

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 77/MP/2022

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 11.11.2022

In the matter of:

Petition under Section 79 (c) and Section 79 1(f) of the Electricity Act, 2003 seeking appropriate orders from the Commission directing the Respondent- Khargone Transmission Limited to pay operation and maintenance charges for the elements – bays that have been charged and in use in terms of the Transmission Service Agreement dated 14.3.2016 along with late payment surcharge to Bhopal Dule Transmission Company Limited.

And in the matter of:

Bhopal Dhule Transmission Company Limited,
Unit No. 101, First Floor, Windsor,
Village Kole Kalyan, Off CST Road,
Vidyanagari Marg, Kalina,
Santacruz (Easst), Mumbai-400 098.
(Maharashtra).

.... Petitioner

Vs

1. Khargone Transmission Company Limited,
F-1 Mira Corporate Suites,
Ishwar Nagar,
New Delhi-110 065.
2. Central Transmission Utility,
B-9, Qutub Institutional Area,
Katwaria Sarai,
New Delhi-110 016.

..... Respondents

For Petitioner : Shri Apoorva Misra, Advocate, BDTCL
Ms. Nistha Kumar, Advocate, BDTCL
Shri Lokendra Singh Ranwat, BDTCL
Shri Kelan Patil, BDTCL



For Respondents : None

ORDER

The Petitioner, Bhopal Dhule Transmission Company Limited (BDTCL) has filed the present petition under section 79(1) (c) and section 79 (1) (f) of the Electricity Act, 2003 (in short 'the Act') against Respondent No.1, Khargone Transmission Limited (KTL) for invoking regulatory and adjudicatory jurisdiction of the Commission to direct KTL to make payment of O&M charges to BDTCL as per the provisions of the Transmission Service Agreement (TSA) dated 14.3.2016 as well as applicable regulations of the Commission since the date of charging of elements.

Background

2. IndiGrid Limited (formerly known as Sterlite Grid 1 Limited) through International Tariff Based Competitive Bidding was awarded a Project by the Ministry of Power on 31.1.2011. The Petitioner/BDTCL is the wholly owned subsidiary of IndiGrid Limited and is an Inter-State Transmission System (ISTS) licensee within the meaning of Section 2(73) of the Act. The Petitioner owns and operates Dhule 765/400 kV Sub-station.

3. Respondent No.1, KTL, is a wholly owned subsidiary of Sterlite Grid 4 Limited which was selected as a successful bidder through TBCB process under Section 63 of the Act to establish the transmission system, details of which are given below in paragraph no. 4, on build, own, operate and maintain basis and to provide transmission service to the Long Term Transmission Customers (LTTCs). KTL executed 2 number of 765 kV line bays along with 2 number of Switchable Line Reactor (240 MVar) in the



premises of 765 kV Dhule Sub-station of BDTCL for termination of Khandwa Pool-Dhule 765 kV D/C line (hereinafter referred to as ' the transmission elements'). These transmission elements were charged and put to use after due approvals of Central Electricity Authority (CEA).

4. KTL was to establish and own the following transmission system to provide transmission service to the LTTCs of the project:

- i. Line-in Line-out (LILO) of one circuit of Khandwa-Rajgarh 400 kV D/C Transmission Line at Khargone TPP (KR Line);
- ii. Khargone TPP Switchyard-Khandwa Pool 400 kV D/C (Quad) Transmission Line (KK Line);
- iii. Khandwa Pool-Indore 765 kV D/C Transmission Line (KI Line);
Khandwa Pool-Dhule 765 kV D/C Transmission Line (hereinafter referred to as "KD Line");
- iv. Establishment of 765/400 kV, 2x1500 MVA pooling station at Khandwa (Khandwa S/S);
- v. 2 nos. of 765 kV line bays and 7x80 MVAR switchable line reactors (1 unit as spare) along with 800 Ω NGR and its auxiliaries for Khandwa Pool – Dhule 765 kV D/C at Dhule 765/ 400 kV Sub-station of the Petitioner/ BDTCL (other elements).

