

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 267/Suo motu/2012**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K.Singhal, Member**

**Date of hearing: 01.04.2014**

**Date of Order: 30.06.2015**

**In the matter of**

Filing of application for determination of tariff for generation of electricity from the generating stations and inter-state transmission system of electricity through the transmission system of Sardar Sarovar Narmada Nigam Ltd (SSNNL)

**And in the matter of**

Suo Motu petition by Commission

**And in the matter of**

Sardar Sarovar Narmada Nigam Ltd  
Narmada Control Authority  
Narmada Valley Development Authority  
Madhya Pradesh State Electricity Board  
Maharashtra State Electricity Board  
Gujarat Urja Vikas Nigam Ltd

.....**Respondents**

**Parties present:**

Shri Sarthak Lazlong, MPPMCL

Shri Hemanth Pandey, NCA

Shri J.P.Singh, NCA

**ORDER**

**Background**

The Sardar Sarovar Project (herein referred to as 'SSP') can be traced back to the award of the Narmada Water Dispute Tribunal (NWDT) which was constituted by the Government of India in 1969, under the Inter State River Water Disputes Act, 1956 to adjudicate upon the water



dispute regarding the inter-State river Narmada and its river valley. The Award of NWDT was published in the Gazette of India on 12.12.1979 and became final and binding on the parties to the dispute. Clause VIII of the final order and decision of the NWDT dealt with sharing of cost and benefits of the Narmada waters, relevant portions of which are summarised briefly as under:

- (a) Out of the net power produced at Navgam at canal head and river bed power houses on any day, the share of Madhya Pradesh will be 57%, Maharashtra 27% and Gujarat 16%.
- (b) The power generated from the canal head and river head power houses at Navgam shall be integrated in a common switchyard. Madhya Pradesh and Maharashtra will be entitled to get 57% and 27% of the power available at the bus bar in the switchyard after allowing for station auxiliaries. The entitlement applies to machine capacity for peak load and to the total energy produced in any day.
- (c) Gujarat will construct and maintain the transmission lines needed to supply allotted quantum of power to Madhya Pradesh and Maharashtra upto Gujarat State border, along an alignment as agreed to between the parties and if there is no agreement along such alignment as may be decided by the Narmada Control Authority. The transmission lines beyond Gujarat State border shall be constructed and maintained by Madhya Pradesh and Maharashtra in their respective States.
- (d) The power houses and appurtenant works including the machinery and all installations as well as the transmission lines in Gujarat will be constructed, operated and maintained by Gujarat State or authority nominated by that State. The authority in control of the power houses shall follow the directions of the Narmada Control Authority in so far as use of water is concerned.
- (e) Sub-clause (ix) of clause VII of the order provides for the elements of the capital costs of the SSP and its sharing by Madhya Pradesh and Gujarat.

2. Clause XIV of the NWDT Order provides for setting up of machinery for implementing the decisions of the Tribunal. It provides that an inter-State, administrative authority to be called Narmada Control Authority shall be established for the purpose of securing compliance with and implementation of the decisions and directions of the Narmada Water Disputes Tribunal. It further provides that the Authority shall give directions for a phased programme of construction for generation and transmission of power in fulfilment of the shares of power allotted to the three States of Madhya Pradesh, Maharashtra and Gujarat from Sardar Sarovar Project and for payment therefore in accordance with the orders of the Tribunal. The Authority is required to

ensure that generation and transmission of power from Sardar Sarovar complex are in accordance with the orders of the Tribunal. It further provides that if and when the Sardar Sarovar Complex is linked with regional or National Power Grid, the operation of the SSP would be governed by such altered system conditions and Narmada Control Authority should take steps to enable the three States to get their entitlement of power and energy from the complex according to Tribunal's order.

3. The Central Government in exercise of its powers under Section 6-A of the Inter-State Water Disputes Act, 1956 framed a scheme known as Narmada Water Scheme, 1980 constituting the Narmada Control Authority and the Review Committee to give effect to the decisions and directions of the NWDT. Accordingly, Narmada Control Authority was set up by the Central Government to implement the decisions and directions of NWDT Awards. Narmada Control Authority has established the Energy Management Centre at Indore in consultation with the Central Electricity Authority to facilitate generation and load dispatch from the SSP in coordination with WRLDC and constituent SEBs. The Scheme also provided for constitution of a Review Committee who may *suo motu* or on the application by any party State review any decision of the Authority.

4. The SSP project comprises two power houses i.e. River Bed Power House (RBPH) and Canal Head Power House (CHPH). The total installed capacity of the SSP is 1450 MW. The RBPH is an underground power house with six number of Francis type reversible turbine generators having 200 MW installed capacity each. The CHPH is a surface power station with five conventional types Kaplan turbine having 50 MW installed capacity each. All the five units each of 50 MW of CHPH were commissioned during August 2004 to December 2004 and all the six units each of 200 MW of RBPH were commissioned during February 2005 to November 2006. The energy generated from both the power houses is evacuated through 400 kV level through interconnecting transformers at GIS, situated in RBPH switch yard. The 400 kV Switchyard is indoor type having Gas Insulated Switch Gear and Bus bars. The energy is

transmitted to party states i.e. Gujarat, Maharashtra and Madhya Pradesh in the proportion of 16:27:57 respectively through 400 kV double circuit transmission lines, namely SSP-Kasor, SSP-Asoj, SSP-Dhule and SSP-Nagda respectively. The operation and maintenance of SSP power complex and transmission lines is being done by Gujarat State Electricity Company Limited (GSECL) in accordance with the O&M agreement between SSNNL and GSECL.

5. SSP which is at the tail end of the River Narmada is a joint venture of four constituent States, namely, Gujarat, Maharashtra, Madhya Pradesh and Rajasthan. The cost of the dam has been apportioned in the ratio of 56.1:43.9 between power and irrigation. While the cost of the irrigation component is to be shared between Gujarat and Rajasthan, the cost of the power component is to be shared by Madhya Pradesh, Maharashtra and Gujarat in the same ratio as the sharing of power in terms of the award i.e.57:27:16.

6. In the above background, the Commission in order dated 20.12.2012 had directed as under:

*“11.....Tariff under section 62(1) of the Act is determined by the Commission in respect of the generating stations covered under section 79(1)(a) and(b) and inter-State transmission of electricity in accordance with the tariff regulations specified by the Commission under section 61 read with section 178 of the Act. Since O&M expenses is one of the components of the tariff which is being paid by the party States to SSNNL, the tariff of SSNNL shall be regulated by the Central Commission in view of the law decided by Appellate Tribunal. We make it clear that we are not suggesting that only O&M expenses will be determined by this Commission. The elements of tariff which would require determination will be decided after the tariff petition is filed by SSNNL based on the facts disclosed in the petition.*

*12. Before we direct SSNNL to file the tariff petition, we intend to give an opportunity of hearing to SSNNL and the beneficiaries of the SSP regarding determination of tariff of SSP by this Commission. Accordingly, the respondents are directed to file their replies by 10.1.2013. The petition shall be listed for hearing on 15.1.2013.”*

7. In compliance of the above directions, the respondents, Sardar Sarovar Narmada Nigam Ltd (SSNNL), Narmada Control Authority, Madhya Pradesh Power Management Company Ltd (erstwhile MPSEB) and Maharashtra State Electricity Distribution Company Ltd (MSEDCL) have filed their responses. Accordingly, the petition was heard on 1.4.2014 and orders reserved.

8. As regards the jurisdiction of the Commission to determine tariff for generation of electricity from the generating stations and inter-state transmission of electricity through the transmission systems of Sardar Sarovar Narmada Nigam Ltd (SSNNL), the respondents have submitted as under:

9. The respondent No.4, MPPMCL vide affidavit dated 9.1.2013 has submitted as under:

(a) The law decided by the Appellate Tribunal in order dated 14.12.2012 in Appeal No.183/2011 (BBMB-v-CERC & ors) is mainly on the issue whether the BBMB comes under the regulatory jurisdiction under Electricity Act, 2003 or is excluded from regulatory jurisdiction under the Punjab Reorganization Act,1966.

(b) The case of Sardar Sarovar Project complex is different and is based on the clarification issued by the Central Commission on 29.8.2003. The tariff of SSP complex has already been determined by the Madhya Pradesh Electricity Commission.

(c) Mere sharing of O&M cost cannot be construed as inter-state sale of electricity.

10. The respondent MSEDCL vide affidavit dated 14.2.2013 submitted as under:

(a) As per Narmada Water Dispute Tribunal (NWDT), Madhya Pradesh and Maharashtra are to pay Gujarat (SSNNL) 57% and 27% of the capital cost of the power portion of the Sardar Sarovar Head works in annual installments until the capital works are completed. In addition to this, Madhya Pradesh and Maharashtra are to pay to Gujarat 57% and 27% of the O&M costs of the SSP complex each year. It is pertinent to note that none of the state distribution utility has any ownership in the said project.

(b) Since the expenses pertaining to the capital cost and O&M cost are shared between the states as mentioned above it may be said that the ownership lies with the state government and as such the tariff determination of the SSP is not within the purview of the Central Commission.

(c) Mere sharing of O&M cost cannot form the basis for the determination of tariff by the Central Commission.

(d) As per Regulation 1.3 of the IEGC, the Sardar Sarovar Project and the transmission systems are treated as intra-state. The electricity generated from the project is getting

delivered from the power station to the Maharashtra boundary and from thereon the Maharashtra transmission/ distribution network is being used for transmitting the power upto MSEDCL. The portion of transmission line in state of Maharashtra does not form part of SSP assets. Therefore, there is no inter-state transmission line and thus, the basis to determine tariff for inter-state transmission of electricity by the Central Commission does not apply.

11. The respondent, Narmada Control Authority, by affidavit dated 14.2.2013 has submitted as under:

(a) Narmada Control Authority (NCA) is an inter-state administrative authority established for the purpose of securing compliance with an implementation of the decisions and directions of the NWDT. The NCA shall give directions for a phased programme of construction for generation and transmission of power as per share allocated to the three states from the project and for payments thereof in accordance with the final order and decision at the Tribunal. The NCA shall also ensure that generation and transmission of power from the project are in accordance with the orders.

(b) SSNNL being an undertaking of the Government of Gujarat formed to execute the project on behalf of the government of Gujarat cannot be treated as an generating company as inferred in para 9 of the CERC'S order dated 20.12.2012.

(c) Sharing of O&M cost of SSP by governments of M.P. and Maharashtra in the ratio of 57% and 27% is irrespective of the quantum of power drawn by them. As such the O&M cost cannot be treated as a component of tariff of SSP Power.

(d) The transmission system of SSP is not owned by SSNNL as the lines upto Gujarat border are the asset of the project. Beyond the Gujarat border lines were constructed by the respective state government of M.P. and Maharashtra in their state at their own cost and hence, the portions of these line are not part of the project.

(e) Under Clause 1.3 (iii) of IEGC, the project has been considered as intra-state generating station and the transmission of the share of power to the M.P. and Maharashtra cannot be treated as inter-state transmission.

12. The respondent No.1 SSNNL has mainly submitted as under:

(a) SSNNL is a special purpose vehicle and Narmada is the principle river in the State of Gujarat. With a view to create a separate organization to implement the Sardar Sarovar

Project on the river Narmada, the State of Gujarat promoted a company under the Company Act, namely SSNNL.

- (b) The power houses are located on the Narmada river in Gujarat and SSNNL is one of the largest water resources project covering four major states namely, Maharashtra, Madhya Pradesh, Gujarat and Rajasthan.
- (c) As per the final award of the NWDT constituted by the Government of India, the entitlement of power and energy for any day can be utilized fully or partly by the concerned states or sold to another participating state under mutual agreement. The power houses and the appurtenant works including the transmission and all installations as well as transmission lines in Gujarat will be constructed, maintained and operated by the Gujarat state or an authority nominated by the state. The scheme of operation of power houses including the power required and the load to be catered for the different states during different part of the day shall be settled between the states at least one week before the commencement of every month and shall not be altered during the month except under agreement among the states or under emergency.
- (d) The hydro project has been established, operated and maintained by SSNNL with both capital cost and operating cost being fully contributed by the three states namely, Maharashtra, Madhya Pradesh and Gujarat in proportion of their respective shares and the power project is co-owned by the three states in the said proportion. While the Govt. of Gujarat has vested its share in the SSNNL, the states of Madhya Pradesh and Maharashtra own their respective shares and are taking their shares of electricity generated. SSNNL had entered into a PPA with Gujarat State Electricity Board on 9.3.2005 in regard to sale of Gujarat share.
- (e) There is no sale of power and the electricity generated being owned by the states is delivered to them at the respective Gujarat- Madhya Pradesh and Gujarat- Maharashtra peripheries by two independent lines at their respective cost. SSNNL has nothing to do with the quantum of electricity delivered as it acts as a conversion agent or an operating agent in regard to such quantum of electricity.
- (f) Accordingly, there is no sale or supply of electricity by SSNNL to utility in M.P. or Maharashtra for the Central Commission to exercise regulatory jurisdiction. There is also no inter-state transmission as there is no activity of transmission undertaken by SSNNL outside the periphery of Gujarat.

- (g) There has never been any transfer or vesting of the ownership of the hydro power project in so far 84% is concerned and the same solely vest in and belong to the said two states. SSNNL is not securing any price or charge whatsoever from the said two states and therefore no income or revenue from the power is made available to the said two states from the project. Therefore, SSNNL is not supplying i.e. selling the power generated as the owner to the above two participating states. The capital expenditure including additional capitalization, the O&M Expenses, working capital requirements, repair, renovation and modernization etc. is given by the two states to the extent of 84%.
- (h) SSNNL is not an entity owned or controlled by the Govt. of India and is not engaged in inter-state transmission of electricity. Hence, the provisions of Section 79 (1) (a), (c) and (d) of the Electricity Act, 2003 are not applicable to the present case. Since, the two conditions under Section 79 (1) (b) of the 2003 Act, namely, (i) supply of electricity in terms of Section 62 (1) (a) of the Act and (ii) such sale is a composite arrangement for generating and sale in more than one state, are not satisfied in the present case, the jurisdiction of the Central Commission would not lie over the SSNNL. Reference may be had to the judgment in *Gajendra Haldea vs. CERC and others* (2008 ELR APTEL 203) and *Lanco Amarkantak Power Pvt. Ltd. vs MPERC & Others* (Judgment of APTEL dated 21.1.2008 in Appeal No. 71 of 2008).
- (i) Since, SSNNL is not the owner of the electricity falling to the shares of M.P. and Maharashtra, there cannot be any supply of electricity by SSNNL. For sale of electricity there has to be two persons and if the participating states/ electricity utilities are the owner of the power houses/ transmission lines and power is generated therefrom, there cannot therefore, be any supply by SSNNL. Reference may be had to the judgment in *Mahendra Kumar Ishwarlal & Co. vs. The State of Madaras Sale Tax Cases* (1968, Vol. XXI, Page 72), *Commissioner of Income Tax vs. Shri Mirdu Hari Dalmia* (ITR (1982) I Delhi Page 183), *Shri Tirumala Venkataswara Timber and Bamboo Firm vs Commercial Tax Officer, Rajamundry* (1968 STC (Vol. XXI), Page 312) and *Commissioner of Income Tax, West Bengal vs. M/s. Hind Construction Ltd.* ((1972) 4 SCC 460).
- (j) In the case of electricity falling to the shares of Madhya Pradesh and Maharashtra none of the regulations specified by the Commission, dealing with the capital cost, additional capitalization, borrowings, return on equity, working capital, depreciation, incentive, disincentive have any application. As the O&M expenses are determined under the tariff regulations on normative basis, there is no further determination by the Central Commission for the normative O&M Expenses provided for in the tariff regulations. The



entire process of tariff determination will be an exercise in futility and the only effect of the tariff order would be that the excess expenditure if any may not be recognized by the respective state commissions while dealing with the revenue requirements for the concerned electricity utilities of the participating states.

- (k) There is no composite arrangement for generation of sale and electricity in more than one state. The arrangement for sale to GUVNL is different. There is no sale at all of electricity to M.P. or Maharashtra. The Narmada Control Authority functions do not also establish any composite arrangement for sale of electricity.
- (l) The reference made to the decision of the Tribunal in the case of Bhakra-Beas Management Board in Appeal No. 183 of 2011 by the Commission in order dated 20.12.2012 is distinguishable and has no application in the present case. The said decision is based on the interpretation of the Punjab Re-organization Act and on special and peculiar facts.

13. The respondent, GUVNL by affidavit dated 21.3.2013 has submitted as under:

- (a) In terms of the final award of NWDT, out of the net power generation, Madhya Pradesh shall have a share of 57%, Maharashtra 27% and Gujarat 16% of the power available at bus-bar.
- (b) The power project has been established and maintained by SSNNL with all the three states owning their proportionate shares and also availing their share out of the power generated.
- (c) The entire share of Gujarat in the power project is vested by the Government of Gujarat with SSNNL with the share of power generation being given to GUVNL. A PPA has been entered into by SSNNL with GUVNL which has been approved by the State Commission on 23.3.2007.
- (e) Narmada Control Authority has earlier approached the Central Commission seeking clarification on certain issues including whether tariff of SSNNL is to be decided by the party themselves and the Commission by letter dated 29.8.2003 had observed that the question of fixation of tariff of power generated by Sardar Sarovar Project does not arise as there is no sale of power from the said project to nay state as such.
- (f) There is no sale of power being undertaken by SSNNL who is only an agency in respect of generation of power and delivery of generated power at its bus-bar to the said state Govts./or nominees. Therefore, there is no sale/supply of power by SSNNL to these states nor is SSNNL engaged in any inter-state transmission of electricity.

14. We now consider the question as to whether the Central Commission has the jurisdiction to regulate the generation and inter-state transmission of electricity under Section 79 (1) (b) of the Electricity Act, 2003 ('the 2003 Act').

### **ANALYSIS**

15. The 2003 Act came into force with effect from 10.6.2003, repealing the earlier Acts such as the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and Electricity Regulatory Commission Act, 1998. Section 173 of the 2003 Act provides that "nothing contained in this Act or any rule or regulation made there under or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989." Further, Section 174 of the 2003 Act provides that "Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act." After the operation of the 2003 Act, all functions and activities covered under the Act shall have overriding effect on similar functions and activities under any other Act in force except in case of the Consumer Protection Act, 1986 or Atomic Energy Act, 1962 or the Railways Act, 1989. Part III of the 2003 Act deals with generation of electricity, Part IV with licensing, Part V with transmission of electricity, Part VII with tariff and Part X with the Regulatory Commissions. Section 79 under Part X of the 2003 Act vests the following functions in the Central Commission.

*"Section 79. (Functions of Central Commission): (1) The Central Commission shall discharge the following functions, namely:-*

*(a) to regulate the tariff of generating companies owned or controlled by the Central Government;*

*(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*

*(c) to regulate the inter-State transmission of electricity ;*

*(d) to determine tariff for inter-State transmission of electricity;*

*(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;*

*(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;*

*(g) to levy fees for the purposes of this Act;*

*(h) to specify Grid Code having regard to Grid Standards;*

*(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;*

*(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;*

*(k) to discharge such other functions as may be assigned under this Act.”*

16. The Central Commission has been vested with the power to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State, to regulate the inter-state transmission of electricity and to determine the tariff for inter-State transmission of electricity among other functions. By virtue of section 174 of the 2003 Act, the Central Commission is the appropriate authority to regulate such functions notwithstanding that such functions were discharged by other bodies prior to 10.6.2003 subject to the exceptions in section 173 of the 2003 Act.

17. SSNNL has contended that the ownership of the generating stations and the transmission lines belong to the participating states and SSNNL is not the owner thereof. It has submitted that its acts as a conversion agent or an operating agent of the power generated from the hydroelectric project. SSNNL has also submitted that the said project has been established, operated and maintained by SSNNL with both capital cost and operating cost being fully contributed by the three states namely, Maharashtra, Madhya Pradesh and Gujarat in proportion of their respective shares and the power project is co-owned by the three states in

the said proportion. The respondent has further contended that it is not selling the power generated as the owner of the participating states and is also not securing any price or charge whatsoever, and therefore, does not generate any income or revenue from the power made available from the two states of the project. It has also been contended that the capital expenditure including additional capitalisation, O&M Expenses, renovation and modernisation are given by the two states (M.P and Maharashtra) to the extent of 80%. Accordingly, the respondent has submitted that it is not engaged in any inter-state transmission of electricity and the provision of Section 79 (1) (a), (c) and (d) are not applicable. The other respondents MSEDCL and GUVNL have made similar submissions and have contended that the Central Commission has no jurisdiction for determination of tariff for generation and inter-state transmission of electricity.

18. The Government of Gujarat in terms of the directions contained in the NWDT Award, formulated the interstate, multi-purpose Sardar Sarovar Project and accordingly established a company, namely the Sardar Sarovar Narmada Nigam Ltd (SSNNL), the respondent No.1 herein, under the Company Act, 1956 for the construction, maintenance and operation of the hydropower generating stations along the canal system, the tie-lines, main transmission lines as specified by the State Government and issued certificate of incorporation on 24.3.1988. The company was granted certificate for commencement of business by the ROC, Gujarat on 9.5.1988. Accordingly, the assets of the Sardar Sarovar project was transferred to the respondent SSNNL by the Government of Gujarat vide resolution G.R.No.COR-1488-H dated 27.10.1988.

19. The respondent Narmada Control Authority has submitted that since SSNNL being an undertaking of the Government of Gujarat formed to execute the project on behalf of the Government of Gujarat, it cannot be treated as a generating company. This contention of the respondent is not acceptable. Section 2(28) of the 2003 Act defines the generating company to mean "any company or body corporate or association or body of individuals, whether

incorporated or not, or artificial juridical person, which *owns or operates or maintains* a generating station". As stated, SSNNL is a company incorporated under the Companies Act 1956 created with the main object to construct, operate and maintain the hydro generating stations, the tie-lines, substations and main transmission lines and for evacuation of power to the States of M.P., Maharashtra and Gujarat in the ratio decided in terms of the NWDT award. As SSNNL operates and maintains the hydro generating stations, it falls within the meaning of Section 2(28) of the 2003 Act.

20. MSEDCL has submitted that since the expenses pertaining to the capital cost and O&M cost are shared between the states, the ownership lies with the State Governments and as such the tariff determination of the project is not within the purview of the Central Commission. GUVNL has submitted that the power project has been established and maintained by SSNNL with all the three states owning their proportionate shares and also availing their share out of the power generated. The submission of the respondents that the participating states are only the owners of the project and that SSNNL is a special purpose vehicle is not acceptable. Pursuant to the decision of the NWDT, the Central Government set up an Inter-state administrative authority called the Narmada Control Authority for implementation of the decisions and directions of the Tribunal as regards the construction of the dam, power houses and all other works incidental or ancillary to the Sardar Sarovar Project. Since the implementation of the decision of the Tribunal was the responsibility of the Govt. of Gujarat, a company to undertake the construction and implementation of the SSP was formed and incorporated on 24.3.1988. It is evident from Article 4(d) of the Articles of Association provides that all rights, liabilities and obligations of the Government, whether arising out of contract or otherwise, acquired or incurred by it in connection with the project and the matters connected therewith or for any of the objects and purposes referred to in the Memorandum of Association before the incorporation shall be deemed to have been acquired or incurred by SSNNL and shall be the rights, liabilities and obligations of SSNNL. Accordingly, the assets of the project stood transferred to SSNNL and

the works were executed by SSNNL. SSNNL is a public limited company having a common seal and can sue and be sued. It cannot be identical or be equated to the participating states which are in fact the beneficiaries of the project. In terms of the NWDT award, the project cost chargeable to the power component and the benefit of power generated by River Bed Power House (RBPH) and Canal Head Power House (CHPH) is to be shared by the States of M.P., Maharashtra and Gujarat in the ratio of 57:27:16. The share of power as per entitlement is being drawn continuously from the Western Region Grid by MPSEB (on behalf of GOMP), MSEB and GEB and monthly statement with effect from August 2004 has been issued by WREB.

21. It is evident that SSNNL has to discharge the powers and functions in terms of the objects pursued by the company (as evident from the Memorandum of Association of the Company) and such powers are not the powers which are to be discharged on behalf of the participating States. Article 178(1) of the Articles of Association of the company provides that the Board of Directors of the company has the power to appoint such staff as it may consider desirable for the efficient performance of its functions and to determine the terms and conditions of appointment of their service. Notwithstanding this, Article 178(2) provides that the Government may depute its officers or employees to work as an employee of the company on such terms and conditions as may be determined by the Government. It has also the power to enter into agreements with any government or authority, or any person or company as may seem conducive to the objects of the company. It is evident that the power of SSNNL is administration, maintenance and operation of the projects for the purpose of regulation and supply of power and such supply is to the Electricity Boards or any other authority in charge of distribution of power. The participating States are only the beneficiaries of the power and water on account of the rights and liabilities vested in the States. In these circumstances, it can be said that the Central Commission has the jurisdiction over the affairs of SSNNL is so far as they relate to the provisions of the 2003 Act.

22. Section 79(1)(b) of the 2003 Act provides that in respect of generating companies other than those owned or controlled by Central Government falling under Section 79(1)(a), if such a generating company enter into or otherwise has a composite scheme for generation and sale of electricity in more than one State, the fixation of tariff arise in the hands of Central Commission. In short, if the generating company enters into or otherwise has composite scheme for generation and sale, in more than one state then the Central Commission may regulate the tariff of such generating company. The respondent, SSNNL has submitted that there is no sale of power and the electricity generated being owned by the states is delivered to them at the respective Gujarat- Madhya Pradesh and Gujarat-Maharashtra peripheries by two independent lines at their respective cost. SSNNL has submitted that it has nothing to do with the quantum of electricity delivered as it acts as a conversion agent or an operating agent in regard to such quantum of electricity. Accordingly, it has submitted the Central Commission has no power to exercise regulatory jurisdiction. The respondent, GUVNL has submitted that there is no sale of power being undertaken by SSNNL who is only an agency in respect of generation of power and delivery of generated power at its bus-bar to the said State Govts/or nominees. The respondent MSEDCL has submitted that the electricity generated from the project is getting delivered from the power station to the Maharashtra boundary and from thereon the Maharashtra transmission/ distribution network is being used for transmitting the power upto MSEDCL. It has also submitted that the portion of transmission line in the State of Maharashtra does not form part of SSP assets and therefore there is no inter-state transmission line and accordingly the basis to determine tariff for inter-state transmission of electricity by the Central Commission does not apply. In short, the contention of the respondents is that there is neither any sale of power by SSNNL nor SSNNL is engaged in the inter-state transmission of electricity.

23. The contention of the respondents that since SSNNL is not the owner of electricity there cannot be any sale and thus consequently supply, in our view is not tenable. Section 2(70) of the 2003 Act defines the term 'supply' in relation to electricity, to mean the 'sale of electricity to a

license or consumer'. The definition of supply under Section 2(70) of the 2003 Act is not applicable in the context of the use of the word in Section 62(1)(a). The opening portion of Section 2 itself states that the definition as defined are applicable 'unless the context otherwise requires'. It is well settled principle of law that the definitions in the Act are subject to a contrary context and need not be applicable to the use of that word in every section of the Act. In our considered view, the term supply cannot mean sale when the word supply is used in Section 62 of the 2003 Act. This is so because to escape the scrutiny of the Appropriate Commission, the generating company would appoint an agent to effect supply of electricity to distribution licensee and since the agent would not be selling electricity, there would be no supply and hence no tariff fixation. Hence, the definition of 'supply' meaning 'sale' is not applicable since the context otherwise dictates. Therefore, the supply from SSNNL to the distribution licensee is a supply within the meaning of Section 62 of the 2003 Act based on the definition of 'supply' under Section 2(70) of the 2003 Act. It is noticed from Section 3 A (14) of the Memorandum of Association of the company that one of the main object of SSNNL is to generate, accumulate, distribute, transmit, supply electric power and to collect, recover and retain such fees, rates, charges etc as may be fixed by the company from time to time for the above purpose. In pursuit of this object, the power generated by RBPH and CHPH of SSP is injected into the 400 kV Grid of Western Regional Electricity Board (WREB) through 400 kV switchyard of SSP and the respective shares of power as per entitlement (57% of the share of power to the State of Madhya Pradesh, 27% of share to the State of Maharashtra and 16% share of power to the State of Gujarat (16%) on the total installed capacity of 1450 MW) are drawn continuously from the grid of WREB by the utilities of the Govt. of MP, Maharashtra and Gujarat respectively in proportionate to their share of power generated from the project. SSNNL has submitted that it is not securing any price or charge whatsoever from the said states and therefore no income or revenue from the power is made available to the said two states from the project. It has therefore submitted that it is not supplying i.e. selling the power generated as the owner to the above two participating states. On the contrary, it is noticed that in respect of the 16% share of



power to the State of Gujarat, SSNNL has executed a PPA with the Gujarat Electricity Board on 9.3.2005. Similarly, SSNNL has been supplying the 57% share of power of the State of Madhya Pradesh from the project to MPSEB (now MPPTCL) at a provisional tariff of ₹2.00 per unit which in turn is sold to NVDD, GOMP based on the PPA entered into with MPSEB/MPPTCL. Also, the supply of power is being made by SSNNL to MSEDCL based on the Power Purchase rate of ₹2.05/kWh. Accordingly, the contention of SSNNL that it does not undertake the sale/ supply of power cannot be accepted. The judgments referred to by SSNNL in Gajendra Haldea v CERC and others (2008 ELR APTEL 203) and Lanco Amarkantak Power Pvt. Ltd v MPERC & Others (judgment of APTEL dated 21.1.2008 in Appeal No. 71 of 2008) to demonstrate the non existence of a composite scheme in this project, in our view, are not applicable to the present case as these cases deal with the jurisdiction of the Commission when supply is made by the generating company to electricity traders. Similar issue in respect of the determination of tariff of BBMB came up before the Tribunal and the Tribunal by its judgment dated 14.12.2012 in Appeal No.183/2011 (BBMB Vs CERC & ors) held as under:

*“24.....Now, it is not that supply by the BBMB to the participating States or the Electricity Boards does prima facie appear to be supply within the meaning of section 2 (70) of the Act, 2003. The word ‘supply’ as used in section 79 (3)(b) of the Act, 1966 has to be understood in the totality of context in which it is used. Since, right to receive and utilize the power as is conferred under section 78 (3) (b) of the Act, 1966 has not been expressly associated with sale such supply may not come under section 2(70) of the Act, 2003. But there does not end the matter. Mr. Ramachandran, learned advocate appearing for the appellant is correct in saying that section 79 (1) must not be read in isolation of section 62 (1). Supply to the owner of the goods is no doubt a sale, but in case of supply of electricity by a generation company to a distribution licensee question of tariff comes. Now the point is: tariff has nowhere been defined, neither in the Act 2003 nor in the Central Electricity Regulatory Commission Regulations. Therefore, the ordinary meaning of tariff that has to be accepted would be rates, charges, fees etc.. When the Punjab Reorganisation Act, 1966 came into effect, it was the States who would by themselves own and control generation, transmission and distribution. In a word, it was the State Electricity Board formed under section 5 of the Electricity (Supply) Act, 1948 that statutorily was entrusted to control all the functions. The State Electricity Board was exclusively a State-owned Board. The reform that has been brought about through the Electricity Act, 2003 has resulted in unbundling of this integrated entity. As a result of this, in most of the States there has come into being three separate statutory corporate entities and the State may or may not own them. The law also makes it possible that private players come forward to form generation, transmission and distribution companies. All the Corporations / companies either in the public sector or in the private sector dealing with generation, transmission and distribution of electricity have been brought under the purview of the Appropriate Commission. The idea behind all these is that the Govt. keeps itself at a legal distance from*

these corporate entities although the Govt. may own any such corporate entity. The present appeal for the very obvious reason has not been chosen to be preferred by any State Govt. It has been preferred by the Punjab State Power Corporation Ltd., Haryana Vidyut Prasaran Nigam Ltd. and Rajasthan Rajya Vidyut Prasaran Nigam Ltd. which are all Govt. companies and the Himachal Pradesh State Electricity Board. Legally, they are now distinct from the Govt. / States. The BBMB make supply to these business entities and they pass on the costs to the consumers. Legally, therefore, when a generating company supplies electricity to the distribution companies including the deemed distribution licensees tariff requires to be determined by the Appropriate Commission, in this case the authority is the Central Commission. Section 79 (1) (a) of the Act, 2003 empowers the Central Commission to 'regulate' the tariff of generation companies, while in case of inter-state transmission of electricity, the word 'determine' has been used in section 79 (1) (d). In case of inter-state transmission of electricity, the word 'regulate' appears in section 79 (1) (c). There is no difficulty in considering the BBMB to be the generating company under the control of the Central Govt. It is the cardinal principle of the interpretation of statutes that when a statute is enacted on a subject that covers a number of matters including those over which there is special law thereon the presumption is that the Parliament or the Legislature while enacting the statute keeps in mind that special law. Viewed in this legal perspective, it can be said that when the Act, 1966 was enacted, the Parliament was conscious of operation of Electricity (Supply) Act, 1948 particularly when there was reference to Electricity Boards in the Act, 1966. As is indicated earlier, section 78 to 80 of the Reorganisation Act, 1966 were made consistent with the Act, 1948. In terms of the Act, 1948, it was the State or the Govt. that was the owner of the power plants, generating stations, transmission lines and the State or the Govt. was also in charge of distribution. All these integrated functions were maintained and controlled by the Electricity Boards which was instrumentality of the State within the meaning of Article 12. The Act, 1966 clearly regarded the BBMB as a generation company and spoke of distribution to the Electricity Boards. The argument of Mr. Ramachandran that the word 'supply' as is meant in section 2(70) of the Act, 2003 cannot be attributed to the word 'supply' as used in the Act, 1966 and, therefore, the BBMB does not come under the jurisdiction of Central Electricity Regulatory Commission is fallacious because unlike the word 'supply' as has been defined in the Act, 2003, there is no definition of the word supply either in the Act, 1910 or in the Act, 1948. There was no occasion on the part of the author of the Statute to import the idea of 'supply' of Electricity Act, 2003 in the Act, 1966. Therefore, there could not be conveyance of the idea of sale in the Act, 1966. The idea of sale of the Act, 2003 has been necessitated because of unbundling of all the functions and making all the functionaries as Corporations with allowance of private players joining in the venture of electricity business. Therefore, the absence of the idea of sale as is used in the Act, 2003 in the 1966 Act does not make the Central Commission not available with the BBMB. In most of the States, the State Electricity Board has been unbundled with the Govt. creating separate corporate entities for generation, transmission and distribution. Now, the functions of the Central Govt. under the 1966 Act are relatable to the Central Commission under the Electricity Act, 2003. As a Govt. company as the BBMB now is, it cannot escape scrutiny and regulatory jurisdiction of the Central Commission. The BBMB cannot be compared to that of a contractor as is contended in the written note of argument. Though there is no actual sale by the BBMB and supply is made in terms of the Act, 1966 such supply does not become absolutely divorced from any consideration. The provision of section 79 (5) of the Act, 1966 will apply also to the Beas Project mutatis mutandis in terms of sub-section (5) of section 80. Thus expenses including salaries and allowances of the staff and other amounts to meet expenses shall have to be provided to the BBMB and the amount shall be apportioned having regard to the benefit of the States / Boards as the Central Govt. may specify. Therefore, there are operation and maintenance expenses, renovation and modernisation expenses which are associated with components of tariff and it is the BBMB that has to meet all these expenses. Regulation of these expenses so far is not the function of any of the

*State Commission because it is an inter-state Central Govt. owned generation entity. The mere fact that such power of regulation has not been exercised so far is no ground to deny this jurisdiction to the Central Electricity Regulatory Commission when the Act, 2003 is an exhaustive Code. Yes, section 79 (1) has to be read with section 62(1) of the Act, 2003, but if any of the components of section 62(1) is attracted then the jurisdiction of the Central Electricity Regulatory Commission is attracted. With the reorganisation of the then existing State of Punjab, the control of the Bhakra Projects ceased to remain in the hands of that State and it vested in the BBMB. It is the BBMB that has the statutory power to supply electricity to the Boards or authority in charge of distribution. Under section 79 (3) (c) of the Act, 1966, the BBMB has to carry out construction of the remaining works connected with the Right Bank Power House. There is force in the argument of the learned senior counsel appearing for the Central Electricity Regulatory Commission that as the BBMB maintains the charges and costs, it is necessary to scrutinise the same as ultimately charges are passed on to the consumers. The concept of prudence check is a jurisprudential concept under the Electricity laws. Therefore, there is no illegality in bringing the BBMB which is an entity controlled by the Central Govt. and distinct from the States within the purview of the Central Electricity Regulatory Commission. It may be that the Central Electricity Regulatory Commission finds that there is no necessity of fixing generation tariff in the same lines as are ordinarily done in other Central Govt. owned generating entities. The primordial question is one of jurisdiction of the Commission. The BBMB is paid for by the States as it meets operation and maintenance expenses. It is the central argument of Mr. Ramachandran that whatever be the status of the BBMB, in view of section 78 (1) of the Act, 1966, there is no escape from the conclusion that rights as are given to the States do not merely mean simply the right to receive water and power because the right to the projects themselves has been given to the States. Therefore, the existence of the BBMB has to be conceived of as being a mere trustee or agent or a contractor who is paid or reimbursed the expenses incurred to perform a job. It is difficult to accept this argument because the expression in section 78(1) of the Act, 1966 that 'notwithstanding anything contained in this Act but subject to the provisions of sections 79 and 80' has controlled the operation of section 78(1) of the Act, 1966. Sections 79 and 80 deal with the constitution of the Board with specification of powers and functions to be discharged by it in relation to generation, and transmission and distribution of electricity to the Electricity Boards through use of inter-state transmission networks which are available to the other public sector utilities also, and these functions which have not to be looked after by the States or the Governments are the functions ordained in the Act, 2003. Under sections 79 and 80 of the Act, 1966, the projects vested in the BBMB and the BBMB is made under the control of the Central Government. The expression 'subject to' conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. Reference in this connection can be made to Chandavarkar Sita Ram Rao Vs Ashalata S. Guram (1986) 4 SCC 447. Actually, right in section 78 (1) & (2) has been crystallised in section 79 (3) (b) of the Act, 1966. Therefore, we conclude that the Central Electricity Regulatory Commission has the jurisdiction in respect of the BBMB within the periphery of the Electricity Act, 2003.*

24. The power generated from the project is evacuated by SSNNL to the distribution companies /utilities of the States of Maharashtra and Madhya Pradesh and the capital cost including additional capitalization, the O&M Expenses, working capital requirements, repair, renovation and modernization etc. is given by the two states (MP and Maharashtra) to the extent of 84% of the share of power. Based on the above discussions, it can be concluded that

SSNNL is a generating company with a composite scheme for generation and sale of power in more than one state and thereby falls within the jurisdiction of the Central Commission in terms of Section 79(1)(b) read with Section 62(1)(a) of the 2003 Act.

25. In terms of the NWDT award, the capital cost of the power portion of the SSP works comprise of the following:

*(a) Full cost of Unit III electrical works and control works pertaining thereto, upto and including the switchyard.*

*(b) Full cost of transmission lines in Gujarat State constructed for supplying power to Madhya Pradesh and Maharashtra.*

*(c) 56.1 per cent of the net cost of common facilities such as Dam and Appurtenant Works i.e. Unit I of Sardar Sarovar Project, after allowing for credits, if any :*

*(d) 56.1 per cent of the credit given to Madhya Pradesh for the downstream benefits derived from Narmada Sagar Dam.*

26. As per the said award, the amount towards 57% of the capital cost of the power portion of the SSP have to be paid by Madhya Pradesh to Gujarat in annual instalments until the capital works are completed. In addition to the payments above, Madhya Pradesh and Maharashtra shall also pay to Gujarat 57 per cent and 27 per cent respectively of the operation and maintenance costs of the Sardar Sarovar Power Complex each year. All the 5 units of 50 MW each of CHPH were commissioned during the period from August, 2004 to December, 2004. Also, all the 6 units of 200 MW each of RBPH were commissioned during the period from February, 2005 to November, 2006. As stated, the power generated from these projects is being injected into the 400 kV grid of Western Region through 400kV switchyard of SSP and the share of power as per entitlement are being drawn continuously by MPSEB, MSEB and GEB. Based on this, we have in this order concluded that the generating station has a composite scheme for generation and sale of power to more than one state and the tariff of the same is to be determined by the Central Commission in terms of Section 62(1)(a) read with Section 79(1)(b) of the Act. It is noticed that in respect of the 57% share of energy from the project, the Govt of MP had agreed to a provisional tariff of ₹2.00 per unit payable by MPSEB/MPPTCL to Narmada

Valley Development Department (NVDD), GoMP with effect from 16.8.2004. On a petition filed by NVDD before the MP Electricity Regulatory Commission (MPERC), the State Commission by order dated 18.1.2008 had determined the provisional generation tariff for MP's share of power from the project with effect from August, 2004 in exercise of its powers under Section 64 read with Section 62(1)(a) of the 2003 Act. As regards the 16% share of the Govt of Gujarat, GUVNL has entered into a PPA dated 9.3.2005 for supply of power from the project at a tariff rate of ₹2.05 /kWh and the Gujarat Electricity Regulatory Commission by order dated 23.3.2007 had approved the said rate subject to finalisation of the project. In the said order, the GERC while holding that while for the purpose of energy accounting, the said project is to be considered as inter-state project, for purchase of power it would be intra-state and governed by the provisions of GERC tariff Regulations. In respect of the 27% share of power of the Govt of Maharashtra (882 MW), MSEDCL had considered the tariff as ₹2.05 per unit from the project and the Maharashtra Electricity Regulatory Commission (MERC) by its order dated 17.8.2009 had allowed the power purchase rate as ₹2.05/kWh. In the said order, the said Commission had observed as under:

*“For projecting the energy availability from SSP, the Commission has considered the annual generation target as specified by the CEA for FY 2009-10. The energy sent out from this station has been estimated by considering the capacity allocation as submitted by MSEDCL. The Commission, however, is of the view that the tariff for Sardar Sarovar Project needs to be determined by CERC. In the absence of CERC's approval, the Commission has considered the energy tariff of ₹2.05 per unit as currently being paid by MSEDCL. This rate shall prevail until such time CERC approves the tariff for Sardar Sarovar Project, and the Commission shall true-up for any variations in the subsequent years.”*

27. Thus, the MERC while observing that the Central Commission only has the jurisdiction to determine the generation tariff of the project had proceeded to approve the generation tariff of SSNNL in the absence of the approval of this Commission. It therefore emerges that the State Regulatory Commissions of MP and Gujarat have determined the generation tariff of the project, apparently on the ground that SSNNL is not the owner of the electricity supplied to the distribution licensees and that the sale is made on behalf of the State to the distribution

licensees. Thus, theoretically each State Commissions have independently gone into the correctness of the very same accounts of SSNNL. In our view, since SSNNL is the owner of these assets, the projects stood vested in the company and hence the supply of power by SSNNL to the distribution companies amount to sale thereby attracting the jurisdiction of the Central Commission. Since at present SSNNL is not accountable to any regulator, it is necessary that the costs, charges expenses and accounts are scrutinised by an independent regulator to examine if the actual expenses incurred by SSNNL are passed on to the consumers and tariff determined on prudence check. The operation and maintenance expenses, working capital requirements renovation and modernization etc., are all components of tariff and SSNNL has to meet all these expenses. SSNNL therefore cannot be conceived as an agent or a trustee of the participating state. The 2003 Act is enacted as an exhaustive Code on all matters concerning electricity and the mere fact that such power of regulation has not been exercised so far is no ground to deny the jurisdiction of this Commission. Accordingly, SSNNL in terms of the Memorandum and Articles of Association has the power to supply the share of electricity of the participating states to the boards or authority in charge of distribution and the necessity of fixing the generation tariff lies with the Central Commission.

28. We have in the discussions above concluded that the Central Commission has the jurisdiction under Section 79(1)(b) read with Section 62(1)(a) of the 2003 Act to decide the generation tariff of the projects of SSNNL, since it is a generation company having a composite scheme for generation and sale of electricity to more than one state. However, one issue which remains to be considered is whether SSNNL is the owner of the transmission system in respect of the power evacuated from the project and the Central Commission has the jurisdiction to regulate the inter-state transmission of electricity under Section 79(1) (c) of the 2003 Act.

29. As stated, the energy generated from both the power houses is evacuated through 400 kV level through interconnecting transformers at GIS, situated in RBPH switch yard. The 400 kV Switchyard is indoor type having Gas Insulated Switch Gear and Bus bars. The energy is

transmitted to party states i.e. Gujarat, Maharashtra and Madhya Pradesh in the proportion of 16:27:57 respectively through 400 kV double circuit transmission lines, namely SSP-Kasor, SSP-Asoj, SSP-Dhule and SSP-Nagda respectively. The operation and maintenance of SSP power complex and transmission lines is being done by Gujarat State Electricity Company Limited (GSECL) in accordance with the O&M agreement between SSNNL and GSECL. The respondent NCA has submitted that the transmission system of SSP is not owned by SSNNL as the lines upto Gujarat border are the asset of the project. It has also submitted that beyond the Gujarat border, lines were constructed by the respective state government of M.P. and Maharashtra in their state at their own cost and hence, the portions of this line are not part of the project. SSNNL has submitted that there is no inter-state transmission as there is no activity of transmission undertaken by SSNNL outside the periphery of Gujarat. MPPMCL has submitted that as per Regulation 1.3 of the IEGC, the Sardar Sarovar Project and the transmission systems are treated as intra-state. It has also submitted that the electricity generated from the project is getting delivered from the power station to the Maharashtra boundary and from thereon the Maharashtra transmission/ distribution network is being used for transmitting the power upto MSEDCL. It has further stated that the portion of transmission line in state of Maharashtra does not form part of SSP assets. Accordingly, it has submitted that there is no inter-state transmission line and the basis to determine tariff for inter-state transmission of electricity by the Central Commission does not apply.

30. In terms of the NWDT award, the power generated in the RBPH and CHPH will be integrated in the common switchyard. It also provides that Gujarat will construct and maintain the transmission lines needed to supply the allotted quantum of power in Madhya Pradesh and Maharashtra upto Gujarat State border along an alignment as agreed to between the parties and if there is no agreement along such alignment as may be decided by the Narmada Control Authority. Also, the transmission lines beyond Gujarat State border shall be constructed and maintained by Madhya Pradesh and Maharashtra in their respective states. Further, the power

houses and appurtenant works including the machinery and all installations as well as transmission lines in Gujarat state will be constructed, maintained and operated by the Gujarat State or any authority nominated by the State.

31. Section 2(36) of the 2003 Act provides as under:

*“Inter-State transmission system” includes –*

*(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;*

*(ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;*

*(iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility.*

32. SSNNL has been entrusted with the responsibility to construct, operate and maintain the tie-lines, sub-stations and main transmission lines as may be required for supply of the allotted quantum of power to the participating states of Madhya Pradesh and Maharashtra. It is noticed that two independent transmission lines have been constructed upto the Gujarat State border for evacuation of power to the State of Madhya Pradesh and Maharashtra for which operation and maintenance expenses are paid by these states in proportion to the share of power. While the respondent NCA has submitted that the lines upto the Gujarat border are the asset of the project, the respondent SSNNL has submitted that there is no inter-state transmission as there is no activity of transmission undertaken by SSNNL outside the periphery of Gujarat. Admittedly, power from the generating stations of SSNNL are conveyed through transmission lines constructed and operated by SSNNL upto Gujarat State border and beyond this to the States of MP and Maharashtra through transmission lines constructed and maintained by them. These submissions are not acceptable. In our view, the conveyance of electricity by SSNNL within the State of Gujarat is incidental to the inter-state transmission of electricity to the States of Maharashtra and MP and therefore falls within the ambit of the definition under sub-clause (ii) of clause 36 of Section 2 of the 2003 Act. The transmission systems of SSNNL having attained



inter-state character as such cannot escape the regulatory control of the Central Commission on the ground that the State of Maharashtra and MP owns and maintains these transmission lines. Accordingly, we hold that the Central Commission has the jurisdiction to regulate the tariff of inter-state transmission of electricity in terms of Section 79(1)(c) of the 2003 Act. We order accordingly.

33. To sum up, after coming into effect of the 2003 Act, SSNNL is a generating company having a composite scheme for the generation and sale of electricity in more than one State and the determination of tariff for generation and supply of electricity is vested in the Central Commission. SSNNL is therefore, directed to make appropriate applications before the Central Commission for approval of tariff of its generating stations and transmission lines in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 for the period 2014-19.

*Sd/-*  
**(A. K. Singhal)**  
**Member**

*Sd/-*  
**(Gireesh B. Pradhan)**  
**Chairperson**