

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 8/MP/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 17th October, 2024

In the matter of:

Petition under Section 79 of the Electricity Act, 2003 read with Regulations 111, 112, and 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for enforcement/ execution of the tariff order dated 4.3.2021 passed by the Commission in Petition No. 148/TT/2019 directing bilateral billing and payment of transmission charges by Respondent No. 1 to the Petitioner on account of delay in commissioning of its transmission network.

Power Grid Corporation of India Limited,
SAUDAMINI, Plot No. 2,
Sector-29, Gurugram-122001, Haryana

...Petitioner

Versus

Tamil Nadu Transmission Corporation Limited,
5B Block 144, Anna Salai,
Chennai (formerly Madras) – 600002,
Tamil Nadu

Central Transmission Utility of India Limited,
Plot No. 2, Sector 29, Gurugram,
Gurgaon– 122001, Haryana

...Respondent(s)

Parties present:

Shri Shubham Arya, Advocate, PGCIL
Ms. Pallavi Saigal, Advocate, PGCIL
Ms. Tanya Singh, Advocate, PGCIL
Shri Devyanshu Sharma, Advocate, PGCIL
Shri S. Vallinayagam, Advocate, TANTRANSO

ORDER

The present Petition has been filed by Power Grid Corporation of India Limited (“**Petitioner/ PGCIL**”) under Section 79 of the Electricity Act, 2003 (**the ‘Act’**) read with Regulations 111, 112 and 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (in short “**the Conduct of Business Regulations, 1999**”) seeking enforcement/execution of the tariff order dated 4.3.2021 passed by the Commission in Petition No. 148/TT/2019 (“**Tariff Order**”) directing bilateral billing and payment of the transmission charges by Tamil Nadu Transmission Corporation Limited (“**Respondent No. 1/ TANTRANSCO**”) to the Petitioner on account of delay in commissioning of its transmission network. The Petitioner has made the following prayers in the instant petition:

- a) Execute the Order dated 4.3.2021 passed in Petition No. 148/TT/2019 & direct the Respondent No. 1- Tamil Nadu Transmission Corporation Limited (TANTRANSCO) to pay/clear all outstanding dues along with applicable Late Payment Surcharge with immediate effect;*
- b) Award the cost of litigation to the Petitioner; and*
- c) Pass such other order(s) and/or direction(s) as this Commission may deem fit and proper in the facts and circumstances of the case.*

Factual matrix:

2. The Petitioner/PGCIL, a deemed transmission licensee under the provisions of the Act, has been entrusted with the implementation of certain elements that are part of the transmission system associated with the Kalpakkam PFBR (500 MW) project in the Southern Region. The scope of the project was discussed and agreed upon in the 21st meeting of the Standing Committee on Power System Planning in the Southern Region held on 22.9.2005.

3. Respondent No. 1/TANTRANSCO is an Intra-State Transmission Licensee and also designated as the State Transmission Utility under Section 39 of the Act for the State of Tamil Nadu.

4. Respondent No. 2/CTUIL has been designated as the Central Transmission Utility under Section 38 of the Act. CTUIL in addition to functions contained in Section 38 of the Act, is performing the function of the billing, collection, and disbursement of Inter-State Transmission Charges.

5. The background of the present petition emanates from the following series of events:

(i) Earlier, the Petitioner had filed Petition No. 105/TT/2012 before the Commission seeking approval of the transmission tariff for (i) Kalpakkam PFBR-Kanchipuram 230 kV D/C line ('Asset-III'), (ii) Kalpakkam PFBR-Arani 230 kV D/C line ('Asset-II'), and (iii) Kalpakkam PFBR-Sirucheri 230 kV D/C line ('Asset-I'). The COD of Asset-I, Asset-II, and Asset-III were 1.12.2011, 1.4.2012, and 1.4.2014, respectively. The Commission, vide its order dated 29.4.2015 in Petition No. 105/TT/2012, had not approved the COD of the Kalpakkam PFBR Kanchipuram 230 kV D/C line.

