

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 31/MP/2021

Coram:

Shri P.K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 6th June, 2022

In the matter of:

Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulation Commission (Conduct of Business) Regulations, 1999 seeking directions for recovery of transmission charges for implementation of certain works under Powergrid works associated with additional System Strengthening Scheme for Chhattisgarh IPPS (Part-B) for the period between 30.11.2018 to 30.3.2019.

And in the matter of:

Power Grid Corporation of India Limited,
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110016.

.... Petitioner

Versus

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur-482008, Madhya Pradesh.
2. Madhya Pradesh Power Transmission Company Limited,
Shakti Bhawan, Rampur,
Jabalpur-482008, Madhya Pradesh.
3. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited,
3/54, Press Complex, Agra-Bombay Road,
Indore-452008.
4. Maharashtra State Electricity Distribution Company Limited,
Hongkong Bank Building, 3rd Floor,
M.G. Road, Fort,
Mumbai-400001, Maharashtra.



5. Maharashtra State Electricity Transmission Company Limited,
Prakashganga, 6th Floor, Plot No.C-19,
E-Block, Bandra Kurla Complex,
Bandra (East),
Mumbai-400051, Maharashtra.
6. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodara-390007, Gujarat.
7. Gujarat Energy Transmission Corporation Limited,
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodara-390007, Gujarat.
8. Electricity Department,
Government of Goa,
Vidyut Bhawan, Near Mandvi Hotel,
Panaji, Goa-403001.
9. Electricity Department,
Administration of Daman & Diu,
Daman-396210.
10. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T. Silvassa-396230.
11. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania,
Raipur, Chhattisgarh-492013.
12. Chhattisgarh State Power Transmission Company Limited,
State Load Dispatch Building, Dangania,
Raipur-492013, Chhattisgarh.
13. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar, Dangania,
Raipur, Chhattisgarh-492013.
14. Adani Power Limited,
Sambhav Press Building, 6th Floor,
B-Wing, Judges Bungalow,
Ahmedabad-380015, Gujarat.
15. Raipur-Rajnandgaon Warora Transmission Limited



Adani Corporate House,
Shantigram, SG Highway,
Ahmedabad, Gujarat-382421.

.....Respondent(s)

- For Petitioner** : Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Soumya Singh, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri D.K. Biswal, PGCIL
Shri Ved Prakash Rastogi, PGCIL
Shri Amit Yadav, PGCIL
Shri Anindya Khare, PGCIL
- For Respondents** : Shri Sanjay Sen, Sr. Advocate, RRWTL
Shri Hemant Singh, Advocate, RRWTL
Shri Lakshyajit Singh Bagdwal, Advocate, RRWTL
Shri Anup Jain, Advocate, MSEDCL
Shri Dinesh Agarwal, Advocate, MSEDCL
Shri Manoj Dubey, Advocate, MPPMCL

ORDER

Power Grid Corporation of India (PGCIL) has filed the instant Petition seeking direction for recovery of transmission charges in respect of 2 No. of 765 kV line bays at 765/400 kV Raipur Pooling Station (Powergrid) (hereinafter referred to as “the transmission asset”) for Raipur PS (Powergrid)-Rajnandgaon (TBCB) 765 kV D/C line (hereinafter referred to as “the transmission line”) under “Powergrid works associated with additional System Strengthening Scheme for Chhattisgarh IPPs (Part-B)” in Western Region (“hereinafter referred to as “the transmission system”) for the period between 30.11.2018 to 30.3.2019 in terms of the order dated 10.5.2020 in Petition No. 16/TT/2019.

Background

2. The brief facts of the case of the instant Petition are as follows:



(a) The Petitioner has been entrusted with the implementation of certain works associated with additional system strengthening scheme for Independent Power Producers (IPPs) in the State of Chhattisgarh (Part-B).

(b) The Investment Approval (IA) for implementation of transmission system under the scope of the Petitioner was accorded by the Board of Directors of the Petitioner on 22.7.2016 for ₹33.51 crore (including IDC of ₹1.98 crore based on April, 2016 price level). The scope of work for which the IA was granted was as under:

“1. Scope of work under the project is given below:

(i) 765kV line bays at 765/400kV Raipur Pooling Station (POWERGRID): 2 Nos. (for Raipur PS (POWERGRID)-Rajnandgaon (TBCB) 765kV D/c line)”

(c) PFC Consulting Limited (PFCCL), Bid Process Coordinator (BPC), conducted the bidding process for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the transmission system for “Additional System Strengthening for Chhattisgarh IPPs-Part-B” through tariff based competitive bidding (TBCB) process. Adani Power Limited (APL) emerged as the successful bidder to establish the transmission system for Additional System Strengthening for Chhattisgarh IPPs-Part-B on Build, Own, Operate and Maintain (BOOM) basis.

(d) APL requested PFCCL to transfer the Special Purpose Vehicle (SPV) to its investing affiliate Adani Transmission Limited (ATL). Accordingly, the SPV, Raipur-Rajnandgaon Warora Transmission Limited (RRWTL), was



transferred to ATL on 23.11.2015. The Commission in its order dated 29.2.2016 in Petition No. 287/TL/2015 granted transmission licence to RRWTL for inter-State transmission of electricity.

(e) The scope of transmission system to be developed under the 'Additional System Strengthening Scheme for Chhattisgarh IPPs' was approved and discussed in the 24th Meeting of Western Regional Power Committee held on 9.10.2013 and 32nd Meeting of Empowered Committee on Transmission System held on 17.1.2014. The approved transmission system comprised of the following elements to be implemented through the TBCB route:

- (i) Raipur (Pool)- Rajnandgaon 765kV D/c line;
- (ii) Rajnandgaon- New Pooling Station near Warora 765kV D/c line;
- (iii) LILO of all (4) circuits of Raipur/ Bhilai- Bhadrawati 400kV lines at Rajnandgaon;
- (iv) Establishment of new substation near Rajnandgaon 765/400kV, 2x1500 MVA sub-station.

(f) The two 765 kV line bays at Raipur 765/400 kV pooling station were to be implemented by the Petitioner in tandem with the above transmission system to be developed through TBCB, implemented by ATL through RRWTL, the SPV.

(g) As per the Investment Approval dated 22.7.2016, the schedule date of commercial operation of the transmission assets under the scope of the Petitioner was November 2018, matching with the commissioning schedule of Raipur Pooling Station (POWERGRID)-Rajnandgaon (TBCB) 765 kV D/C line.



(h) The transmission assets within the scope of the Petitioner were put into commercial operation in November, 2018. Accordingly, in December 2018, the Petitioner filed Petition No.16/TT/2019 for determination of transmission tariff for two bays at 765/400 kV Raipur Pooling Station from the date of commercial operation to 31.3.2019 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter, “the 2014 Tariff Regulations”) for 2014-19 tariff period.

(i) The Petitioner in Petition No. 16/TT/2019 submitted that the transmission assets could not be utilized due to delay in COD of the associated TBCB transmission line being implemented by APL. Accordingly, the Petitioner sought approval of the COD of the transmission asset under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations.

(j) The commercial operation of associated transmission line i.e. Raipur PS (Powergrid)-Rajnandgaon (TBCB) 765 kV D/C line was declared on 31.3.2019 by RRWTL.

(k) The Commission vide order dated 10.5.2020 in Petition No. 16/TT/2019, approved the COD of the transmission assets as 30.11.2018 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and held that the transmission charges for the transmission asset from 30.11.2018 to 30.3.2019 would be borne by APL on account of non-commissioning of the associated downstream transmission system under scope of APL. The relevant portions of the Commission’s order dated 10.5.2020 is as follows:



“22. The associated transmission line under the scope of Adani Power Limited was not ready, therefore the transmission charges from COD of the instant Asset till COD of the associated transmission line i.e. 31.3.2019 shall be borne by Adani Power Limited.”

“65. The COD of instant asset has been approved as 30.11.2018 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations due to non-commissioning of the associated transmission system under the scope of Adani Power Limited (APL). Accordingly, the transmission charges in respect of instant Asset from 30.11.2018 till 30.3.2019 shall be borne by APL and w.e.f 31.3.2019, the transmission charges allowed in this Order, as provided in Regulation 43 of the 2014 Tariff Regulations, shall be shared by the beneficiaries and long term transmission customers in terms of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 as amended from time to time.”

(l) In furtherance of the directions issued by Commission in order dated 10.5.2020 in Petition No.16/TT/2019, the Petitioner raised a bilateral bill on RRWTL towards transmission charges for the period between 30.11.2018 to 31.3.2019 in the sum of ₹2,36,23,677/-.

(m) In the meanwhile, RRWTL (being the implementing agency of the associated TBCB line) had filed a Petition No. 326/MP/2018 before the Commission seeking declaratory reliefs under the Transmission Service Agreement (TSA) dated 19.5.2015 on account of *force majeure* event which adversely affected the construction of its transmission assets. The Commission vide order dated 9.10.2019 in Petition No. 326/MP/2018 condoned the delay in commissioning and extended the SCOD of the project of RRWTL from 23.11.2018 till 31.3.2019.

(n) On 7.8.2020, the Petitioner filed Petition No.30/TT/2021 for truing up of transmission tariff of 2014-19 period and determination of transmission tariff of 2019-24 period for the transmission assets.



(o) During the course of hearing on 3.8.2021 and 2.11.2021 of Petition No. 30/TT/2021, the Petitioner submitted that APL was wrongly impleaded as a party in Petition No. 16/TT/2019 instead of RRWTL, which is implementing the associated transmission line under TBCB route. APL is the parent company of RRWTL. Therefore, RRWTL was impleaded and arrayed as Respondent in Petition No. 30/TT/2021.

(p) In response to the Petitioner's letter dated 15.5.2020 against the bill of ₹2,36,23,677/-, RRWTL stated that the said bill had been wrongly issued to it as RRWTL was not a party (as Respondent) to the proceedings in Petition No.16/TT/2019. Therefore, in terms of order dated 10.5.2020, no liability to pay transmission charges can be fastened upon RRWTL. Further, there is neither any contract between RRWTL and the Petitioner nor any rule or regulation provided for payment of such transmission charges to the Petitioner by RRWTL. On the same grounds, RRWTL vide its reply dated 31.3.2021 objected to the direction for payment of bilateral transmission charges in terms of the Commission's order dated 10.5.2020.

(q) In the meanwhile, aggrieved by non-payment of transmission charges, the Petitioner had filed the present Petition No. 31/MP/2021 with the following prayers:

“(a) issue appropriate directions for recovery of transmission charges towards servicing of the 2 Nos. of bays of the Petitioner at the Raipur pooling substation associated with the Raipur PS (Powergrid)-Rajnandgaon (TBCB) 765 kV D/c line for the period between 30.11.2018 till 30.3.2019 as adjudicated under Order dated 10.5.2020 passed in Petition No.16/TT/2019: Power Grid Corporation of India Limited v. Madhya Pradesh Power Management Company Limited & Ors.; and/or



(b) pass such further and other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case."

(r) The Commission disposed of Petition No.30/TT/2021 vide order dated 13.3.2022 holding that the issues raised by RRWTL with respect to raising bill on APL for transmission charges of the transmission asset for the period of mismatch from 30.11.2018 to 30.3.2019 in terms of Commission's order dated 10.5.2020 in Petition No 16/TT/2019, observations of Appellate Tribunal for Electricity (APTEL) in Appeal No. 17 of 2019 vide judgment dated 14.9.2020 and non-impleadment of RRWTL in Petition No 16/TT/2019 will be considered in Petition No 31/MP/2021.

Submissions of the Petitioner

3. The gist of submissions made by the Petitioner in the instant Petition and affidavit dated 7.10.2022 is as under:

(a) The tariff for the transmission assets of the Petitioner has been determined in accordance with the provisions of Regulation 4(3)(ii) of 2014 Tariff Regulations.

(b) The Commission in order dated 30.11.2017 in Petition No. 60/TT/2017 imposed the liability towards payment of Interest during Construction (IDC) and Incidental Expenses during Construction (IEDC) on TBCB licensee i.e NRSS XXXI (B) Transmission Limited (NTL) for the period for which the Petitioner could not commission its assets on account of delay in implementation of NTL lines. NTL had filed Petition No.195/MP/2017 seeking compensatory and declaratory reliefs under its TSA on account of *force majeure* events which had adversely



affected the construction of the project. The Commission vide order dated 29.3.2019 in Petition No.195/MP/2017 held that delay on part of NTL in commissioning the associated transmission lines was due to *force majeure* events and allowed extension of their SCOD. NTL, aggrieved with the order dated 30.11.2017 of the Commission in Petition No. 60/TT/2017 for imposing liability of IDC and IEDC for the transmission assets, filed Appeal No. 17 of 2019 before APTEL. Appeal No. 17 of 2019 was disposed of by the APTEL vide judgement dated 14.9.2020 directing the Commission to take a fresh view with regard to all the aspects including the issue of mismatch in commissioning of transmission system as observed in the said judgement. In view of the directions issued by the APTEL vide judgement dated 14.9.2020 and the stand taken by RRWTL, it emerges that RRWTL has declined to pay the transmission charges for the period of mismatch and Commission is required to frame Regulations in the context of mismatch in commissioning of upstream/ downstream transmission systems.

(c) Accordingly, the Petitioner has submitted that in the interregnum, the transmission charges for the Petitioner's assets for the period between 30.11.2018 to 30.3.2019 as directed by the Commission vide order dated 10.5.2020 in Petition No.16/TT/2019, remains unpaid. Accordingly, the Petitioner is praying for directions from the Commission to decide as to who will bear the liability to pay transmission charges as these charges are legally and legitimately payable to the Petitioner as it has completed its scope timely and reasons for mismatch are not attributable to it. The Petitioner has prayed for invoking the



inherent powers vested in the Commission under Regulation 111 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as 'CBR') for issuing such Orders as may be necessary for meeting the ends of justice.

(d) If recovery of charges for mismatch period is not addressed properly it will cause irreparable loss and material injury to the Petitioner.

Hearing dated 17.9.2021

4. The Commission vide Record of Proceeding (RoP) for the hearing dated 17.9.2021 directed the Petitioner to submit information as to whether any bills have been raised by the Petitioner on APL for the subject period and reasons for not impleading RRWTL in Petition No. 16/TT/2019. The Petitioner vide affidavit dated 7.10.2021 has submitted that no such bill was raised on APL. The said bill was raised on RRWTL, which was the transmission licensee implementing the Raipur-Rajnandgaon Warora Transmission Line. On the issue of impleadment of RRWTL in the proceedings in Petition No.16/TT/2019, the Petitioner has submitted that Petition No.16/TT/2019 was filed for approval of COD and determination of tariff for the subject transmission assets for the 2014-2019 tariff period and as such, all the beneficiaries of the said transmission assets including APL (who was the successful bidder for implementation of the downstream transmission assets) were arrayed as parties/ Respondents and all procedural formalities including issuance of public notice and uploading the Petition on its website were duly complied with by the Petitioner. However, RRWTL, was inadvertently omitted to be arrayed as one of the Respondent. The said error by the Petitioner was totally unintentional and unwitting.



Accordingly, the Petitioner prayed to the Commission to condone this inadvertent error and issue appropriate directions for recovery of transmission charges towards servicing of the two bays of the Petitioner at the Raipur Pooling Sub-station associated with the Raipur PS (Powergrid)-Rajnandgaon (TBCB) 765 kV D/C line for the period between 30.11.2018 till 30.3.2019.

5. RRWTL has filed its reply and written submissions vide affidavit dated 13.10.2021 and 24.11.2021 respectively. M.P Power Management Co. Ltd. (MPPMCL), Respondent No.1 has filed its written submission dated 23.11.2021. Maharashtra State Electricity Distribution Company Limited (MSEDCL), Respondent No.4 has filed its reply vide affidavit dated 9.11.2021.

Submissions of RRWTL, Respondent No.15

6. The gist of the submissions made by RRWTL in its reply and written submissions are as follows:

a) The Commission vide order dated 10.5.2020 in Petition No. 16/TT/2019, where APL was made a party instead of RRWTL, directed to make payment of transmission charges to PGCIL for two bays from 30.11.2018 to 30.3.2019 on account of delay in achieving the COD of the transmission project by RRWTL. Accordingly, no reliance, can be placed upon the aforesaid order, so as to claim payment of transmission charges from RRWTL, as PGCIL did not make RRWTL a party in the Petition No. 16/TT/2019.



b) RRWTL ought to have been made a Respondent as it is a necessary party, when certain claims were being made against RRWTL. As PGCIL has not made RRWTL as Respondent in Petition No. 16/TT/2019, it suffers from non-joinder of necessary party. As a result, the order dated 10.5.2020 is *non-est* and *void ab initio*. This defect cannot be corrected in the truing up Petition filed by the Petitioner for 2014-19 tariff period.

c) Reliance is placed on the Hon'ble Supreme Court judgements, (i) *Ramrao v. All India Backward Class Bank Employees Welfare Assn. (2004) 2 SCC 76*] (Para 27 & 37) and *Girjesh Shrivastava and Others V. State of Madhya Pradesh and Others, (2010) 10 SCC 707* (Para 20- 23), wherein Hon'ble Supreme Court made it clear that non-joinder of a necessary party goes to the root of an order, and that such a defect is fatal which cannot be corrected in the present proceedings.

d) Delay in achieving SCOD of the TBCB transmission line by RRWTL was on account of occurrence of certain *force majeure* events which the Commission in its order dated 9.10.2019 in Petition No 326/MP/2018 has already condoned and extended the SCOD from 30.11.2018 to 30.3.2019.

e) Once *force majeure* was accepted by the Commission, it is deemed that there is no delay in achieving COD by RRWTL and as such no liability qua payment of transmission charges under non-POC/ sharing mechanism can be fastened on RRWTL for the delay.

f) Reliance placed by PGCIL on order dated 10.5.2020 in Petition No. 16/TT/2019 is completely misplaced as there is no applicability of the aforesaid order on the present proceedings. Once, the said delay is held to be



on account of *force majeure events*, then as per the judgement dated 14.9.2020, passed by the APTEL in Appeal No 17 of 2019, titled as *NTL Vs. CERC & Ors.* no transmission charges can be levied by PGCIL. This proposition squarely applies to the present case as the delay by RRWTL stands condoned on account of occurrence of *force majeure events*.

g) The demand of the Petitioner for levy of transmission charges on RRWTL is also contrary to the provisions of the 2010 Sharing Regulations.

h) RRWTL was never intimated about the proceedings of Petition No. 16/TT/2019. APL participated in the bid, but ATL was the 'investing affiliate' as per the Share Purchase Agreement dated 23.11.2015. APL and ATL are two separate entities. In fact, APL is not even a transmission licensee. When APL is not a transmission licensee, then the commissioning/ non-commissioning of the associated transmission system cannot be under its scope. On the other hand, RRWTL is a separate company and an independent legal entity.

i) RRWTL vide its letter dated 20.6.2020 categorically informed PGCIL that it made an error by making APL as a party and therefore, the invoice was wrongly raised upon RRWTL.

j) Making RRWTL a party in the true-up proceedings, cannot cure the fatal error/ defect engrained in the earlier tariff proceedings and the tariff order dated 10.5.2020, qua the non-joinder of RRWTL as a party Respondent.

k) In view of the APTEL's judgment dated 9.5.2008 in Appeal No. 9 of 2008, "*Karnataka Power Transmission Corporation Limited v. KERC*", PGCIL



cannot seek to claim any charges from RRWTL in the present true-up proceedings under Petition No. 30/TT/2021.

l) PGCIL cannot make any claim for recovery of transmission charges in case of a mismatch in commissioning of transmission system between two transmission licensees, when one of such transmission licensees is delayed due to *force majeure* events. No claim for recovery of transmission charges can be made by PGCIL in the true-up proceedings of Petition No. 30/TT/2021 as well as in the proceedings of Petition No. 31/MP/2021.

m) APTEL judgment dated 14.9.2020 in Appeal No. 17 of 2019 squarely applicable to the present case as the delay by RRWTL stands condoned by this Commission on account of occurrence of *force majeure* events vide order dated 9.10.2019 in Petition No. 326/MP/2018.

n) If an element/ asset of PGCIL being developed under Section 62 of the 2003 Act is ready, but the other part of the same ISTS (i.e., developed by RRWTL) is not ready, then PGCIL is only entitled to claim IDC and IEDC as part of its ARR/ tariff to be recovered under the PoC Mechanism. The 2010 Sharing Regulations do not contemplate levy of transmission charges from one 'inter-State' transmission licensee to another 'inter-State' transmission licensee.

o) A combined and harmonious reading of the 2014 Tariff Regulations and the 2010 Sharing Regulations shows that there cannot be part commissioning of inter-dependent elements of ISTS being developed under Section 62 of the 2003 Act. While determining tariff under Section 62, an ISTS asset has to be considered as one composite asset, which cannot be broken



only on account of there being separate licensees. The two 765 kV line bays at Raipur 765/400 kV of PGCIL was 'inter-dependent' upon the Raipur PS (Powegrid)-Rajnandgaon (TBCB) 765 kV D/C line of RRWTL.

p) This fact of inter-dependency is also 'admitted' by PGCIL in Petition No. 31/MP/2021, wherein it has been stated that "it was decided that 2 numbers of 765 kV line bays at Raipur 765/400kV pooling station were to be implemented by the Petitioner in tandem with the above transmission system to be developed through TBCB."

q) The transmission assets of PGCIL could not have been commissioned without the commissioning of the RRWTL asset, and that the only remedy which is available with PGCIL being a Section 62 of the 2003 Act project is to claim IDC and IEDC, etc., as part of recovery of transmission tariff post commissioning of RRWTL asset, in accordance with the sharing/ PoC Mechanism, for the element which is ready but could not be put to use.

r) PGCIL's claim for payment of transmission charges in a bilateral manner is in complete derogation of Notification dated 15.1.2021 issued by the Ministry of Power (MoP) to this Commission, which provides that the liability of a transmission licensee, if any, cannot go beyond the four corners of the TSA. The MoP notification is in the nature of a clarification qua the interpretation of the regulatory framework, and accordingly, there cannot be a levy of transmission charges by one inter-state transmission licensee upon another inter-state transmission licensee.



- s) The order dated 10.5.2020 in Petition No. 16/TT/2019, wherein APL was imposed with bilateral transmission charges, amounts to adding words to a fiscal statute, which is impermissible in law
- t) The Commission cannot proceed to provide for something which is not at all contemplated under the 2014 Tariff Regulations and the 2010 Sharing Regulations. Even regulatory powers cannot be exercised on account of the principles settled by the Hon'ble Supreme Court in the Constitution bench decision in *PTC v. CERC* [(2010) 4 SCC 603].

Submissions of MSEDCL, Respondent No. 4

7. The gist of the submissions made by MSEDCL in its reply is as follows:
- a) MSEDCL is one of the beneficiaries in the Western Region. However, the present claim of the Petitioner for recovery of transmission charges from COD i.e., 30.11.2018 till the COD of the associated transmission line i.e., 31.03.2019 cannot be fastened upon the DISCOMs as the beneficiaries have not used the assets for the claim period. No such liability towards payment of transmission charges can be fastened under law upon the Respondent nor does the same is provided in the 2014 Tariff Regulations or the 2010 Sharing Regulations.
- b) As regards the suggestion of recovery of the same through the PoC Pool is concerned, the same cannot be made so, for the reason that transmission charges for the period of mismatch in commissioning of inter-linked upstream/downstream assets were in the nature of 'damages' for delay in commissioning of assets and hence could not qualify as sharing of



transmission charges. The same view was taken by APTEL in its judgement dated 29.3.2019 in Appeal No. 17 of 2019. The said mode of recovery as suggested from the PoC Pool is not governed by any Regulations on the issue of transmission charges and its liability thereof and hence cannot be devised through a judicial order.

c) The Commission vide its order dated 10.5.2020 in Petition No. 16/TT/2019 had duly held APL liable for payment of the claimed transmission charges.

d) Since the Commission had allowed extension of SCOD of transmission assets from 23.11.2018 to 31.03.2019 vide its order dated 9.10.2019 in Petition No. 326/MP/2018, as there is no Regulation notified by this Commission regulating the obligations for the mismatch period, therefore the present issue needs to be resolved only through framing of appropriate Regulations in this regard, as also directed by APTEL in Appeal No. 17 of 2019 by following the due procedure. Hence, no liability in absence of any Regulations can be fastened upon the Respondents through a judicial order, which otherwise will have an industry impact.

Submissions of MPPMCL, Respondent No. 1

8. MPPMCL, Respondent No.1 has filed its written submissions dated 23.11.2021. The gist of its submissions is as under:

(a) Neither the 2014 Tariff Regulations nor the 2010 Sharing Regulations provide for transmission charges for the period when the asset is not put to use for the beneficiaries. Hence, the beneficiaries cannot be burdened with



the load of suffering the transmission charges for the period during which assets were not put into use.

(b) At the relevant time, there were no Regulations in force governing the specific issues of mismatch involved in present case. Subsequent to the disputed period in instant petition, the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (“the 2020 Sharing Regulations”) came into force with effect from 1.11.2020. The said 2020 Sharing Regulations cannot be applied retrospectively. However, in a way of removal of difficulty and in exercise of valuable discretionary power vested with the Commission, a view that is consonant to and not in derogation to the spirit of the subsequently enforced 2020 Regulations may be taken by the Commission.

9. The matter was heard on 2.11.2021 through video conferencing and order was reserved.

Analysis and Decision

10. We have considered the submissions of the Petitioner and Respondents and perused the material on record and the orders issued by the Commission which have a bearing on the effective adjudication of the issues raised in the instant Petition. The Petitioner has submitted that Petition No.16/TT/2019 was filed for approval of COD and determination of tariff for the transmission assets (2 number of bays) for the 2014-2019 tariff period and all the beneficiaries of the said transmission assets including APL, who was the successful bidder for implementation of the downstream transmission assets, were arrayed as Respondents. Vide order dated 10.5.2020 in



Petition No. 16/TT/2019, the Commission held APL liable for the transmission charges for the period from 30.11.2018 to 30.03.2019 as the downstream assets under the scope of APL were not ready. As per the Petitioner, RRWTL i.e. Respondent No.15, was the SPV implementing the downstream assets which were to be developed under the TBCB route and RRWTL was inadvertently not arrayed as a Respondent. The Petitioner has further submitted that the said error was totally unintentional and unwitting. Accordingly, the Petitioner has prayed to the Commission to condone this inadvertent error.

11. Based on the Commission's order dated 10.5.2020 in Petition No. 16/TT/2019, the Petitioner raised bilateral bill on RRWTL towards transmission charges of the transmission asset for the mis-match period. RRWTL has objected to the bill payment on the ground that it was not a party to the proceedings in Petition No. 16/TT/2019 and as such, no liability can be fastened on it in terms of order dated 10.5.2020. We have perused the order dated 10.5.2020 and we are of the view that the said order is binding upon the parties of the Petition only and not against *rem*. We are, therefore, of considered view that such error cannot be rectified subsequently in such miscellaneous Petition.

12. The Petitioner has filed the present Petition seeking issuance of directions for recovery of transmission charges for the period between 30.11.2018 and 30.3.2019, the period of mismatch in commissioning of the interlinked 2 numbers of bays at Raipur Pooling Station and commissioning of the associated transmission line by



Respondent No.15, which was due to delay in commissioning of the associated transmission line by Respondent No.15.

13. The Petitioner has invoked the provisions of Regulation 111 of the CBR with regard to inherent powers of the Commission for directions for recovery of transmission charges towards servicing of 2 numbers of bays of the Petitioner at the Raipur pooling substation associated with the Raipur PS (Powergrid) -Rajnandgaon (TBCB) 765 kV D/c line for the period between 30.11.2018 till 30.3.2019 as adjudicated under Order dated 10.5.2020 passed in Petition No.16/TT/2019. The Respondents have submitted that the exercise of inherent powers is not available when there is a specific provision in the regulations. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in the case of PTC vs CERC [(2010) 4 SCC 603].

14. We have considered the submissions of the parties. Regulation 111 of the CBR is extracted as under:

“Saving of inherent power of the Commission

111. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.”

15. In Civil Appeal No. 1110/2007 (NTPC Vs UPPCL), Hon`ble Supreme Court has recognised the inherent powers of this Commission under Regulation 111 of CBR as under:



“35. The Central Commission, as indicated hereinbefore, has a plenary power. Its inherent jurisdiction is saved. Having regard to the diverse nature of jurisdiction, it may for one purpose entertain an application so as to correct its own mistake but in relation to another function its jurisdiction may be limited. The provisions of the 1998 Act do not put any restriction on the Central Commission in the matter of exercise of such a jurisdiction. It is empowered to lay down its own procedure.”

16. Further, the provisions of Regulation 111 of the CBR are *pari materia* with the provisions of Section 151 of the Code of Civil Procedure. The Hon`ble Supreme Court in Padam Sen v. State Of UP [(1961) 1SCR 884] has dealt with the scope of inherent powers of the Courts under the Code of Civil Procedure (CPC) as under:

"8. Section 151 of the Code reads:

Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code. "

17. In the case of K.K. Velusamy Vs. N. Patattisamy, [(2011) 11 SCC 275], the Supreme Court has held as under:

"12. The Respondent contended that Section 151 cannot be used for reopening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of Section

151 has been explained by this Court in several decisions []. We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in



accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power s co-extensive with the need to exercise such power on the facts and circumstances."

18. From the above two judgments, it emerges that the inherent powers can be exercised in order only to address the procedural infirmities in the CPC to achieve the ends of justice and to prevent abuse of the process of the court. Further, Section 151 of the CPC is not a substantive provision which creates or confers any power or jurisdiction on courts.

19. In the present case, the Commission has determined tariff and decided the issue of sharing of transmission charges vide order dated 10.5.2020 in Petition No 16/TT/2019 as under:

"65. The COD of instant asset has been approved as 30.11.2018 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations due to non-commissioning of the associated transmission system under the scope of Adani Power Limited (APL). Accordingly, the transmission charges in respect of instant Asset from 30.11.2018 till 30.3.2019 shall be borne by APL and w.e.f. 31.3.2019, the transmission charges allowed in this order, as provided in Regulation 43 of the 2014 Tariff Regulations, shall be shared by the beneficiaries and long term transmission customers in terms of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 as amended from time to time."

20. We observe that the Petitioner is seeking a review of the order dated 10.5.2020 in Petition No 16/TT/2019 regarding sharing of transmission charges in



the garb of this Miscellaneous Petition. Therefore, we are of the opinion that it is not a fit case for invoking the inherent jurisdiction under Regulation 111 of the CBR.

21. In light of the above, we find that the present Petition is not maintainable under Section 79(1)(f) of the Act read with Regulation 111 of the CBR.

22. This order disposes of Petition No. 31/MP/2021 in terms of the above discussions and findings.

Sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson

