therein. The words '*guided by*' had been interpreted by the Hon'ble High Court and the Hon'ble ATE to mean a non-binding advice, which the State Commission may or may not follow. The interpretation set out in this regard need not be elaborated for the reason that it has no bearing on the prayer sought in the petition.

20. Reference has been made to a judgment rendered by the Hon'ble Supreme Court in Civil Appeal Nos.5881-5882 of 2016 in the matter of '*All India Power Engineer Federation and others. Vs. Sasan Power Limited and others*'. The point raised for consideration is that the movement the tariff gets affected, the consumer interest comes in and public interest gets affected. This observation is clearly acceptable in this case as there is increase in tariff consequent upon increase in variable cost in the form of coal supply cost by addition of premium to the same. This contention has been accepted by the Hon'ble Supreme Court in the above said judgment. Fixing of higher tariff for coal supplied would naturally impact the end tariff payable by the consumer and thereby the consumer interest gets affected. Thus, the petitioners have made out a case in support of their claim that higher coal cost is affecting them and through them the end consumers.

21. The respondent sought to draw attention of the Commission to the judgment of the Hon'ble Supreme Court in Civil Appeal No.2908 of 2022 in the matter of '*Uttar*

Haryana Bijli Vitran Nigam Limited and another Vs. Adani Power (Mundra) Limited and another. The central issue that is relied upon in this judgment is with regard to inter plant transfer of coal permitted by CIL would amount to change in law. The Hon'ble Supreme Court was considering the action of the CIL in allowing inter plant transfer of coal supplies from one generating unit to another generating unit of the same company. It has held as follows:

“23. It will be relevant to refer to the definition of “Law” as defined under the PPA, which reads thus:

“Law means, in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code; rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission.”

24. *It can, thus, clearly be seen that the definition of “Law” is wide enough to include all rules, regulations, orders, notifications by the Governmental instrumentalities.*

.....

34. *We, therefore, find that the present appeal deserves to be partly allowed. Though the issue with regard to allowing ‘Change in Law’ compensation on the basis of ACQ – actual 18 supply deserves to be upheld, the issue with regard to IPT not being ‘Change in Law’ deserves to be set aside.*

35. *In the result, we partly allow the appeal and pass the following order:*
(i) *The finding of the APTEL to the effect that the communication dated 19th June 2013 providing for IPT does not amount to ‘Change in Law’ is set aside;*
(ii) *We hold that IPT amounts to ‘Change in Law’.*”

Though the respondent has placed reliance on this judgment, this judgment was rendered in the context of there being a specific definition of ‘law’ and that the proceeding issued by CIL would, therefore, constitute ‘change in law’. Similar perspective is not found in the PPA between the petitioners and respondent. What all it provided for is ‘change in law’ as extracted above. Therefore, this judgment is of no benefit to the respondent.

22. The petitioners have referred to a judgment rendered by the Hon'ble Supreme Court in Civil No.1843 of 2021 in the matter of ‘*Maharashtra State Electricity Distribution Company Limited Vs. Maharashtra Electricity Regulatory Commission and others*’. The core issue that had been decided by the Hon'ble Supreme Court is that

the procurer is liable for payment of LPS, which had arisen due to the action of banking regulator that is Reserve Bank of India, changing the base rate system to marginal cost of funds based lending rate. The Hon'ble Supreme Court, having examined the entire case law, had concluded as below:

“

158. *The questions of law raised by Mr. Vikas Singh, which have been set forth hereinabove in Paragraph 15, would not have a material bearing on the decision in this appeal, for the reasons discussed hereinafter.*
159. *The only issue in this appeal is, whether the change applicable in respect of interest charged by banks and financial institutions from the Prime Lending Rate to Base Rate and then to MCLR amounts to change in law in terms of the Power Purchase Agreement, and if so, whether there is any substantial question of law involved in this appeal, as argued by Mr. Singh, on behalf of the Appellant. It is not for this Court 36 (1996) 6 SCC 166 81 to reanalyze evidence adduced before the forums below or to sit in appeal over concurrent findings of facts.*
160. *There can be no doubt that a notification issued by the Reserve Bank of India constitutes law. A Reserve Bank of India notification which alters, modifies, cancels or replaces an earlier notification would tantamount to a change in law. However the notification relating to alteration of the lending rates chargeable by banks and financial institutions are not laws which relate to the Power Purchase Agreements in question, and therefore do not attract, as the case may be, Article 13 of the Stage 1 Agreements or Article 10 of the Stage 2 Agreements.*
161. *The RBI circulars/guidelines referred to above are admittedly instructions issued to banks and financial institutions and are not applicable to the Appellant or to the Respondent-Power Generating Companies, who are engaged in the business of production, sale/purchase and/or distribution of electricity and not of advancing loans. Moreover, SBAR as defined in the Power Purchase Agreements is admittedly not linked to any RBI guidelines or circulars. The guidelines/circulars are thus not relevant to the issues involved in this appeal.*
162. *As rightly argued by the counsels appearing for the Power Generating Companies, the RBI circulars/guidelines to banks, advising the banks to follow certain norms, while setting their benchmark reference rates for loans, and the amendments thereto, have no legal consequence on the contract between the parties. This has been correctly appreciated by both the forums below:*

... ..

206. *... .. Moreover, State Regulatory Commissions exercise continuous regulatory supervision as affirmed by this Court in All India Power Engineering Federation & Ors. v. Sasan Power Limited & Others, cited by Mr. Mukerjee.*
207. *MERC acted within the scope of its power of regulatory supervision in directing the Appellant to make payment of LPS within the time stipulated*

in the order of MERC. The APTEL rightly upheld the direction. In any case, such a direction cannot be interfered with in exercise of powers under Section 125 of the Electricity Act which corresponds to the power of Second Appeal under Section 100 of the CPC, since the sine qua non for entertaining an appeal is the existence of a substantial question of law.”

An inference can be drawn from the findings of the Hon’ble Supreme Court that notifications/circulars issued by the competent authorities without reference to any statutory power would not constitute a binding direction and thereby, would not read into the PPA. 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 that 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.

23. The petitioners have also relied on the judgment of the Hon’ble Supreme Court in Civil Appeal No.10322 of 2018 in the matter of ‘*Suzuki Parasrampurua Suitings Private Limited Vs. The Official Liquidator of Mahendra Petrochemicals Limited (In Liquidation) and others*’. The said case arises under SARFAESI Act, 2002. The main finding in the said case is with regard to the shifting of stand by the parties. It has been observed at paragraphs 12 and 13 as extracted below:

“12. *A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate or reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in Amar Sing vs. Union of India, (2011) 7 SCC 69, observing as follows.*

“50. *This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands law. He cannot prevaricate and take inconsistent positions.”*

13. *A similar view was taken in Joint Action Committee of Air Line Pilots’ Assn. of India vs. DG of Civil Aviation, (2011) 5 SCC 435, observing:*

12. *The doctrine of election is based on the rule of estoppel - the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity.*

Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

Though, this principle would apply to a certain extent insofar as averments of the respondent, the Commission would not wish to dwell into the said aspect for the reason that certain unrelated aspects have been canvassed by the respondent in such a fashion that it would approbate or reprobate according to the line of argument. The main prayer is no way affected by the submissions of the respondent for the moment as the facts and circumstances lay out in the matter. Therefore, the submissions of the petitioners to this extent are not considered appropriate.

24. An issue with regard to determination of input cost relating to the captive coal mine has been addressed by the parties. The contentions set out in the pleadings would establish that the petitioners take the plea that the Commission has authority to determine the input cost of coal, as coal is the fuel and is part of the variable cost to be determined by the Commission. On the other hand, the respondent would state that the Commission has no jurisdiction over determination of input cost as it relates to exclusive jurisdiction of the CERC being an interstate mine in case of the respondent, which is located in the State of Odisha. In support of its contention, it has relied on the regulations notified by the CERC in exercise of power under Section 178 read with Section 61 of the Act, 2003 vide notification dated 7th March 2019 and amendment regulation dated 19.02.2021. The original regulation is titled as Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2019 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulation, 2021. Clause 7 of the original regulation relating to sale of infirm power has been further strengthened by insertion of clause 7A, which is as follows.

- “7A. *Supply of Coal or Lignite prior to the Date of Commercial Operation of integrated Mine: The input price for supply of coal or lignite from the integrated mine(s) prior to their date of commercial operation shall be:*
- (a) *In case of coal, the estimated price available in the investment approval or the notified price of Coal India Limited for the corresponding grade of coal supplied to the power sector, whichever is lower:*
 - (b) *... ..”*

This clause would not state or put any restriction on determination of input price for supply of coal from the integrated mine by the Commission. Also, there is no restriction

on CERC that it should alone determine the input cost of coal in respect of the interstate mine or mine allocated to the central undertakings only. On the other hand, it also does not restrict the State Commissions from undertaking the determination of input cost of coal of an integrated mine. In the instant case, since the respondent as well as its generating unit are located in the State of Telangana only, this Commission would naturally be the authority to decide the input cost of coal. However, this view of the Commission is not final at this point of time as this issue is not germane to the issue that is to be decided in this petition and at this point of time.

25. The Commission is now concerned with the notification of price undertaken by the respondent vide its communication dated 10.06.2023, whereby it had notified the price of different grades of coal for power and nonpower sector. Earlier, the respondent had entered into a supplementary memorandum of understanding to the MoU dated 16.04.2021, wherein the price structure for FY 2023-24 has been indicated, which is as follows:

“PRICING STRUCTURE FOR THE FY 2023-24

Sl. No.	Type of customer	Mine	Quantity	Price
1	Bridge Linkage	Normal	Up to 75% Agreed Quantity	20% over and above notified basic price of power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Up to 75% Agreed Quantity	Notified basic price of the Mine/Blended/CHP/washed coal or 20% over and above notified basic price of the power whichever is higher
		Normal	Beyond 75% Agreed Quantity	30% Over and above notified basic Price of Power Sector.
		Cost Plus Mine/Blended CHP/Washery	Beyond 75% Agreed Quantity	Notified basic price of the Mine/Blended CHP/washed coal or 30% over notified basic price of the power whichever is higher
2	Non - Bridge Linkage/MOU customer	Normal	Upto MOU Quantity	30% over and above notified basic price of power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Upto MOU Quantity	Notified basic price of the Mine/Blended CHP/washed coal or 30% over and above notified basic price of the same grade of raw coal of power sector whichever is higher

The other terms and conditions of MoU dt.16.04.2021 remain unchanged.”

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. This notification or the amendment to the MoU does not specify under which rule or regulation the premium is sought to be imposed. At this stage, it may be relevant to notice the minutes of the SLC (LT) dated

10.04.2023, whereby the topic for consideration was 'Additional Agenda Item No.8: Bridge Linkage extension for Singareni Thermal Power Plant 2x600 MW of SCCL'.

The recommendation thereof is extracted below:

“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 (2x600 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 CII/SCCL.”

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.

26. Having considered the material on record, the Commission is of the view that pricing of coal is the exclusive fort 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 respondent is estopped from collecting any premium over the coal price fixed by it.

27. It is also appropriate to state here that the respondent had obtained coal linkage in the form of captive coal mine at Naini in the State of Odisha. The allotment made thereof had required the respondent to establish the coal block within a period of 3 years from the date of allotment. 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 linkage of coal obtained pending establishment of the captive coal mine, which was initially for three years and now continued upto March 2024. The review of the establishment of the coal mine as done by MoSPI, Gol shows a tardy progress according to the submissions of the respondent itself. 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.

28. It is the case of the respondent that it has been entering into similar MoUs with other GENCOs as is being done with respect to its unit STTP. Alas the Commission is neither impressed nor would appreciate the same, as the said GENCOs are not before it or the Commission is having jurisdiction over them. This Commission is concerned with the petitioners who are its licensees and have to follow the Act, 2003 and regulation made by it. It is also concerned with stakeholders in the State of Telangana and not elsewhere. Therefore, this argument would not aid in any the respondent in this case.

29. The Commission would be abdicating its responsibility if it does not consider the factual matrix with regard to premium on coal price fixed by the respondent over the years from FY 2017-18 onwards. However, the Commission is conscious of the fact that the petitioners themselves have approached the Commission only in the year 2023 when they have been burdened with 20% and 30% premium over the coal for the agreed quantum as well as additional quantum over and above 75%. Though the respondent did not canvass the aspect of the attitude of the petitioners as to the challenge made now, it is incumbent upon the Commission to take a view as to what relief it could give since the issue had arisen way back in the year FY 2017-18.

30. In these circumstances, the Commission would like to place its displeasure about the petitioners' attitude towards abdicating the responsibility of consumer

interest in whose favour they have to function being the State instrumentalities. From the pleadings, it is clear that the MoU between the respondent and the generating unit thereof had been entered for specific periods as identified above supra and if any grievance was perceived, nothing estopped the petitioners from approaching the Commission for appropriate relief at the first instance. Having knowledge of the actions of the respondent even now, the petitioners have approached the Commission in the year 2023 when MoU for the period FYs 2021-24 had already been entered on 16.04.2021 and they had intimation of the same, which provided for premium against the coal price. Nothing prevented the petitioners from approaching the Commission at the earliest point of time in the year 2017 itself or in the worst case in the year 2020, when the report of the Comptroller and Auditor General on India has been made public.

31. Keeping in view the circumstances and factual matrix and the Commission having the onerous responsibility to balance the interest of all the stakeholders and to ensure (a) the generation, transmission, distribution and supply of electricity are conducted on commercial principles and (b) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner, the Commission has taken an equitable stand in the matter of coal pricing resorted to by the respondent. As such, 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.

32. For elaborated discussion and extensive understanding of the pleadings and facts, the petition filed by the petitioners stands allowed, without any costs.

This Order is corrected and signed on this the 1st day of April, 2024.

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M. D. MANOHAR RAJU) MEMBER	Sd/- (T. SRIRANGA RAO) CHAIRMAN
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