(ii) The said order dated 29.4.2015 was challenged before the Appellate Tribunal for Electricity ("APTEL") in Appeal No. 168/2015. The APTEL, vide its judgment dated 20.9.2018, granted liberty to the Petitioner to file an application before the Commission for seeking approval of the Kalpakkam PFBR Kanchipuram 230 kV D/C line in terms of the Tariff Regulations, 2014

and hence the matter was remitted back to the Commission for considering the matter afresh.

(iii) Pursuant to the remand, the Petitioner filed a fresh Petition, *i.e.*, Petition No. 148/TT/2019, in relation to the approval of the date of commercial operation of the Kalpakkam PFBR Kanchipuram 230 kV D/C line in terms of Regulation 4(3)(ii) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in Short “the Tariff Regulations 2014”). The Commission, vide its Tariff Order, approved the COD of the Kalpakkam PFBR Kanchipuram 230 kV D/C line as 1.4.2014 under Regulation 4(3)(2) of the Tariff Regulations, 2014. Further, keeping in view that BHAVINI and TANTRANSCO were not read ready as on the said date, the Commission directed BHAVINI and TANTRANSCO to share the transmission charges from COD of the asset, *i.e.* 1.4.2014 in equal proportion and further held that only after the commissioning of the generation by BHAVINI or transmission system by TANTRANSCO, *i.e.*, when the Kalpakkam PFBR Kanchipuram 230 kV D/C line would be put to regular use, the transmission charges of the said asset will be included in the PoC.

(iv) Thereafter, the Petitioner approached the Commission for truing up of the transmission tariff for the 2014-19 period under the Tariff Regulations 2014 and determination of the transmission tariff for the 2019-24 period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short “**the Tariff Regulations 2019**”) in respect of the Assets-1, 2 and 3. The Commission vide its order dated 5.12.2021 in Petition No. 19/TT/2022 (“**Truing-up Order**”) trued up the transmission tariff of the 2014-19 period.

(v) TANTRANSCO has also filed an appeal (Appeal No. 140 of 2024) against the truing-up Order before the APTEL, along with an application seeking a stay of the truing-up Order, which is currently pending.

3. The Petitioner has approached the Commission invoking the provisions of Section 79 of the Act and Regulations 111, 112, and 119 of the Conduct of Business Regulations, 1999 for the execution of a Tariff Order directing the TANTRANSCO to pay the outstanding dues along with the Late Payment Surcharge ('LPS') to the PGCIL with immediate effect.

Proceedings before the Commission

4. The Commission, on 19.4.2024, admitted the Petition and the Petitioner to submit the relevant provision under which enforcement of the order dated 4.3.2021 and the relief claimed therein was sought. PGCIL, in compliance with the directions of the Commission, filed its submission on affidavit on 16.5.2024. In response to the submissions of PGCIL, TANTRANSCO filed its submission on 7.6.2024.

5. In the hearing dated 27.6.2024, the Commission heard the parties at length and reserved the matter for final order. PGCIL and TANTRANSCO were also directed to file their respective written submissions. In compliance with the same, TANTRANSCO and PGCIL have filed their respective written submissions.

Submissions of Petitioner/ PGCIL

6. The Petitioner, during the course of the hearing, made the following submissions:

(a) TANTRANSCO has continuously defaulted in complying with the Tariff Order. The Commission, in the said order, imposed transmission charges on

BHAVINI and TANTRANSCO in a 50:50 ratio as the works in scope of TANTRANSCO were not ready.

(b) Subsequent to the Tariff Order, the bilateral invoices of Rs. 37,43,04,807/- (inclusive of true-up tariff for the 2014-19 period) were raised on TANTRANSCO. To date, after several notices, TANTRANSCO has not paid the outstanding dues amounting to about Rs. 37 crores excluding LPS.

(c) No Appeal / Review has been preferred against the Tariff Order by TANTRANSCO.

(d) PGCIL has no contractual mechanism to enforce the recoveries against the TANTRANSCO. There is no Bank Guarantee or Letter of Credit available with CTUIL or PGCIL for encashment to recover the outstanding dues. Further, the power supply of TANTRANSCO also could not have been regulated by CTUIL under the provisions of the Central Electricity Regulatory Commission (Regulation of Power Supply), Regulations, 2010 (now repealed) and also as per the Late Payment Surcharge Rules, 2021/2022 notified by the Ministry of Power because TANTRANSCO is not a distribution company.