5. Accordingly, TSA dated 14.3.2016 with regard to procurement of transmission services for transmission of electricity through TBCB for system strengthening in WR associated with Khargone TPP (1320 MW) was executed by KTL with its LTTCs, namely, Madhya Pradesh Power Management Company Ltd (MPPMCL), Chhattisgarh State Power Distribution Company Ltd. (CSPDCL), Gujrat Urja Vikas Nigam Ltd. (GUVNL), Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), Electricity Department, Government of Goa (GED), DNH Power Distribution Corporation Ltd. (DNH Power), Electricity Department and Daman and Diu (ED-D&D).



6. The said TSA provided that Khargone-Rajgarh line (KR line) was to be executed within 20 months from the effective date i.e. by February, 2018 while Khargone-Khandwa (KK line), Khandwa-Indore (KI line), Khandwa-Dhule (KD line) and all other elements were to be executed within 37 months from the effective date i.e. by July, 2019.

7. Schedule 2 of the said TSA dated 16.3.2016 executed between KTL and its LTTCs provides that O&M charges are payable by the selected bidder to BDTCL as per Central Commission's norms as notified from time to time.

Submissions of the Petitioner

8. The Petitioner has made the following submissions:

- (a) KTL executed the transmission elements i.e. 2 number of 765 kV line bays along with 2 number of switchable line reactor (240 MVAR) in the premises of BDTCL for termination of Khandwa Pool-Dhule 765 kV D/C line at 765 kV Dhule Sub-station.
- (b) KTL was granted transmission licence by the Commission vide order dated 17.11.2016 in Petition No. 157/TL/2016 while tariff was adopted vide order dated 11.11.2016 in Petition No. 156/AT/2016.
- (c) On account of delay in completion of certain elements due to force majeure, KTL in 2019 filed Petition No. 308/MP/2019 seeking to allow its various prayers on account of force majeure and change in law. During pendency of Petition No. 308/MP/2019, KTL also filed Interlocutory Application (IA) No.78 of 2019 praying therein to declare that the applicant is entitled to collect transmission charges as per the provisions of the TSA for various elements from their actual



commercial operation date and permit the applicant to de-link Khandwa Pool-Dhule 765 kV D/C transmission line from rest of the transmission elements as laid down in Schedule 3 of the TSA for optimum utilization of the transmission system to ensure evacuation of the entire generation capacity of NTPC Khargone TPP through the Khargone-Khandwa Pool-Indore corridor by October, 2019 as suggested by CEA in meeting dated 29.7.2019.

- (d) On 21.10.2019, the Commission disposed of the said IA No. 78 of 2019, permitting KTL to declare the commercial operation of (i) Khargone TPP Switchyard-Khandwa Pool 400 kV D/C (quad) transmission line, (ii) Khandwa Pool-Indore 765 kV D/C transmission line and (iii) 765/400 kV, 2x1500 MVA Pooling Station at Khandwa without linking it to commercial operation of the Khandwa Pool-Dhule 765 kV D/C transmission line whose completion was affected by several factors which were claimed by KTL as force majeure and change in law in the main petition.
- (e) The transmission elements were successfully charged on 27.6.2019 after requisite approval of CEA and they are in continuous operation since then. The O & M charges of the transmission elements are being incurred by the Petitioner from the date of charging of the transmission elements.
- (f) The Petitioner sent letter dated 20.5.2021 to KTL claiming operation and maintenance charges of the transmission elements i.e. 2 number of 765 kV line bays for termination of Khandwa Pool-Dhule 765 kV D/C line at 765 kV Dhule Sub-station of BDTCL as per Schedule-2 of the TSA dated 14.3.2016.



- (g) The matter relating to recovery of O&M charges for the transmission elements i.e. 2 number 765 kV line bays for termination of Khandwa Pool-Dhule 765 kV D/C line at 765 kV Dhule Sub-station of BDTCL was raked up by the Petitioner in 544th OCC meeting dated 22.6.2021. In the said 544th OCC meeting, KTL informed that bays and reactors of KTL at Dhule end are in service as per system requirement since charging. KTL is not getting any tariff for this. Once KTL gets tariff, the same will be passed on to BDTCL. KTL performed O&M of Dhule bays till 31.3.2021.
- (h) Referring to 544th OCC discussions dated 22.6.2021, the Petitioner sent letter dated 28.7.2021 to KTL informing that charging of line reactors and bays was facilitated as per the request of KTL and as per FTC procedure, trial run operation certificate was issued by WRLDC which established that the reactor and bays at Dhule Sub-station belong to KTL are operational and being operated by BDTCL as per the requirement of KTL. Therefore, KTL is liable to pay O&M charges to BDTCL as per the TSA.
- (i) KTL through its letter dated 14.9.2021 informed the Petitioner that its claim for operation and maintenance charges of the transmission elements will be payable only after the concerned transmission elements achieve COD. However, Dhule bays have not achieved COD and the same is evident from the Commission's order dated 21.9.2019 in IA No. 78 of 2019 in Petition No. 308/MP/2019 wherein COD of all elements except Dhule bays and Khandwa Pool-Dhule 765 kV D/C transmission line (KD line) have been declared and KD line achieving COD is a pre-requisite for COD of Dhule bays. Further KTL and



SPTL personnels were manning Dhule bays and maintenance works, therefore, BDTCL's claim is not maintainable.

- (j) On account of disagreement between KTL and BDTCL on the issue of payment of O&M charges of the transmission elements, no formal Agreement for O&M charges could be finalized between the parties.
- (k) Transmission elements were required to be executed by June, 2019 as per Schedule 2 of the TSA. The bays have been charged and put to use in 2019 itself and as such KTL is obligated to pay the Petitioner in terms of Schedule 2 of the TSA.

9. KTL has made the following submissions:

- (a) The dispute covered in the present petition is neither covered under Section 79 (1) (c) nor Section 79 (1) (f) of the Act. The present dispute is a private, bilateral, unregulated dispute between two transmission licensees for O&M charges purportedly payable by one licensee to the other. Thus, this Commission has no jurisdiction over the present dispute. Further, it is not a case where this Commission's Regulations/statutory contracts notified by the Ministry of Power under Section 63 of the Act clearly mention that this Commission shall exercise jurisdiction over the disputes arising thereunder. Merely because the dispute is between generating companies and/or inter-state transmission licensees, the Commission's jurisdiction cannot be invoked.
- (b) The present dispute is between two inter-state transmission licensees relating to O&M charges for a portion of transmission system owned by KTL but alleged



to be operated and maintained by the Petitioner. The present dispute does not have any relationship with tariff or any other regulated aspect (such as grid security) nor has the Petitioner claimed otherwise. No consumers are going to be affected by the outcome of the present dispute and as such the consumers' interests are not at stake since this is purely a bilateral financial disagreement.

- (c) The Petitioner has filed the present petition in the purported capacity of an O&M contractor and not as a transmission licensee. The relief as has been sought against KTL is in the capacity of a purported employer receiving O&M services (not as transmission licensee). Such a bilateral contractor-employer relationship between the Petitioner and KTL is not subject to regulation by the Commission under Section 79 of the Act.
- (d) O&M norms in the TSA are only for the purpose of benchmarking the charges payable for carrying out operation and maintenance activities under a bilateral contract between two entities, namely, BDTCL and KTL. Merely by reference to the O&M norms stipulated under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (2019 Tariff Regulations), the Commission does not vest the jurisdiction for adjudication of such disputes. Under KTL's TSA, the Commission has jurisdiction to only adjudicate disputes between the TSP (i.e. KTL) and its LTTCs. The TSA only stipulates the norms according to which O&M charges may have to be paid by KTL. It does not confer any jurisdiction upon the Commission, either under Article 16 - the Dispute Resolution clause of the TSA or any other provision thereof, to adjudicate any disputes arising out of payment/ non-payment of O&M charges. BDTCL is not a



party to KTL's TSA and Article 16 of the TSA only confers jurisdiction to adjudicate the disputes between parties to the TSA on this Commission. Thus, the present dispute is not maintainable.

- (e) Appellate Tribunal for Electricity (APTEL) vide judgment dated 11.11.2013 in the matter of Tamil Nadu Generation and Distribution Corporation Limited Vs. CERC & Ors., Appeal Nos. 51 and 79 of 2013 considered a dispute on similar facts where Powergrid Corporation of India Ltd. (PGCIL) was an inter-state transmission licensee and Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) – a State Utility relating to charges for operation and maintenance of a portion of transmission system owned by PGCIL but operated and maintained by TANGEDCO on behalf of PGCIL. The APTEL in the said judgment unequivocally held that relationship between PGCIL and TANGEDCO with respect to O&M services provided by TANGEDCO is that of an employer and contractor and the same cannot be the subject of regulation by the Commission under Section 79 of the Act. Thus, the present petition under Section 79 (1) (c) or Section 79 (1) (f) of the Act is not maintainable and liable to be rejected.

Submissions of KTL On Merits

- (a) KTL has denied the claim of the Petitioner for operation and maintenance charges (O&M Charges) of the transmission elements for the period between 2019-20 to 2021-22 on the grounds that it was done by BDTCL or through Sterlite Power Transmission Limited (SPTL).
- (b) The O&M activities carried out by SPTL purportedly for the Petitioner were only restricted to the assets owned and operated by the Petitioner. SPTL never



carried out any O&M activities for the assets of KTL within the sub-station of the Petitioner in the capacity of the Petitioner's agent. This position continued even though the Petitioner is owned by a separate company, i.e., the Indgrid Trust (IGT). The said assertions are, therefore, denied as incorrect.

- (c) The O&M activities for KTL's elements was done by KTL itself from both Khandwa and Dhule locations and this fact is evident from the minutes of the 544th OCC Meeting dated 22.06.2021 [pg. no. 203 of the Consolidated Pleadings].
- (d) Schedule 3 of the TSA explicitly states that payment of transmission charges for the transmission elements can be considered only after successful execution of all pre-required elements, inter alia, including KD line. KD line was the last element to be executed by KTL on 13.12.2021, while the transmission elements were executed in 2019 and they came into regular service only on 13.12.2021 after the charging of KD line. Therefore, COD of the elements was declared on 13.12.2021 and since then they are in commercial operation.
- (e) KTL has prayed that the present petition may be dismissed on the ground on maintainability alone with imposition of costs.

10. The Petitioner in its rejoinder has reiterated the submissions as made by it in the petition. The Petitioner has, however, placed reliance on the judgments in the case of PTC India Limited Vs. CERC (2010) 4 SCC 603 and Chhatisgarh State Electricity Board Vs. CERC (2010) 5 SCC 23. Besides this, the Petitioner has also placed



reliance on the judgment of APTEL in Appeal No. 94 of 2012 titled BSES Rajdhani Power Limited Vs. Delhi Electricity Regulatory Commission & Anr., to contend that the present dispute is covered under Section 79 of the Act.

11. The Petitioner vide affidavit dated 23.8.2022, has mainly made the following additional submissions:

- (a) The Petitioner and KTL are not related entities. The Petitioner is carrying out O&M activities at BDTCL Sub-station through separate legal entity viz- SPTL. Accordingly, SPTL is working as a contractor to BDTCL and not as owner/parent company.
- (b) The settled position of law is that in the event of delay in execution of any element or the project, the respective licensee is not permitted to recover tariff till the said delayed element or the project is executed/put to use. However, in the present case, all the elements were required to be executed by 2019. Despite delay in execution of the entire KTL project, some of the elements were executed and charged. However, the issue of delay and extension of time is pending adjudication before the Commission in Petition No. 237/MP/2021.
- (c) No formal agreement was executed between the Petitioner and KTL for payment of O&M charges. However, the Petitioner has furnished the details of O&M activities being carried out with reference to the transmission elements at the Petitioner's Sub-station and claimed the O&M expenses as per Regulation 35 of the 2019 Tariff Regulations.



12. The matter was heard on 29.7.2022 through virtual mode. After hearing, order was reserved on admissibility of the petition.

13. Learned counsel for the Petitioner has mainly contended that transmission elements were constructed by KTL at Dhule Sub-station of the Petitioner and reference of the same has been made in Schedule-2 of the TSA dated 14.3.2016. Schedule-2 of the TSA provides that O&M charges for the transmission elements shall be payable by the selected bidder to the Petitioner as per the norms notified by Central Electricity Regulatory Commission. Learned counsel further contended that KTL has refused to make payment of the O&M charges pertaining to transmission elements to the Petitioner as per Schedule-2 of the TSA dated 14.3.2016 for the period 2019-20 to 2021-22. Learned counsel contended that the transmission elements were successfully charged on 27.6.2019 after requisite approval of CEA and since then they are in continuous service. Learned counsel for the Petitioner also contended that no formal Agreement was executed between the Petitioner and KTL for payment of O&M charges of the transmission elements. Learned counsel contended that the Commission can entertain the present petition under Section 79 of the Act.

14. KTL in its reply has mainly contended that the dispute covered in the present petition is neither covered under Section 79 (1) (c) nor under Section 79 (1) (f) of the Act. KTL has further contended that present petition is filed by the Petitioner in the purported capacity of an O&M contractor and not as a transmission licensee. The relief as has been sought against KTL is in the capacity of a purported employer receiving O&M services (not as transmission licensee). KTL has contended that merely because the dispute is between generating companies and/or inter-state transmission



licensees, the Commission's jurisdiction cannot be invoked. KTL has further contended that O&M norms in the TSA are only for the purpose of benchmarking the charges payable for carrying out operation and maintenance activities under a bilateral contract between two entities, namely, BDTCL and KTL, and that reference to the O&M norms stipulated under the 2019 Tariff Regulations do not vest the jurisdiction for adjudication of such disputes with this Commission. KTL has contended that in its TSA executed with LTTCs, this Commission has only jurisdiction to adjudicate disputes between the TSP (i.e. KTL) and its LTTCs. KTL has contended that the Petitioner is not a party to KTL's TSA, and that only Article 16 of the TSA confers jurisdiction to adjudicate disputes between parties to the TSA on this Commission. KTL has cited APTEL's judgment dated 11.11.2013 in Appeal Nos. 51 and 79 of 2013 titled Tamil Nadu Generation and Distribution Corporation Limited Vs. CERC & Ors., to contend that relationship in the nature of an employer and contractor cannot be the subject of regulation by the Commission under Section 79 of the Act. Thus, the present petition under section 79 (1) (c) or section 79 (1) (f) of the Act is not maintainable and is liable to be rejected.

15. KTL has denied the claim of the Petitioner for O&M charges of the transmission elements for the period from 2019-20 to 2021-22 having been done by the Petitioner or through SPTL. KTL has contended that O&M activities carried out by SPTL for the Petitioner were restricted to the assets owned and operated by the Petitioner. KTL has also contended that SPTL never carried out any O&M activities for the assets of KTL within the sub-station of the Petitioner in the capacity of the Petitioner's agent.



Analysis and Decision

16. We have considered the contentions of the parties and have gone through record carefully. The question that needs to be decided first is whether the Commission is vested with the jurisdiction to entertain the present dispute under Section 79 (1) (c) and 79 (1) (f) of the Act.

17. Admittedly, both BDTCL and KTL are inter-state transmission licensees. It is an admitted fact that the Petitioner owns and operates Dhule 765/400 kV Sub-station. From the perusal of record, it is noticed that KTL is a wholly owned subsidiary Company of Sterlite Grid 4 Limited which was selected as successful bidder through TBCB process under Section 63 of the Act to establish and own the following transmission system to provide transmission service to the LTTCs of the project:

- (a) Line-in Line-out (LILO) of one circuit of Khandwa-Rajgarh 400 kV D/C Transmission Line at Khargone TPP (KR Line);
- (b) Khargone TPP Switchyard-Khandwa Pool 400 kV D/C (Quad) Transmission Line (KK Line);
- (c) Khandwa Pool-Indore 765 kV D/C Transmission Line (KI Line);
- (d) Khandwa Pool-Dhule 765 kV D/C Transmission Line (hereinafter referred to as "KD Line");
- (e) Establishment of 765/400 kV, 2x1500 MVA pooling station at Khandwa (Khandwa S/S);
- (f) 2 nos. of 765 kV line bays and 7x80 MVAR switchable line reactors (1 unit as spare) along with 800 Ω NGR and its auxiliaries for Khandwa Pool – Dhule 765 kV D/C at Dhule 765/ 400 kV Sub-station of the Petitioner/ BDTCL (other elements).

18. The Petitioner has claimed that the transmission elements i.e. 2 number of 765 kV line bays for termination of Khandwa Pool-Dhule 765 kV D/C line at 765 kV Dhule Sub-station were charged on 27.6.2019 after requisite approval of CEA and they are in continuous operation since then. On perusal of note appended to Schedule-2 of the TSA dated 14.3.2016, we notice that O&M charges are payable by the selected bidder



i.e. Sterlite Grid 4 Limited/its wholly owned subsidiary Company i.e. KTL to BDTCL as per the Commission's norms notified from time to time.

19. KTL has raised objection that the present dispute cannot be entertained under Section 79 (1) (c) and Section 79 (1) (f) of the Act as the nature of the present dispute is bilateral in nature while the Petitioner has contended that the Commission can entertain the present dispute under Section 79 of the Act. KTL by referring to the judgment of APTEL dated 11.11.2013 in Appeal Nos. 51 and 79 of 2013 in the matter of PGCIL and TANGEDCO has contended that APTEL in the said judgment on similar facts observed that O&M services provided by TANGEDCO is in the nature of an employer and contractor and thus the same cannot be the subject of regulation by the Commission. KTL has denied the claim of the Petitioner for operation and maintenance charges of the transmission elements for the period between 2019-20 to 2021-22 on the ground that it was done by the Petitioner or through SPTL.

20. We have perused the TSA dated 14.3.2016 executed between KTL and its LTTCs, namely, MPPMCL, CSPDCL, GUVNL, MSEDCL, DNH, DND and GED. However, we note that BDTCL is not a signatory to the said TSA. It has been admitted by the Petitioner that there is no separate Agreement between BDTCL and KTL with reference to payment of O&M charges for 2 number of 765 kV line bays for termination of Khandwa Pool-Dhule 765 kV D/C line at 765 kV Dhule Sub-station of BDTCL. The Petitioner contends that both BDTCL and KTL are ISTS licencees and as such the Commission is well within its power to exercise jurisdiction under Section 79 (1) (c) and Section 79 (1) (f) of the Act to adjudicate the present dispute.



21. On careful consideration of the contentions of Petitioner, we find that it was KTL which constructed 2 number of 765 kV line bays at 765 kV Dhule Sub-station owned by BDTCL for which BDTCL was assured by the selected bidder/KTL that O&M charges will be payable to it as per Central Commission's norms as notified from time to time. We also note that BDTCL has contended that it is carrying out O&M activities for 2 number of 765 kV line bays of KTL at its Dhule Sub-station. However, KTL has refused to make payment of O&M activities carried out by it for 2019-20 to 2021-22 periods.

22. On analysis of the contentions of Petitioner and KTL, we find that the decision to construct 2 number of 765 kV line bays at 765 kV Dhule Sub-station owned by BDTCL was with mutual consent of the selected bidder/KTL and BDTCL. BDTCL agreed to successful bidder KTL that it will manage O&M of the said bays subject to payment of O&M charges. Thus, the nature of contract in the present case is based on mutual arrangement. However, no separate Agreement is said to have been executed between BDTCL and successful bidder/KTL with regard to payment of O&M charges for the said bays. In our view, in the present case BDTCL is not acting in the capacity of an ISTS licensee but it is performing its duties as an O&M service provider to the successful bidder/KTL on being employed by KTL. Merely because it has been recorded in Schedule-2 of the TSA dated 14.3.2016 that O&M charges will be payable by selected bidder to BDTCL on the norms of Central Commission, and that both the parties to the present petition are ISTS licensees, the jurisdiction of the Commission under Section 79 of the Act cannot be invoked. Perusal of record shows that BDTCL is to provide space and O&M services for the said bays at its Dhule Sub-station and



the successful bidder/KTL is to construct the bays/transmission elements and to make payment of O&M charges and as such arrangement is bilateral.

23. There is no doubt that the Central Commission is vested with the power to regulate the inter-State transmission of electricity. In our view, where the terms and conditions of a contract are for providing operation and maintenance services to the inter-state transmission licensee by any licensee or entity, the same will not fall within the definition of regulation of inter-State transmission of electricity.

24. Further, as regards the payment of O&M charges as per the norms of the Central Commission agreed between the two parties to a contract, it is observed that the Commission notifies tariff regulations from time to time wherein O&M charges as a component of transmission tariff is granted to inter-State transmission licensees. In our opinion, these regulations are not applicable for the charges of operation and maintenance services being provided to the inter-State transmission licensee by any entity/agency.

25. APTEL vide its judgment dated 11.11.2013 in Appeal Nos. 51 and 79 of 2013 in the matter of Tamil Nadu Generation and Distribution Corporation Ltd. Vs. CERC and Ors. examined Section 79(1) of the Act. Relevant extracts of the said judgment are as follows:

“15. Let us now examine Section 79(1) of the Electricity Act, 2003.

“Section 79 (1) of the Electricity Act, 2003 (“2003 Act”) reads as under:

“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) -----

(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;

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16. Thus, under Section 79(1)(f) of the Electricity Act, 2003, the Central Commission is empowered to adjudicate upon the disputes involving generating companies or Transmission Licensees in regard to matters connected with Clauses (a) to (d) of Section 79(1). Clauses (a) and (b) deal with regulation of tariff of generating companies. Clause (c) deals with regulation of inter- State transmission of electricity. Clause (d) deals with determination of tariff for inter-State transmission of electricity.

17. We feel that the present dispute is not related to determination of tariff for inter-State transmission of electricity or regulation of inter-State transmission of electricity. The dispute in this case is between an inter- State Transmission Licensees and a State utility relating to charges for operation and maintenance of a portion of transmission system owned by the inter-State Transmission Licensee but operated and maintained by the State utility on behalf of the former. The inter-State Transmission Licensee (POWERGRID) and TNEB for their mutual convenience and by mutual consent have agreed that the bays at Alamathy owned by POWERGRID will be operated and maintained by TNEB. The charges for providing the operational and maintenance services by TNEB to POWERGRID is not a matter under the jurisdiction of the Central Commission.

18. The Central Commission under Section 79(1)(d) of the Electricity Act has to determine the tariff of the Transmission Licensee involved in the business of inter-State transmission of electricity. The Central Commission does not have the jurisdiction over the arrangement that a inter-State Transmission Licensee has with another licensee or any other entity for providing operation and maintenance services for its transmission system and the rates payable to such licensee or entity for providing the operation and maintenance services.

19. The Central Commission has power to regulate the inter-State transmission of electricity. However, the terms and conditions of the contract for providing operation and maintenance services to the inter-State Transmission Licensee by any licensee or entity will not fall under regulation of inter-State transmission of electricity and will not fall under the jurisdiction of the Central Commission.”



26. In the light of above findings of the APTEL, it is clear that the matter in dispute before the APTEL related to charges for operation and maintenance services by a State Utility as a Contractor to a transmission licensee of inter-State transmission system (Powergrid) and as such is beyond the jurisdiction of the Central Commission.

27. The Petitioner has relied on the judgment of APTEL dated 4.9.2012 in Appeal No. 94 of 2012 in the matter of BSES Rajdhani Power Ltd. Vs Delhi Electricity Regulatory Commission & Anr., to contend that Sections 61 and 79 of the Act not only deal with the tariff but also deal with the terms and conditions of tariff, and that the terms and conditions of tariff include all the terms related to tariff. In our view, the facts of the said judgment dated 4.9.2012 of APTEL differ from the facts of the present case as in the present case the matter of O&M services being provided by an inter-state transmission licensee in the capacity of contractor to another ISTS TBCB licensee is involved. Therefore, reliance placed on the said judgment by the Petitioner is misconceived.

28. The Petitioner has also relied on the judgment of Hon'ble Supreme Court in the matter of PTC India Ltd. Vs. CERC (2010) 4 SCC 603 to contend that Sections 61, 62 and 64 of the Act indicate the dual nature of functions performed by the Regulatory Commissions, viz., decision-making and specifying terms and conditions for tariff determination including the terms and conditions which may be specified under Section 61 of the Act. We have perused, the said judgment of Hon'ble Supreme Court and are of the view that in the present case we are dealing with a dispute of operation and maintenance services provided by BDTCL to KTL under mutual agreement in the capacity of contractor which is not covered under any of the provisions of the Section 79 (1) Act. Thus, reliance placed by the Petitioner on the said judgment is also



misconceived as the said judgment has broadly laid down principles where the power under Section 79 of the Act with regard to regulation can be exercised by the Commission. However, the present dispute of O&M service being provided by one ISTS licensee in the capacity of contractor to another ISTS licensee, is bilateral in nature and thus the Commission cannot exercise its power Section 79 of the Act.

29. For the reasons mentioned above in detail, we are of the view that, in the facts and circumstances of this case, the Commission has no jurisdiction to entertain the present petition. Accordingly, Petition No. 77/MP/2022 is disposed of.

sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