(e) The Commission has powers of the Civil Courts and can execute and enforce its own orders under Regulation 119 of the Conduct of Business Regulations, 1999, and undertake all such steps to ensure the implementation of the Tariff Order.

(f) The Commission exercises regulatory powers in terms of Section 79, read with the applicable provisions of the Act, which includes, within its scope, the power to enforce and to do all the things as may be necessary to ensure the enforcement and implementation of its orders.

(g) It is well settled that the power to execute and implement the Order is inherent in the jurisdiction of the authority which has passed such order. In this regard, PGCIL has placed reliance on certain judgments of the Hon'ble Supreme Court.

Submission of Respondent No. 1/ TANTRANSCO

7. In response to the submissions of PGCIL, the Respondent has mainly submitted as under:

(a) There are no provisions in the Act and the Conduct of Business Regulations, 1999, providing for the execution of an order by the Commission. Section 79 relates to adjudication of disputes and relating to arbitration. Regulation 119 of the Conduct of Business Regulations, 1999 provides for enforcement & compliance of orders passed by the Commission by the Secretary following the provisions of the Act and Regulations and, if necessary, may seek orders of the Commission for directions.

(b) Although the Act provides specifically for the execution of orders passed by the APTEL in Section 120 (3) and (4), there is no provision whereby the Commission has been empowered to execute its orders, except for the provisions under Section 142 of the Act

(c) Even Regulation 70 (2) of the Conduct of Business Regulations, 2023, only provides for appropriate action against the concerned person/party for non-compliance under Section 142 of the Act.

(d) PGCIL did not file any Petition under Section 142 for the non-compliance of the Tariff Order.

(e) PGCIL filed Petition No. 19/TT/2022 seeking to true-up the tariff for the period 2014-2019. In this petition, the issue of liability to pay the transmission tariff was again raised by PGCIL, and the same was held against TANTRANSCO by the Commission in its order dated 5.12.2021 in Petition No. 19/TT/2022 ("**Truing-up Order**").

(f) TANTRANSCO has approached the APTEL in Appeal No. 140 of 2024 seeking a stay of the Truing-up Order. As per the TANTRANSCO, it has not filed an appeal against the Tariff Order owing to the fact that the issue has attained finality in the Truing-up Order.

(g) Since the final tariff order in operation is the order passed in the true-up petition and not the tariff order, the present petition seeking execution of the Tariff Order is not maintainable.

(h) As on date, Asset-III has not been put to beneficial use even after the commissioning of the bays by TANTRANSCO. A transmission system not put to beneficial use cannot be considered for a transmission tariff.

(i) PGCIL has failed to review the progress of the generation project as mandated under the second and third provisos under Regulation 12 (1) and detailed procedure made under Regulation 27 of the Connectivity Regulations, 2009. Due to the uncoordinated act of PGCIL, the evacuation lines have come into existence without intended benefits.

(j) PGCIL ought to have brought the facts on record and should have prayed for directions of the Commission to recover the transmission cost directly from BHAVINI.

(k) Regulation 8 (6) of the Sharing Regulations 2010 provides for the liability to pay the transmission charges. Further, the Sharing Regulations, 2010, relating to sharing of the transmission charges of inter-State lines, specifically states that the generator can bill the transmission charges on the Long-Term customers availing supplies from inter-State generating station only after the commercial operation of the generator.

8. Since the order in the matter, which was reserved on 27.6.2024, could not be issued prior to the Members of the Commission, who formed part of Coram, demitting office, the matter was re-listed for the hearing on 8.10.2024. During the course of the hearing, the learned counsels for the Petitioner and the Respondent, TANTRANSCO, submitted that the Pleadings are already complete no further submissions are required in the matter, and accordingly, the matter may be reserved for the order. Considering the submissions of the learned counsels for the parties, the order in the matter was reserved.

Analysis and decision:

9. We have heard the learned counsels for Petitioner and Respondent and examined the submissions filed by the parties in the present matter. The following issues arise for consideration in the present matter:

Issue No. 1: Whether the instant Petition is maintainable under the provisions of Section 79 read with Regulations 111,112 and 119 of Conduct of Business Regulations, 1999? Whether the Commission has the power to execute /enforce its own orders?

Issue No. 2: In case the answer to Issue No. (1) is in affirmative, whether the order passed by the Commission in Petition No. 148/TT/2019 ('Tariff Order') can be executed/enforced in view of the true up order in Petition No. 19/TT/2022 ('Truing-up Order') passed by the Commission?

Issue No. 3: What relief is to be given, if any?

The above issues have been dealt with in the succeeding paragraphs.

Issue No. 1: Whether the instant Petition is maintainable under the provisions of Section 79 read with Regulations 111,112 and 119 of Conduct of Business Regulations, 1999? Whether the Commission has the power to execute its own orders?

10. Before delving into the merits of the present matter, it is apposite to first note that the Petitioner has filed the present Petition under Section 79 of the Act read with Regulation(s) 111, 112, and 119 of the Conduct of Business Regulations, 1999 seeking execution/enforcement of the Tariff Order passed by the Commission. The Respondent/ TANTRANSCO has vehemently contested the maintainability of the Petition.

11. Further, in response to the specific query of the Commission vide Record of Proceedings for the hearing dated 19.4.2024, PGCIL, in its affidavit dated 16.5.2024, also sought to rely upon the provisions of Section 142 of the Act read with Regulations 70 and 71 of the Conduct of Business Regulations, 2023 and has stated as under:

“11. In the instant case, Respondent No. 1 has wilfully and continuously defaulted in complying with the Order dated 04.03.2021 of this Hon'ble Commission. Further, it is submitted that considering the gravity of the facts and circumstances pleaded in the Instant Petition, the kind intervention of this Hon'ble Commission is requested to remedy the situation by issuing orders for enforcement and implementation immediately in terms of Section 142 of the Electricity Act, 2003 read with Regulation 70 and 71 of the Conduct of Business Regulations, 2023”.

12. *Per contra*, TANTRANSCO has submitted that the Petition is liable to be dismissed as there are no provisions in the Act as well as the Conduct of Business Regulations, 1999, except for Section 142 of the Act whereby the Commission has been empowered to execute its orders. Further, TANTRANSCO has also pointed out that Section 79 of the Act does not deal with the execution of orders passed by the Commission. Regulation 119 of the Conduct of Business Regulations, 1999, only provides for the enforcement and compliance of orders passed by the Commission

through the Secretary of the Commission. TANTRANSCO has also contended that even Regulation 70(2) of the recently notified Conduct of Business Regulations, 2023, provides only for the appropriate action against the person/party concerned for non-compliance under Section 142 of the Act.

13. Having considered the submissions of the parties, we find it apposite to refer to relevant provisions of the Act and the Conduct of Business Regulations. Section 79 of the Act enumerates the functions of the Central Commission, which 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) 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...”*

14. Further, Regulation(s) 111, 112, and 119 of the Conduct of Business Regulations, 1999 provides 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.*

112. *Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.*

Enforcement of orders passed by the Commission

119. *The Secretary shall ensure enforcement and compliance of the orders passed by the Commission, by the persons concerned in accordance with the provisions of the Act and Regulations and if necessary, may seek the orders of the Commission for directions”.*

15. Albeit the present proceedings were initiated under the Conduct of Business Regulations, 1999, on 23.1.2024, the Commission notified the Conduct of Business Regulations, 2023, in supersession of the Conduct of Business Regulations, 1999. The relevant provisions of the Conduct of Business Regulations, 2023 are as under:

“PREAMBLE

...Now, therefore in exercise of the powers conferred under Section 178(2)(zb) read with Section 92(1) of the Act and all other powers enabling it in this behalf, and after previous publication, and in supersession of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, except in respect of acts or things done or omitted to be done before such supersession, the Central Electricity Regulatory Commission hereby makes the following Regulations with respect to the practice and procedure for discharge of its functions under the Act”.

Regulation 2. Application.-

All proceedings, whether pending before or instituted after the date of commencement of these regulations, shall be governed by these regulations.

Regulation 70. Effect of non-compliance

(1) Failure to comply with any requirement of these regulations shall not invalidate any proceeding merely by reason of such failure, unless the Commission is of the view that such failure has resulted in miscarriage of justice.

(2) Failure to comply with the provisions of the Act, the Rules, the Regulations issued under the Act or any directions or orders of the Commission shall invite appropriate action against the concerned party or person under Section 142 of the Act”.

16. Apart from the above, we also note that Section 142 of the Act mandates the Commission to impose a penalty on any person who does not comply with any provisions of the Act, the Rules or Regulations, or any direction given by the Commission. Section 142 of the Act reads as follows:

“Section 142. Punishment for non-compliance of directions by Appropriate Commission

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction”.

17. After perusing the aforesaid provisions of the Act as well as the Conduct of Business Regulations, 1999 and 2023, we observe the following:

(a) Although Section 79(1) of the Act does not specifically elaborate upon the execution of orders passed by the Commission, it enables the Commission, amongst others, to regulate the inter-State transmission of electricity, to determine the tariff for inter-State transmission of electricity and also to adjudicate upon the disputes in connection thereof.

(b) Regulation 119 of the Conduct of Business Regulations, 1999 empowers the Secretary of the Commission to oversee the enforcement of and compliance

with orders passed by the Commission in accordance with the provisions of the Act.

(c) Regulation 70 of the Conduct of Business Regulations, 2023 provides for the initiation of appropriate action against the concerned party for non-compliance under Section 142 of the Act.

(d) Under Section 142 of the Act, this Commission is empowered to impose the penalty for contravention of its orders, and regulations, etc.

18. Coming to the issue of maintainability of the Petition and whether the Commission can execute/enforce its own orders, we find that the said issue is no longer res-integra. As rightly pointed out by the Petitioner, in various judicial pronouncements, it has already been held that the power to regulate also includes with it the power to enforce [Central Power Distribution Co. & Ors. v. Central Electricity Regulatory Commission and Anr. (2007) 8 SCC 197] and that the Courts/Tribunals must be held to possess the power to execute their own orders [State of Karnataka v. Vishwabharti House Building Coop. Society (2003) 2 SCC 412]. In this regard, we may refer to the observations of the APTEL in the judgment dated 4.2.2022 in Appeal No. 184 of 2019 in the matter of CLP Wind Farms (India) Pvt. Ltd. v. MP Power Management Co. Ltd. and Anr., which read as under:

“11. In our view, the approach of the regulator has been hesitant. A State Commission is empowered under the Electricity Act not only to adjudicate upon such disputes but also to enforce its decision to maintain judicial discipline amongst entities within its State. It has, however, been noticed by this tribunal, almost as a pattern, that in most of such claims arising out of default in payments, effective adjudication of dispute is missing. There is a perceptible reluctance on the part of Commissions to prescribe a definite timeline for payment or to take recourse to jurisdiction under Section 142 read with Section 146 of Electricity Act. This invariably has the fall out of compelling the parties seeking enforcement to approach this tribunal by appeals or applications for execution unnecessarily adding to the work at this level. It is not that this tribunal

is loath to exercise its powers under the law to execute and enforce binding orders. We would not have, and have never shown, any hesitation in intervening by deploying all possible measures in law to enforce discipline wherever we come across disobedience. But such involvement of this tribunal would not be required if the Commissions were to start showing better control....”

19. Moreover, the Hon'ble Supreme Court in the case of *Maharashtra State Electricity Distribution Company Ltd. Vs. Maharashtra State Electricity Regulatory Commission & Ors. [(2022) 4 SCC 657]* has observed that the Electricity Regulatory Commissions constituted under the Act are to be seen as substitutes for Civil Courts in relation to the disputes between the licensees and the generating companies and that the Courts have the power to execute its own orders. The Hon'ble Court further observed that the Electricity Regulatory Commission is well within its scope of power of its regulatory supervision to give directions for the payment which is due from the defaulting entity. Relevant para of the judgement is encapsulated as hereunder:

“205. It is now well settled by various decisions of this Court that an Electricity Regulatory Commission such as MERC constituted under the Electricity Act, 2003 has all the trappings of a Court. The MERC is a substitute for a Civil Court in respect of all disputes between licensees and Power Generating Companies. This proposition finds support from the judgments of this Court in Tamil Nadu Generation & Distribution Corporation Ltd. v. PPN Power Generating Co. Pvt. Ltd., Andhra Pradesh Power Coordination Committee & Ors. v. Lanco Kondapalli Power Ltd. & Others. and Gujarat Urja Vikas Nigam Limited v. Amit Kumar & Others cited by Mr. Vishrov Mukerjee”.

206. As held by this Court in State of Karnataka v. Vishwabharathi House Building Cooperative Society and Others, cited by Mr. Mukerjee, Courts have the power to execute their own order. The impugned judgment and order cannot, therefore be faulted for giving directions for payment of the outstanding dues of the Appellant. Moreover, State Regulatory Commissions exercise continuous regulatory supervision as affirmed by this Court in All 45 (2014) 11 SCC 53 46 (2016) 3 SCC 468 (2021) SCC OnLine 194 (2003) 2 SCC 412 (Paras 59-62) India Power Engineering Federation & Ors. v. Sasan Power Limited & Others 49, cited by Mr. Mukerjee.

207. MERC acted within the scope of its power of regulatory supervision in directing the Appellant to make payment of LPS within the time stipulated in the order of MERC. The APTEL rightly upheld the direction. In any case, such a

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

20. In view of the above, the objection/contention that the Commission cannot enforce/execute its own order(s) cannot be sustained. Although, as pointed out by the Respondent, TANTRANSCO, the Act does not expressly provide for execution of the Commission’s order as a decree of civil court as specified for the orders made by the APTEL in Section 120 of the Act. This, however, cannot be construed to mean that this Commission is bereft of any power to execute/enforce its order(s) by other means, such as taking recourse to its jurisdiction under Sections 142 of the Act as also envisaged in Conduct of Business Regulations, 2023. The Respondent, TANTRANSCO, has also pointed out that the Petitioner, as such, has not invoked the provisions of Section 142 of the Act for non-compliance with the order. However, invocation of provisions of Section 142 of the Act by the concerned party, in our view, is not *sine qua non* in the enforcement/execution proceedings. As noted above, initiation of proceedings for non-compliance under the said Section has to be considered as one of the means of securing the enforcement/execution proceedings – the scope of which is much larger than merely the proceedings for punishment for non-compliance under Section 142 of the Act. Besides, the Commission is well within its power to *suo motu* initiate the proceedings under Section 142 of the Act to secure the enforcement/execution of its order.

21. The issue is answered accordingly.

Issue No. 2: In case the answer to Issue No. (1) is in affirmative, whether the order passed by the Commission in Petition No. 148/TT/2019 (‘Tariff Order’) can be executed/enforced in view of the true up order in Petition No. 19/TT/2022 (‘Truing-up Order’) passed by the Commission?

22. The next issue in line is in relation to the contention raised by the Respondent TANTRANSCO that the Tariff Order passed by the Commission in Petition No. 148/TT/2019 is the order relating to the determination of the presumptive transmission tariff, while the Truing-up Order passed in Petition No. 19/TT/2022 is the final order. As per TANTRANSCO, the Truing-up Order supersedes the Tariff Order.

23. The grievance of the Petitioner emanates from the non-payment of charges by TANTRANSCO as directed by the Commission *vide* its Tariff Order. Petition No. 148/TT/2019 was filed by PGCIL for the determination of tariff of the 230 kV D/C Kalpakkam PFBR-Kanchipuram transmission line (Asset-3) and 2 Nos. 230 kV Bays at Kanchipuram Sub-station of TNEB under transmission system associated with Kalpakkam PFBR (500 MW) project in Southern Region for 2014-19 tariff period under the Tariff Regulations, 2014. *Vide* order dated 4.3.2021, the Commission approved the COD of Asset-3 as 1.4.2014 under proviso (ii) of Regulation 4(3) of the Tariff Regulations, 2014 and further held as under:

“24. As BHAVINI and TANTRANSCO were not ready on 1.4.2014, we are of the view that the transmission charges of the instant asset should be shared by BHAVINI and TANTRANSCO. Therefore, the transmission charges from COD of the instant asset i.e. 1.4.2014 shall be shared by TANTRANSCO and BHAVINI in equal proportion. After the commissioning of generation by BHAVINI or transmission system by TANTRANSCO, when the instant asset is put to regular use, the transmission charges of the instant asset shall be included in the POC computation”.

...

67. Sharing of transmission charges shall be in accordance with paragraph 24 of this order. Once BHAVINI or sub-station of TANTRANSCO are commissioned, the transmission charges approved in the instant petition shall be recovered on monthly basis in accordance with Regulation 43 of the 2014 Tariff Regulations. The billing, collection and disbursement of Transmission Charges approved shall be governed by the provision of Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010, as amended from time to time”.

24. Thereafter, the Petitioner approached the Commission for truing-up of the transmission tariff of the 2014-19 period under the Tariff Regulations, 2014, and determination of the transmission tariff for the 2019-24 period under the Tariff Regulations, 2019. In respect to Asset-3, the Commission in the truing-up Order observed as under:

“91. We do not find any sufficient reason to neither reopen nor deviate from the Commission’s earlier decision in order dated 4.3.2021 in Petition No.148/TT/2021. Accordingly, the transmission charges of Asset-3 shall be shared as per the order dated 4.3.2021. Therefore, the transmission charges of Asset-3 from COD i.e. 1.4.2014 shall be shared by TANTRANSCO and BHAVINI in equal proportion. Kanchipuram Substation was put into commercial operation by TANTRANSCO on 28.2.2019. Hence, the Petitioner has to recover charges from 1.4.2014 till 28.2.2019 in equal proportion from both TANTRANSCO and BHAVINI and, thereafter, tariff from 1.3.2019 shall be recovered from BHAVINI till commissioning of its first unit of generation”.

25. Evidently, in the truing-up Order, the Commission specifically refused to re-open or deviate from its earlier decision in the Tariff Order on the aspect of the sharing of transmission charges of Asset-3 between BHAVINI and TANTRANSCO in equal proportion. In the Turing-up Order, the Commission only acknowledged the operationalisation of the Kanchipuram substation by TANTRANSCO on 28.2.2019 and, accordingly, has clarified the liability of the Respondent to share the transmission charges for the Asset-3 in equal proportion till 28.2.2019. As per PGCIL, BHAVINI has already paid its share in compliance with the Tariff Order. However, TANTRANSCO has evaded from paying its corresponding share to the Petitioner. Several demand notices were raised by the Petitioner to TANTRANSCO, however, it was of no avail.

26. It is pertinent to mention that the TANTRANSCO has not preferred to challenge the Tariff Order dated 4.3.2021; rather, TANTRANSCO went into appeal before the APTEL in Appeal No. 140 of 2024 seeking the stay of the truing-up Order dated

5.12.2021. Since the matter is currently pending before the APTEL and, as such, there is no stay granted therein.

27. In the present matter, TANTRANSCO has contended that the Tariff Order dated is superseded by the truing-up Order. In this regard, it is to be noted that the Tariff Order was pronounced by the Commission wherein the transmission tariff was determined whereas in the truing-up Order, the truing up of transmission tariff was carried out on the basis of actual capital expenditure.

28. It is also pertinent to mention that the Tariff Order dated 4.3.2021 and the truing-up Order dated 5.12.2021 passed by the Commission cannot be treated in isolation, rather to be read altogether as both the orders relate to the charges which were laid on BHAVINI and TANTRANSCO which were, in turn, payable to PGCIL. While observing the scope of truing-up proceedings, the Hon'ble Supreme Court, in the case of BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, [2022 SCC OnLineSC 1450], has noted as under:

“53. ‘Truing up’ has been held by APTEL in SLDC v. GERC to mean the adjustment of actual amounts incurred by the Licensee against the estimated/projected amounts determined under the ARR. Concept of ‘truing up’ has been dealt with in much detail by the APTEL in its judgment in NDPL v. DERC wherein it was held as under:

“60. Before parting with the judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the Revenue required by a particular utility and such assessment should be based on practical considerations. ... The truing up exercise is meant (sic) to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence.”

54. This view has been consistently followed by the APTEL in its subsequent judgments and we are in complete agreement with the above view of the APTEL. In our opinion, 'truing up' stage is not an opportunity for the DERC to rethink de novo on the basic principles, premises and issues involved in the initial projections of the revenue requirement of the licensee. 'Truing up' exercise cannot be done to retrospectively change the methodology/principles of tariff determination and re-opening the original tariff determination order thereby setting the tariff determination process to a naught at 'true-up' stage."

Hence, the truing-up Order is not a re-opening of the original Tariff Order, thereby setting the tariff determination process to a naught at the true-up stage. In other words, a truing-up order cannot be construed as an order superseding the Tariff Order. It only facilitates the arriving at the financial gains and losses to the transmission licensee based on the actuals and the passing on or recovering such difference to/from the concerned LTTCs or DICs along with the interest as provided in the Tariff Regulations. Turing-up exercise is not an independent exercise but is in furtherance to the determination of tariff under the Tariff Order. Respondent No.1, TANTRANSCO, having not paid the tariff as per the Tariff Order in the first place, cannot seek a shelter of truing-up exercise under the True-up Order and its impact. Merely because the applicable transmission charges for Asset 3 have undergone revision due to the truing-up exercise, it does not render the Tariff Order, especially the direction(s) issued thereunder, non-executable or unenforceable. Pertinently, the decision/direction of sharing of transmission charges of Asset 3 between TANTRANSCO and BHAVINI in equal proportion from its COD, i.e., 1.4.2024 till it is put to regular use, flows from the Tariff Order itself and not from the Trued-up Order. As noted above, the True-up Order does not alter or modify the said decision/direction in any manner but only acknowledges the operationalisation of the Kanchipuram substation by TANTRANSCO on 28.2.2019 and, accordingly, goes on to clarify its liability to share the transmission charges till 28.2.2019. Merely because the transmission charges for

Asset III have also undergone certain changes on account of the truing-up exercise, it does not render the Tariff Order, particularly the decision/direction regarding sharing of transmission charges qua Asset 3, non-enforceable. In any case, it is noted that the Petitioner has already factored into the impact of the truing-up exercise in the bilateral bill(s) raised upon the Respondent. TANTRANSCO.

29. It is also relevant to note that TANTRANSCO, in the present Petition, has also raised certain contentions on merits regarding its liability to share/pay the transmission charges as per the direction under the Tariff Order. Not only were such contentions already dealt with by the Commission in its earlier Order(s), but they are beyond the scope of the present enforcement/execution proceeding, and hence, we are not inclined to entertain such contentions herein.

30. The issue No. 2 is decided accordingly.

Issue No. 3: What relief is to be given, if any?

31. In view of the foregoing issues as deliberated upon in the preceding part of the present order, it is *ex-facie* clear that the reliefs claimed in the present Petition do not arise from a fresh cause of action and a new *lis* between the parties, rather the same has been adjudicated by the Commission in both Petition No. 148/TT/2019 as well as Petition No. 19/TT/2022. Although TANTRANSCO has challenged the order dated 5.12.2021 in Petition No. 19/TT/2022 in Appeal No. 140 of 2024 before the APTEL, there is no stay of proceedings, and it is well settled that mere filing of an appeal would not affect the enforceability. In fact, the Tariff Order dated 4.3.2021 passed in Petition No. 148/TT/2019 has not been challenged before the APTEL. Therefore, in light of the Tariff Order dated 4.3.2021 and the truing-up Order dated 5.12.2021, the Commission, in order to secure the execution/enforcement of its orders, hereby directs

TANTRANSCO to clear the entire outstanding dues along with applicable late payment surcharge in terms of the bilateral invoices raised by the Petitioner within a period of fifteen days. The Respondent, TANTRANSCO, is additionally also cautioned to comply with the stipulated directions given in the Tariff Order, the Truing-up Order, and the present order, failing which appropriate proceedings, including but not limited to the proceedings under Section 142 of the Act will be initiated against the Respondent, TANTRANSCO. The Respondent, TANTRANSCO, shall also file an affidavit indicating compliance with the aforesaid direction within a week thereafter. Needless to say, the above direction shall be subject to the outcome of the order/direction issued by the APTEL in Appeal No. 140 of 2024 as preferred by the TANTRANSCO.

32. The Issue No. 3 is decided accordingly.

33. In light of the above discussion, Petition No. 8/MP/2024 is disposed of.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson