IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14-09-2012

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition Nos.8509 and 8510 of 2012 and
M.P.Nos.1 and 1 of 2012

Tamilnadu Generation and Distribution
Corporation Limited,
Represented by its Chairman
and Managing Director
No.144, Anna Salai,
Chennai-600 002. .. Petitioner in
both the writ petitions.

Versus

1. Central Electricity Regulatory Commission,
Represented by its Secretary,
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110001.

2. National Load Dispatch Centre
Power System Operation Corporation Ltd.,
(POSOCO) Represented by its
General Manager,
B-9, Qutab Institutional Area,
Katwari Sarai, New Delhi-110 016.

3.Southern Region Loa Dispatch Centre
Represented by its General Manager,
No.29, Race Course Cross Street,
Bangalore-560 009.

4.Power Grid Corporation of India Ltd.
Represented by its General Manager/Commercial,
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110 016.

5. Government of India,
Represented by its Secretary,
Ministry of Power,
New Delhi-110 001. .. Respondents in
both the writ petitions.

Prayer in W.P.No.8509 of 2012: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration, declaring the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) (Second Amendment)

Regulations, 2012, contained in Notification No.1(1)/2011-CERC, dated 5.3.2012, as arbitrary, unreasonable and ultra vires the Constitution of India and quash the same.

Prayer in W.P.No.8510 of 2012: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration, declaring the Electricity Regulatory Commission (Indian Electricity Grid Code) (First Amendment) Regulations, 2012, contained in Notification No.1/18/2010-CERC, dated 5.3.2012, as arbitrary, unreasonable and ultra vires the Constitution of India and quash the same.

For Petitioners : Mr.A.Navaneethakrishnan
Advocate General for
Mr.G.Vasudevan in
W.P.No.8509 of 2012

Mr.Guru Krishnakumar
Additional Advocate General (SC) for
Mr.G.Vasudevan in
M.P.No.8510 of 2012

For Respondents : Mr.Sriram Panchu, Senior Advocate for
Mr.T.Mohan (R1)

Mr.Jayesh B.Dolia (R2 to R4)

Mr.M.R.Murugesan (R5)

O R D E R

Since the issues involved in both the writ petitions are similar in nature, they have been taken up together and common order is being passed.

2. Heard the learned counsels appearing for the petitioner, as well as the learned counsels appearing on behalf of the respondents.

3. The writ petition, in W.P.No.8509 of 2012, has been filed praying that this court may be pleased to issue a Writ of Declaration, declaring the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) (Second Amendment) Regulations, 2012, contained in Notification No.L-1(1)/2011-CERC, dated 5.3.2012, as arbitrary, unreasonable and ultra vires the Constitution of India.

4. The writ petition, in W.P.No.8510 of 2012, has been filed praying that this court may be pleased to issue a Writ of Declaration, declaring the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (First Amendment) Regulations, 2012, contained in Notification No.1/18/2010-CERC, dated 5.3.2012, as arbitrary, unreasonable and ultra vires the Constitution of India.

5. The learned counsels appearing on behalf of the petitioner had submitted that the petitioner in the above writ petitions is the Tamilnadu Generation and Distribution Company Limited, which is a Government of Tamilnadu enterprise. The primary functions of the petitioner corporation are the generation and distribution of electricity, within the State of Tamilnadu.

6. The petitioner has filed the above writ petitions challenging the recent amendments to the existing Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) Regulations, 2009, hereinafter referred to as the 'UI Regulations' and the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, hereinafter referred to as the 'Grid Code Regulations', stating that they are, ex facie, arbitrary and that they suffer from the vice of unreasonableness, as they have been made without taking note of the relevant factors and the applicable principles like the doctrine of proportionality. The Central Electricity Regulatory Commission, hereinafter referred to as 'CERC', has narrowed down the grid frequency from the existing bandwidth, resulting in enhancement of power cuts, from 10 hours to 14 hours, without taking into consideration the relevant factors.

7. It has been further stated that the CERC, in exercise of the powers conferred, under Section 178, read with Section 79(1)(C) of the Electricity Act, 2003, had issued the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) (Second Amendment) Regulations, 2012, hereinafter referred to as the 'Impugned Second Amendment', by which certain amendments are sought to be brought into effect, from 2.4.2012.

8. It has been further stated that the impugned amendments, inter alia, suffer from the vice of arbitrariness and unreasonableness. By the impugned amendments the CERC has narrowed down the operating frequency of electricity supply (Grid Frequency) by 0.2 Hz i.e. from 49.50-50.20 Hz to 49.70-50.20 Hz in the Grid Code, as well as in the Unscheduled Interchange Charges and related matters. The impugned amendments in the Grid Code and in the UI Regulations, relating to the frequency bandwidth, are only aimed at promoting the sale of power by the Power Traders and Exchanges. The inefficient management of the power situation, by the Regulators, would result in higher rates being paid for the electricity purchased from private generators, at the cost of the end users of power.

9. It has been further stated that India is geographically divided into five grids, namely, Northern, Eastern, Western, North Eastern and Southern. All the States and the Union Territories in

India fall within the five grids. The first four grids are synchronized with each other (NEW Grid) and the power can flow across these regions, seamlessly, as per the relative load and generation. The Southern region is interconnected with the rest of India grid through asynchronous links of High Voltage Direct Current networks. There is only controlled flow of power and it cannot flow seamlessly, as per the relative load and generation.

10. It has also been stated that the petitioner cannot draw electricity from the NEW Grid because of the controlled flow of electricity and the failure on the part of CERC to direct synchronisation of the Southern Grid, with the NEW Grid, for seamless natural flow of power. The petitioner's requirement is 12500 megawatts of power. The installed capacity is about 10180 megawatts, which includes 3080 megawatts of the Central Sector Generating Stations. The maximum available power from the installed capacity, inclusive of power purchases, is about 8000 megawatts. Thus, there is a maximum deficit of about 4500 megawatts.

11. It has been further stated that the recent amendments to the existing UI Regulations, 2009 and the Grid Code, 2010, narrowing down the grid frequency, from the existing bandwidth, would result in the enhancement of power cuts, from 10 hours to 14 hours. It would also seriously affect the economy of the State. Both public and private establishments would suffer due to such measures.

12. It has also been stated that the gap between the supply and the demand of electricity is mainly measured by the system frequency. When the demand equals the supply then the system frequency will be 50 Hz. Each of the five regions has a Regional Load Despatch Centre (RLDC), which ensures economic, efficient and integrated operation of the power system in the region concerned. The RLDCs monitor the grid operations and supervise the economical, efficient and integrated functioning of the power systems. Any difference between the scheduled and actual quantum of power drawn from the grid is treated as Unscheduled Interchange. The charges of the Unscheduled Interchanges shall be payable for the over drawal, by the buyer or the beneficiary.

13. It has been further stated that the Electricity Act, 2003, confers substantial powers on the Central Commission to develop the relevant market, in accordance with the principles of competition, fair participation, as well as the protection of the consumers' interests. However, the CERC while exercising such powers, would have to take into consideration certain factual aspects before arriving at its decisions, for initiating the regulatory measures.

14. It is the case of the petitioner that such mandatory facts and the relevant factors have not been taken into consideration, while bringing about the impugned amendments. It has been further stated that the CERC had not considered any of the mandatory facts required to be considered, as per the Grid standard of CEA, and had brought about the amendments to the Grid Code and the UI Regulations. The CERC had failed to consider the fact that there has been no grid failure in the recent past. It had failed to consider the frequency profile and the voltage profile of the Southern Grid. It had also failed to consider the line loading of the corridor connecting the NEW Grid with the Southern Grid, through the HVDC line. The CERC had also failed to consider that even with their limited supply of electricity the Southern Grid is stable due to the heavy load shedding, as part of the load management carried out by the Southern State utilities.

15. It has been further stated that as an effect of the amended UI Regulations the petitioner has to necessarily restrict its over drawing facility at 49.80 Hz itself, instead of 49.70 Hz, resulting in longer periods of load shedding. Further, the impact of the increase in UI Rate, at the threshold frequency, would cost an increase of 52 percent in the charges at the lower limit i.e. 49.70 Hz, as compared to the present UI rates. The rate is increased from Rs.3.875 per unit to Rs.5.906 per unit. The inevitable effect of the amended grid frequency in the Grid Code Regulations would lead to further loss in industrial growth, education, emergency services such as hospitals, combined water schemes, water purification and treatment plants, irrigation plants and public security measures, as the petitioner could be compelled to go in for longer periods of power cuts to manage the supply and the demand of electricity in the State of Tamilnadu.

16. It has been further stated that the grid is operating at the present grid frequency for the last two years and there has been no grid failure reported in the Southern Grid, so far. There is no benefit to the end consumer due to the frequency correction. Instead the end consumer would be put to more hours of power cuts affecting the gross domestic product of the State. The amendments introduced by the CERC would not help the cause of higher reliability and cost seving measures, which are essential for the proper functioning of the system.

17. It has been further stated that the CERC had not taken the relevant factors into account, while deciding to introduce the amendments. It had not taken into account the fact that there is no integrated grid operation in effect, between the NEW Grid and the Southern Grid. As the Southern Grid operates independent of the rest of the grids in the country the CERC has not made any endeavour to connect and syncronise the Southern Grid with the NEW Grid, in spite of the repeated demands made by the petitioner and the other

utilities of the Southern Grid. The failure of the CERC to appreciate and to take concrete steps to improve the power situation in the four Southern States connected to the Southern Grid has resulted in the present situation, which is adverse in nature.

18. It has been further stated that the Southern Grid is operating as a separate entity. It is connected to the NEW Grid through High Voltage Direct Current (HVDC System) in which there is only a controlled power flow and there is no natural power flow. Such a situation does not facilitate adequate drawal of power from the NEW Grid by the Southern utilities. Further, the lack of congestion free transmission system has lead to the inability of the petitioner to draw power from other grids of the country to manage its demand and supply of power. The CERC being the Regulatory Authority should ensure that all the grids within the country are connected with each other and synchronized in such a way that they operate economically, without, any congestion in the Central Transmission System.

19. It has been further stated that, even though the CERC has held the Central Transmission Utility (CTU) to be solely responsible for the lack of sufficient inter-State transmission system, it had failed to appreciate that load management by the Southern utilities is not possible in the absence of an efficient and economical congestion free inter-State transmission system. It has been further stated that, in order to tide over adverse supply and demand management, on a short term basis, the petitioner has been purchasing power from power exchanges, at a very high rate. The rate of purchase of power, from the power exchanges, not only depends upon the market conditions, but also the corridor congestion during the transmission of the power to the State of Tamilnadu. There is no mechanism to control the market price variation. Therefore, it is the duty of the CERC to ensure an efficient, economical and co-ordinated Central Transmission System for efficient management of the demand and supply of power in the various regions of the country.

20. It has been further stated that the various provisions of the Electricity Act, 2003, which is an exhaustive code concerning the matters relating to electricity, has entrusted wide ranging powers and responsibilities with the Regulatory Commissions. However, while exercising such powers and responsibilities the Regulatory Commissions are to be guided by the National Electricity Policy, the Tariff Policy, as well as the National Electricity Plan, in terms of Section 79(4) and 86(4) of the Electricity Act, 2003. The Tariff Policy which had been brought into effect, from 6.1.2006, should ensure the availability of electricity to consumers at reasonable and competitive rates. The Tariff Policy should try to balance the interests of consumers and the need for investments, while prescribing the rate of return. It should also try to promote trading in electricity for making the markets competitive. Under the Tariff Policy the Regulatory Commissions are mandated to monitor the trading

transactions, continuously, in order to ensure that the electricity traders do not indulge in profiteering, in cases of market failure. The Tariff Policy directs the Regulatory Commissions to fix the trading margin in a manner, which would ensure that the cost of electricity utilized by the consumers are at a reasonably low level, keeping in mind the necessary requirements for the investments.

21. The learned counsels appearing on behalf of the petitioner had stated, while pointing out the relevant provisions of the Electricity Act, 2003, that, pursuant to Section 177(2) of the Electricity Act, 2003, the CERC had notified the Grid Code in the year, 2010. Under the UI Regulations, which had been introduced in the year, 2009, the grid frequency was 49.20 to 50.30 Hz, as per the CEA specified standard. As such, the CEA, vide Gazette of India notification, dated 26.6.2010, had notified the Central Electricity Authority (Grid Standards) Regulations, 2006, under sub Section 3 of Section 177 of the Electricity Act, 2003, read with Section 34 and Clause (d) of Section 73 of the said Act. As per Regulation 3, the Standard for Operation and Maintenance of Transmission Lines is to operate at a frequency close to 50 Hz and it shall not go beyond the range of 49.20 to 50.30 Hz, or a narrower band specified in the Grid Code, except during the transient period following tripping.

22. It has been further stated that no untoward incidents had taken place, in respect of grid stability and security, even when the frequency range was 49.20 - 50.30 Hz, after the introduction of Availability Based Tariff (ABT) in the year, 2003. It has also been stated that the narrow bandwidth prescribed by the CERC has not been ratified by the Parliament, as required under Section 179 of the Electricity Act, 2003. Further, Regulation 4, dealing with the operation planning provides that the RLDC shall review, periodically, the performance of the grid, in the past and to plan stable operation of the grid, in the future. It shall take into consideration the various parameters such as, frequency profile, voltage profile, line loading, grid incidence, grid disturbance, performance or system protection schemes and protection coordination for its planning and implementation of the regulations.

23. It has also been stated that Unscheduled Interchange is the over drawal or under drawal of power from a grid, in deviation to the scheduled quantum of power. The CERC had made regulations to deal with Unscheduled Interchange, by introducing a penalty clause for violation of UI Regulations. Apart from the UI Charges the petitioner would also have to pay the congestion charges to Power Grid Corporation of India, due to the lack of corridor required to get the power transmitted. It is the duty of the Central Transmission Utility (CTU), under Section 38 of the Electricity Act, 2003, to ensure an efficient, economical and integrated transmission system to the utilities. The CERC, vide first Amendment, dated 28.4.2010, had changed the lower utility frequency, from 49.20 to 49.50 Hz and the

higher utility frequency, from 50.30 to 50.20 Hz. While so, the CERC had issued a public notice, dated 19.8.2011, to the Draft Amendment to CERC (Unscheduled Interchange Charges and Related Matters) Regulation, 2009, and had invited comments from the public, State Electricity Boards and other stake holders. The CERC in its draft notice, dated 19.8.2011, had enclosed an Explanatory Memorandum to the draft CERC (Unscheduled Interchange Charges and Related Matters) (Amendment) Regulation, 2011. The petitioner had forwarded its comments to the proposal made by the CERC to amend the regulation. The petitioner had cited various difficulties it was facing due to the corridor congestion, the non-synchronisation of the Southern Grid with the NEW Grid and the lack of proper regulations to aid the utilities in managing their demands. It had also pointed out that the State of Tamilnadu is the only State in India which pays the maximum amount of congestion charges, due to its geographical location. However, without paying heed to the comments and the difficulties expressed by the petitioner the CERC has proceeded to bring about the impugned second amendment, by which it had changed the lower utility frequency, once again, from 49.50 to 49.70 Hz, in the bandwidth of 49.50 to 50.20 Hz. The change in frequency was to come into effect, from 2.4.2012.

24. A common counter affidavit has been filed on behalf of the first respondent, wherein, the averments and allegations made in the affidavit filed in support of the writ petitions have been denied. It has been stated that the Central Electricity Regulatory Commission (CERC) is a statutory authority, constituted under Section 76 of the Electricity Act, 2003. The functions of CERC, as per Section 79 of the Act, include the regulation of inter-State transmission of electricity, specification of Grid Code, having regard to the grid standards, specification and enforcement of standards, with respect to quality, continuity and reliability of service, by the licensees. Under Section 178 of the Act the Central Commission is vested with the power to make regulations consistent with the Act and the Rules. In order to give effect to the provisions of the Act, in exercise of the powers conferred under Section 178, read with Section 79(1)(h) of the Electricity Act, 2003, the Central Commission has issued the Central Electricity Regulatory Commission (Indian Electricity Grid Code), Regulations, 2010. The Grid Code has come into effect, on 3.5.2010, repealing the Indian Electricity Grid Code, 2006. Similarly, in exercise of the powers, under Section 79(1)(c), read with Section 178(1) and 178(2)(ze) of the Act, the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters), Regulations, 2009, had been issued, with effect from 1.4.2009.

25. It has been further stated that the Supreme Court of India in its decision, in Central Power Distribution Power Company Limited Vs. the Central Electricity Regulatory Commission, (2007) 8 SCC 197, has recognized the role and the functions of the Central Commission, in specifying the Grid Code and the UI Charges, for the purpose of

maintaining grid discipline. In the said decision the supreme court had held that the application of Availability Based Tariff (ABT) and the imposition of Unscheduled Interchange (UI) Charges are essential parts of the functions of the Central Commission. The ABT and UI charges are commercial mechanisms to control the utilities in scheduling the dispatch and the drawal of power. The UI cherges are payable for the deviations, if any.

26. It had also been stated that the Appellate Tribunal for Electricity, while considering an appeal filed by the Delhi Transco Limited, in Appeal No.124 of 2009, under Section 111 of the Act, challenging the order passed by the Central Commission imposing penalties for grid violation, had issued certain directions, with regard to grid security and the need for periodic revision of the UI rates, for overdrawal from the grid. By the said directions it had been made clear that the Central Commission should review the UI rates, periodically, as it would encourage additional generation and under drawal of power.

27. It has been further stated that it is desireble to maintain grid frequency, as close as possible to 50 Hz. Any deviation in the frequency would result in inefficient operation of generation and load equipment and would result in degradation of the quality of electricity supply, to the end consumers and it could also result in the collapse of the power system. While comparing the operational frequency band in Europe and in the United States of America, it has been stated that the frequency band in such countries had been fixed in a very narrow range, in order to ensure supply of quality power to the consumers and for protection of the generating stations, transmission systems and electrical equipments and appliances. In contrast the utilities in India had been relying on overdrawal of power from the grid for meeting the consumer demand, without setting up power projects.

28. It has been further stated that the over drawal of power from the grid to meet the consumer demand is not in the interest of grid security and grid discipline. The utilities should plan for procurement of power on long term, medium term and short basis, to meet the consumer demands. For a stable and secure operation of the grid it is required to bring the permissible range of the frequency band close to the nominal level, at the earliest, so that the utilities across the country are encouraged to go for planned development of electricity and to create an environment for the investors to set up new power projects.

29. It has been further stated that Section 80 of the Electricity Act, 2003, provides for the constitution of the Central Advisory Committee (CAC). The CAC is to advise the Central Commission on major issues relating to policy, protection of consumer interest and electricity supply and in maintaining the overall standards of performance, by the utilities. It has also been stated that the issue of narrowing down the grid frequency had been discussed in the 15th meeting of the CAC, held on 7.3.2011. It has considered the issue of

narrowing down the grid frequency band and the consequent revision of UI price vector.

30. It has also been stated that the Central Commission is to ensure safety, security and reliability of the grid. Therefore, the Central Commission had initiated the process of amendment to the Grid Code and the UI Regulations, as per the procedures prescribed, under Section 178 of the Electricity Act, 2003. The Central Commission, after considering the suggestions and objections received, in response to the draft amendments, had finalized and notified the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (First Amendment) Regulations, 2012 and Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) (Second Amendment) Regulations, 2012. The impugned regulations have been validly made, in accordance with the provisions of the Act, in due discharge of the statutory responsibility vested in the Central Commission.

31. It has been further submitted that the impugned regulations, which are in the nature of delegated legislation, can only be challenged if they are ultra vires the provisions of the parent Act, or offends any of the provisions of the Constitution of India, or any other Act in force. In fact the impugned regulations have been validly made, in accordance with the procedures prescribed under the relevant provisions of law, for the purpose of ensuring the safe and secure operation of the National Grid and to instill discipline amongst the utilities, through the commercial mechanism of Unscheduled Interchange and by initiating penal actions against the erring utilities, who overdraw, under low grid frequency conditions, by endangering the National Grid.

32. It has also been stated that the petitioner was found to be overdrawing power, on several occasions in the past, in violation of the permissible limits specified in the Grid Code. The petitioner has also been imposed with penalties for overdrawal from the Grid. Further, the petitioner has also defaulted in payment of the UI dues. It had also been stated that the impugned regulations do not suffer from the vice of unreasonableness and arbitrariness and they are not hit by the doctrine of proportionality, as averred by the petitioner.

33. It had been further stated that the Central Commission had made the impugned regulations, by following the process of previous publication, as specified under Section 178(3) of the Electricity Act, 2003, and after considering the comments, suggestions and objections received in response to the draft regulations, including the suggestions and objections raised on behalf of the petitioner. It has also been denied that the narrowing down of the grid frequency, through the impugned regulations, has resulted in the enhancement of power cuts from 10 to 14 hours, in the State of Tamilnadu.

34. It has been further stated that the petitioner has a legitimate right to schedule the drawal from the grid, by arranging

for power through long term, medium term and short term access. Unscheduled Interchange, which is in the nature of deviation from the schedule, cannot be relied on as a regular source of power. It is a commercial mechanism to discourage drawal in deviation of the schedule and to encourage the utilities to resort to planned procurement of power. In fact, the power cut in the State of Tamilnadu is a result of the cumulative and prolonged inaction on the part of the petitioner to make the necessary arrangements, to supply sufficient power, considering the consumer demands in the State, by procuring sufficient power from the various power generating and transmitting agencies.

35. It has also been stated that the main objective of the impugned regulations is to encourage sale of power through scheduled transactions and to discourage overdrawal from the grid, under Unscheduled Interchange, which has the potential to endanger the safety and security of the grid. It has also been stated that the narrowing down of the frequency band, by way of the impugned regulations, would result in safe, secure and reliable grid operation and supply of quality power to the consumers. It would also result in the smooth integration of Southern Regional Grid with the NEW Grid and it would enhance the service life of the generating units.

36. It has also been pointed out that overdrawal through UI mechanism cannot be a substitute for scheduled power, sourced through the traders or by power exchange or by direct purchase of power from the generators. In fact, the average UI prices have been higher than the prices of power available through the power exchenges, including the congestion charges. As such, the allegation of the petitioner that the difficulties in maintaining grid discipline had arisen due to the inefficient management of the power situation, by the Central Commission, is neither true nor valid.

37. It has been further stated that the tightening of the frequency bandwidth is a critical requirement for synchronization of the Southern Grid with the NEW Grid. The NEW Grid and the Southern Grid have an approximate installed capacity of 1,32,600 megawatts and 51000 megawatts, respectively. For ensuring secured and integrated operation of the National Grid of 1,84,000 megawatts, one of the primary requirements is that the system frequency should be as close as possible to 50 Hz. The overdrawal by the utilities would endanger the grid security, with unsustainable flow in the inter-regional transmission lines leading to the tripping of the grid, or grid disturbance, with a cascading effect.

38. It is not open to the petitioner to claim that the problem has been existing due to the alleged lack of sufficient infrastructure for the transmission of power from the NEW Grid to the Southern Grid. If the petitioner makes sufficient plans, in advance,

to procure electricity from other generators, it would be possible to provide sufficient corridor space for such transmission of power. The petitioner ought to have long term and medium term plans, along with the short term plans, to buy power from the various power generators. If long term and medium term contracts are made, the cost of power would also be at a lower rate, as compared to short term plans. In fact, the transmission corridors are built on the basis of long term access. Since, the State of Tamilnadu had not entered into long term access agreements, for the supply of electricity, sufficient infrastructural development cannot be made, as it would involve heavy cost.

39. It has also been submitted that the power number of the Southern Grid is about 1100 megawatts per Hertz, as per the latest load generation status. Since, the impugned regulations have sought to tighten the frequency by 0.02 Hz, the impact would be about 220 megawatts for the Southern Grid. As such, the petitioner would be affected to a maximum extent of 220 megawatts, if the State of Tamilnadu is the only State overdrawing power in the region. It has also been stated that a number of power generation projects are on the verge of being commissioned in the Southern region. As such, it would be possible to maintain the load generation balance in the Southern region and the tightening of the frequency band would only have a minimum effect on the load management, by the petitioner.

40. It has also been stated that the Central Commission has also a duty to take steps for the development of the market, in accordance with the mandate of the Electricity Act, 2003, and the National Electricity Policy. The Central Commission has granted trading licences for inter-State trading in electricity, with a cap on trading margin, in order to protect the interests of the consumers. It has been further stated that there has been no grid failure in the recent past, despite the constant load growth, due to the implementation of Availability Based Tariff, with the continuous review of UI Mechanism and by the continuous narrowing down of the frequency bandwidth, as per the requirements of the Indian Power System.

41. It has also been stated that, due to the harnessing of power through effective power market mechanisms, including the participation of small captive power plants and renewable energy producers, a major grid failure has also been averted by ensuring strict compliance of the Electricity Grid Code and the UI Regulations and due to the implementation of the various special protection schemes. It has also been noted that the average frequency of the Southern Grid was 49.80 Hz and 49.77 Hz, during the years 2010-2011 and 2011-2012, respectively. The lower end of the frequency band has been fixed at 49.70 Hz, by way of the impugned regulations and it is commensurate with the prevailing frequency profile of the Southern region.

42. The Central Commission has taken pro-active steps, by way of a suo motu petition, bearing Petition No.67 of 2010, to remove the various bottle necks in the different transmission systems, including that of the Southern region. The Central Commission has also granted regulatory approval to the Central Transmission Utility, for inter connection between the NEW Grid and the Southern Grid, for relieving the corridor congestion and to facilitate additional flow of power from the NEW Grid to the Southern Grid.

43. It has also been stated that, if the petitioner adheres to the scheduled drawal of power from the grid, it shall be spared from the burden of paying the UI Charges. The grievance of the petitioner regarding the restriction of its overdrawing facility, on account of the revision of the UI rates, cannot be held to be valid, as the overdrawal under the UI is allowed only as a temporary excursion from the schedule and not as a regular source of purchasing power. The non failure of the grid, for the past two years, cannot be the sole criterion for deferring the decision of grid frequency, as it is found to be necessary to achieve safety, security and reliability of the grid. Failure of the grid would result in serious financial and other losses to a number of stake holders and it would adversely affect the economy of the State. As such, the contentions raised on behalf of the petitioner against the narrowing of the frequency band, by way of the Regulations and the increase in the UI rates are invalid. They are neither arbitrary in nature or ultra vires the Constitution of India, as alleged by the petitioner. As such, the impugned regulations are valid in the eye of law, as they have been introduced for the purpose of enforcing grid discipline to be followed by the utilities, such as the petitioner. Since, the writ petitions filed by the petitioner are devoid of merits, they are liable to be dismissed.

44. The learned counsels appearing on behalf of the petitioner had submitted that the impugned amendments are arbitrary, unreasonable and ultra vires the Constitution of India and therefore, they are liable to be quashed. The impugned amendments had been made without taking note of the relevant factors and the objections raised on behalf of the petitioner. It has also been stated that the impugned amendments have the effect of narrowing down the grid frequency from the existing bandwidth, resulting in the enhancement of power cuts. It has also been submitted that the impugned amendments are hit by the doctrine of proportionality. The amendments had been made by the Central Electricity Regulatory Commission, without considering the practical difficulties faced by the petitioner and without a proper appreciation of the ground realities.

45. It has also been submitted that the petitioner is not in a position to purchase power from power generators and to transmit the same to the Southern Grid, due to the lack of sufficient infrastructural facilities. It had also been stated that, due to the corridor congestion and the increase in the UI rates, the cost of power supplied to the consumers would increase substantially. The amendments introduced by the Commission does not adhere to the procedures, as contemplated by the relevant provisions of the Electricity Act, 2003. The Commission had failed to carry out the mandate of Section 25 of the act, which requires the Central Government, through its agencies, to provide efficient, integrated and economical supply of electricity. The act of the Central Transmission Utility is in violation of Section 38 of the Act, as there is no corridor to meet the present congestion and to facilitate the natural uninterrupted flow of electricity, from the NEW Grid to the Southern Grid. The petitioner has also been burdened with the congestion charges imposed on the State distribution utilities. As such, the power grid corporation is the beneficiary of the congestion charges. The imposition of congestion charges makes the purchase of power costlier and it is in violation of Section 38(2)(d) of the Electricity Act, 2003. However, no serious attempt has been made to reduce the congestion in the corridor, through which the power is transmitted.

46. The learned counsel appearing on behalf of the petitioner had submitted that the impugned Regulations, which fall under the category of Subordinate Legislation, could be declared to be arbitrary, invalid and ultra vires the Constitution of India, if it does not satisfy the requirements enumerated by the Supreme Court of India. He had further submitted that Subordinate Legislation could be subject to judicial review on wider grounds, as compared to that of a primary enactment. Presumption of the constitutional validity of a subordinate legislation cannot be on the same footing as that of an enactment. He had further submitted that, except the State of Gujarat all the other States in India have been overdrawing power. There has not been a single grid failure in the last 10 or 12 years. Sufficient mechanisms have been put in place to protect the system from grid failures. Instead of addressing the basic issue of integration of the Southern Grid with the NEW Grid to ease the power situation, drastically, the Central Electricity Regulatory Commission has imposed certain stringent conditions, which would increase the cost of electricity supplied to the consumers. As per Section 25 of the Electricity Act, 2003, the Central Government may take necessary steps for intra-State, regional and inter-regional transmission of electricity. However, the impugned amendments are contrary to the said provision of law, as well as the object of providing efficient, economical and integrated transmission and supply of electricity.

47. The learned counsel appearing on behalf of the petitioner had relied on the following decisions in support of his contentions:

47.1) In Indian Express Newspapers Vs. Union of India, (1985) 1 SCC 641, the supreme court had held as follows:

> "In deciding the reasonableness of restrictions imposed on any fundamental right the Court should take into consideration the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the disproportion of the imposition and the prevailing conditions at the relevant time including the social values whose needs are sought to be satisfied by means of the restrictions.
>
> A subordinate legislation may be questioned on the grounds of (1) legislative competence on which the plenary legislation which delegated the power is also subject; (2) being ultra vires the parent statute or the Constitution in that it fails to take into account the very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or the Constitution or that it does not conform to the statutory or constitutional requirements; (3) being in conflict with any other statute; (4) being so arbitrary that it could not be said to conform to the statute or be violative of Article 14. But subordinate legislature cannot be questioned on ground of violation of natural justice which is available against an administrative action. It cannot be challenged merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the court considers relevant."

47.2) In Bombay Dyeing & Mfg. Co. Ltd (3) Vs. Bombay Environmental Action Group, (2006) 3 SCC 434, it had been held as follows:

> "The court ordinarily is required to consider the constitutionality of the subordinate legislation within the accepted norms and parameters of judicial review. A subordinate legislation apart from being intra vires the Constitution, should not also be ultra vires the parent Act under which it has been made. A subordinate legislation must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith. Subordinate legislation can also be challenged if it is violative of the legislative object or if the reasons assigned therefor are not germane or otherwise malafide. Unreasonableness is certainly a ground of striking down a subordinate legislation."

47.3) In State of M.P. Vs. Bhola, (2003) 3 SCC 1, it had been held as follows:

"A delegated legislation can be declared invalid by the Court mainly on two grounds: firstly, that it violates any provision of the Constitution and secondly, it is violative of the enabling Act. If the delegate which has been given a rule-making authority exceeds its authority and makes any provision inconsistent with the Act and thus overrides it, it can be held to be a case of violating the provisions of the enabling Act but where the enabling Act itself permits ancillary and subsidiary functions of the legislature to be performed by the executive as its delegate, the delegated legislation cannot be held to be in violation of the enabling Act."

47.4) In A.Satyanarayana Vs. S.Purushotham, (2008) 5 SCC 416, it had been held as follows:

"There cannot be any doubt that a policy decision and, in particular, legislative policy should not ordinarily be interfered with and the superior courts, while exercising their power of judicial review, should not consider as to whether such policy decision has been taken mala fide or not. But where a policy decision as reflected in a statutory rule pertains to the field of subordinate legislation, indisputably, the same would be amenable to judicial review, inter alia, on the ground of being violative of Article 14 of the Constitution."

47.5) In Sanjay Singh Vs. U.P.Public Service Commission, (2007) 3 SCC 720, it had been held as follows:

"39. Learned counsel for the Commission also referred to several decisions in support of its contention that courts will be slow to interfere with matters affecting policy requiring technical expertise and leave them for decision of experts. (State of U.P. v. Renusagar Power Co. 1988 (4) SCC 59, Tata Iron & Steel Co. Ltd. v. Union of India 1996 (9) SCC 709, Federation of Railway Officers Association v. Union of India 2003 (4) SCC 289). There can be no doubt about the said principle. But manifest arbitrariness and irrationality is an exception to the said principle. Therefore, the said decisions are of no avail."

47.6) In State of Kerala Vs. Unni, (2007) 2 SCC 365, it had been held as follows:

"The principles on which constitutionality of a statute is judged and that of a subordinate legislation are different. A subordinate legislation would not enjoy the same degree of immunity as a legislative Act would. Unreasonableness is one of the grounds of judicial review of delegated legislation. Reasonableness of a statute or otherwise must be judged having regard to the various

factors including the effect thereof on a person carrying on a business. If by reason of the rule-making power, the State intended to impose a condition, the same was required to be a reasonable one. It was required to conform to the provisions of the statute as its violation would attract penal liability. It was expected to be definite and not vague. Indisputably, the State having regard to Article 47 of the Constitution, must strive hard to maintain public health. However, it should have specified the mode and manner in which the percentage of ethyl alcohol can be found out by the licensee. When a statute provides for a condition which is impossible to be performed, its unreasonableness shall be presumed. It would be for the State in such a situation to justify the reasonableness thereof."

47.7) In Union of India Vs. Cynamide India Ltd., (1987) 2 SC 720, it had been held as follows:

"With the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish. However, the distinction between the two has usually been expressed as "one between the general and the particular". A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. But, this is only a broad distinction, not necessarily always true. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts."

47.8) In Shri Sitaram Sugar Co. Ltd. Vs. Union of India, (1990) 3 SCC 223, it had been held as follows

"Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not

tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.

A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."

47.9) In State of U.P. Vs. Renusagar Power Co., (1988) 4 SCC 59, it had been held as follows:

"Price fixation under Section 3(4) which is ultimately the basis of rise in cost because of the rise of the electricity duty is not a matter for investigation of court. Whether in a particular situation, rural electrification and development of agriculture should be given priority or electricity or development of aluminium industry should be given priority or which is in public interest, are value judgments and the legislature is the best judge."

47.10) In Barium Chemicals Ltd. And another Vs. Company Law Board and others, AIR 1967 SC 295(1), it had been held as follows:

"Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

47.11) In Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh, (2004) 2 SCC 130, it had been held as follows:

"46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to

achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority.

.....

49. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. In cases where such legislation is made and the restrictions are reasonable; yet, if the statute concerned permitted administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. In such cases, the administrative action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is being done by the courts. Administrative action in India affecting the Fundamental Freedoms has always been tested on the anvil of the proportionality in the last 50 years even though it has not been expressly stated that the principle that is applied is the proportionality principle"

47.12) In Global Energy Ltd Vs. Central Electricity Regulatory Commission, (2009) 15 SCC 570, it had been held as follows:

"35. In the event a statute provides for licensing, in a case of this nature, the same must thus be found to satisfy the test of reasonableness. The standard for determining reasonableness of a statute so as to satisfy the constitutional scheme as adumbrated in Article 14 of the Constitution of India must receive a higher level of scrutiny than an ordinary statute. Such a higher level of scrutiny is necessary not for the purpose of determining the Constitutionality of the statute alone vis-a-vis the field of legislative power as envisaged under Article 245 of the Constitution of India but also having regard to the object and purpose, the statute seeks to achieve.

36. Electricity was subject to strict regulations. It, subject to just exceptions, was the monopoly of the State Electricity Boards, Public Sector Undertakings. Participation of the private sector inter alia in trading

was encouraged by the provisions of the Act. Court's concern, therefore, would be not only to see that the Statute is intra vires the Constitutional scheme including the legislative field, but also as to whether it passes the test of reasonableness having regard to the object and purpose of the Act. For achieving the aforementioned purpose not only the premise, relevancy of the constitutional scheme in relation thereto is required to be taken into consideration as would be noticed a little later but therefor the doctrine of purposive interpretation should also be resorted to.

48. Mr.Sriram Panchu, the learned senior counsel, appearing on behalf of the first respondent had submitted that the writ petitions, filed by the petitioner, are liable to be dismissed, as they are unsustainable, both on facts and in law. The learned counsel had submitted that the contention of the petitioner that the impugned notifications meant to ensure better grid security are unnecessary, as there had not been a single instance of grid failure in the past, is devoid of merits. He had pointed out that the collapse of the entire Northern Grid, on 30.7.2012, and the Northern, Eastern and Northeastern grids, on 31.7.2012, shows the fragility of the grid system and the necessity to tighten the regulations necessary for ensuring grid discipline, by imposing increased penalty. The grid failure in 21 States of the Northern and Northeastern regions of India had caused serious havoc, disrupting the normal life of the people in the said regions. It had also caused severe financial loss and irreparable damage to many industrial units and other entities. The reason for the grid failure in the Northern and Northeastern States of India is said to be due to the grid indiscipline by some of the States in the said regions.

49. The learned counsel has further stated that, even if certain safety measures, like under frequency trip relays, automatic generation control, frequency protective relays etc., are in place, they would not be sufficient to ensure the safety of the grid and to prevent it from failure. Further, the frequency protective relays, installed by the petitioner, would come into play only when the frequency drops below 48.8 Hz. However, they are not sufficient to protect the grid from imminent collapse when it is put under severe strain.

50. It had also been stated that the new amendments introduced by way of the impugned notifications for the tightening of the operating grid frequency and the introduction of certain measures for enhancing the grid discipline are prerequisites for the integration of the Southern Grid with the NEW Grid. Further, the impugned notifications have been issued to promote the objects of the Electricity Act, 2003, the National Electricity Policy and the Tariff Policy and for the purpose of ensuring the availability of quality

power to the consumers at reasonable and competitive rates.

51. The learned counsel had further submitted that the impugned notifications do not fall foul of the requirement to provide efficient, economical and integrated transmission and supply of electricity. The impugned notifications conform to the mandate of the Electricity Act, 2003, and the National Electricity Policy.

52. It has been further stated that the increase in the price of the electricity cannot be attributed to the impugned notifications. In fact, the increase in the price of electricity is due to the increase in its price, by the distribution companies, as a result in the increase in cost of coal and the other components and the cost of generation of electricity, by such companies. Further, it is clear that the petitioner would be liable to pay the UI charges only when it makes unscheduled drawals from the grid. The penalty that has been imposed for overdrawals cannot be shown as a reason for the increase in the price of the electricity. Further, it is open to the petitioner to avoid payment of UI charges by purchasing power from the distribution companies and by informing about the necessity for the transmission of the power purchased, by the petitioner, from the distribution companies, to avoid payment of corridor congestion charges.

53. It has been further stated that it is for the petitioner to enter into long term and medium term contracts or arrangements, for the supply of electricity, by the distribution companies, instead of overdrawing power from the grid, when it is in short supply. The petitioner could also make the necessary arrangements for getting power from wind and solar power generators. However, it is not appropriate for the petitioner to consider UI as a viable source of drawing electricity.

54. It has been further stated that the contentions raised on behalf of the petitioner, with regard to non syncronisation of the Southern Grid with the NEW Grid and the issues relating to the corridor congestion and the resultant cost implications cannot be accepted. In fact, the erstwhile Tamilnadu Electricity Board had not raised the issue of syncronisation of the grids, during the meetings of the committee. In fact, the Board had felt more secure being islanded to prevent the outflow of electricity from the State of Tamilnadu. The non-integration of the grids is due to the fact that there should be proper grid discipline and an operating frequency range as close to 50Hz as possible, for the safety of the network.

55. It has been further stated that the petitioner would be liable to pay the congestion charges only when it overdraws electricity through the available corridor, without proper planned

purchases of power. The congestion charges would not be leviable if contracts or agreements are entered into for the purchase of electricity, well in advance, based on the requirement of the petitioner to draw the power and if the petitioner draws power, after conveying its need to draw such power, by prior intimation. If such arrangements are made it would be convenient for all the stake holders involved, including the petitioner. As such the fresh measures, sought to be implemented, by narrowing the frequency range, would be useful to all the stake holders, including the petitioner, as such measures would make the supply of power efficient and cost effective. The unscheduled overdrawals of power would result in payment of UI charges, by the petitioner, and it would result in the increase in the cost of electricity supplied to the consumers. It would also reduce the quality of power supplied by the petitioner.

56. It has been further stated that the revision of the UI charges is in accordance with the order of the APTEL, in Appeal No.124 of 2010 and the order passed by the supreme court, after taking into account all relevant factors, including the pattern of overdrawal, the cost of generation of power, using different fuels and the frequency profile of the grid. It cannot be said that the difference in the rates prescribed for power producers and its consumers, like the petitioner, are arbitrary and contrary to Article 14 of the Constitution of India. Even though different UI rates have been in existence, from 7.1.2008, the petitioner had not challenged the same, till date.

57. It has also been stated that the tightening of the frequency by 0.2 Hz will have an overall impact of about 220 megawatts, out of which the impact on the State of Tamilnadu would be around 75 megawatts, based on the drawal from the grid. It has been further stated that no objections had been raised on behalf of the petitioner, with regard to the Grid Code Notification, when it was open to the petitioner to raise such objections. Therefore, the contention of the petitioner that its objections had not been considered is devoid of merits. In fact, at the time of the hearing of the objections, it was only requested, on behalf of the petitioner, that the Commission may postpone the implementation of the proposed amendments. Further, all the objections raised on behalf of the petitioner, some of which were similar to those which had been raised by other similarly placed entities, had been considered by the Commission. Thereafter, the Commission had arrived at the conclusion that certain regulatory procedures should be introduced to bring about greater grid discipline amongst its users, for the protection of the grid and for providing efficient, economical and integrated transmission and supply of quality power.

58. The learned counsel appearing on behalf of the first respondent had relied on the decision of the supreme court, in State of Tamilnadu and another Vs. P.Krishnamurthy and Others, AIR 2006 SC

1622, to show that there is a presumption in favour of the Constitutionality and the validity of a subordinate legislation. He had relied on the decision of the supreme court, in Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat and Others, AIR 2008 SC 1892, wherein it had been held, relying on its decision, in Government of Andhra Pradesh and Others Vs. Smt.P.Laxmi Devi, AIR 2008 SC 1640, that the court should exercise judicial restraint while judging the constitutional validity of statutes. The same principle would also apply when judging the constitutional validity of delegated legislation. In K.T.Plantation Pvt. Ltd. And another Vs. State of Karnataka, AIR 2011 SC 3430, a Constitutional Bench of the supreme court had held that any law which, in the opinion of the court, is not just, fair and reasonable cannot be struck down because such an approach would always be subjective in nature and that it would not reflect the will of the people, as there is always a presumption of the constitutionality of the statute.

59. The learned counsel had further submitted that it is a well recognized position in law that a subordinate legislation can be challenged only on certain specified grounds like lack of legislative competence, violation of fundamental rights or any other provision in the Constitution of India, failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act, repugnancy to the laws of the land, manifest arbitrariness or unreasonableness. He had also pointed out that the supreme court, in Central Power Distribution Co. and others Vs. Central Electricity Regulatory Commission and another, AIR 2007 SC 2912, had held that the Central Electricity Regulatory Commission has plenary powers to regulate the grid. He had also cited the decisions of the supreme court, in Gauri Shankar Vs. Union of India, AIR 1995 SC 55, Ashustosh Gupta Vs. State of Rajasthan, (2002) 4 SCC 34, Western U.P. Electric power and supply co. Vs. State of Uttar Pradesh, AIR 1970 SC 21 and State of Uttar Pradesh Vs. Kamal Palace, AIR 2000 SC 600, while elaborating on the concept of equality, under Article 14 of the Constitution of India.

60. The learned counsel had further relied on the decision of the supreme court, in State of Bihar Vs. Kameshwar Singh AIR 1952 SC 252, wherein it had been held that the legislature is the best judge of what is good for the community, by whose suffrage it comes into existence. He had also relied on the decision of Keshvananda Bharati Vs. State of Kerala, AIR 1973 SC 1461, wherein, it had been observed that, in exercising the power of judicial review the courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error.

61. He had also stated that the supreme court, in State of Bihar and Others Vs. Bihar Distillery Ltd., AIR 1997 SC 1511, had observed that the approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption

of constitutionality. The court should strike down the enactment only when it is not possible to sustain it. He had quoted the observations of Justice Frankfurter of the U.S. supreme court, in American Federation of Labour Vs. American Sash and Door Co., 335 U.S. 538 (1949), wherein, it had been observed that, even where the social undesirability of a law may be convincingly urged, invalidation of the law, by a court, debilitates popular democratic government. Most laws dealing with social and economic problems are matters of trial and error.

62. The learned counsel had further stated that, in Federation of Railway Officers Vs. Union of India, AIR 2003 SC 1344, the supreme court had held that, on matters affecting policy and requiring technical expertise, the court would leave the matter for the decision of those who are qualified to address the issues. Therefore, he had submitted that the determination of the grid frequency and the imposition of UI charges are matters involving high technical expertise and scientific reasons for arriving at the policy and therefore, it is not the subject matter of judicial review.

63. He had also submitted that, in Central Power Distribution Co. and Ors. Vs. Central Electricity Regulatory Commission, AIR 2007 SC 2912, the supreme court had held that the Central Electricity Regulatory Commission has the plenary powers to regulate the grid by evolving a commercial mechanism such as imposition of UI charges. Further, it is a well settled position in law that a power to regulate includes within it the power to enforce, as held in Indu Bhusan Vs. Rama Sunderi, (1970) 1 SCR 443, K.Ramanathan Vs. State of Tamilnadu, (1985) 2 SCR 1028, V.S.Rice and Oil Mills Vs. State of Andhra Pradesh, (1964) 7 SCR 456 and Deepak Theatre, Dhuri Vs. State of Punjab, AIR 1992 SC 1519. Therefore, the enforcement of grid discipline, by the Central Regulatory Electricity Commission, by introducing the amendments, by way of the impugned notifications, cannot be held to be arbitrary or invalid in the eye of law. Accordingly, the writ petitions filed by the petitioner are liable to be dismissed.

64. The learned counsels appearing on behalf of the respondents 2 to 4 had submitted that the Central Regulatory Electricity Commission had issued the amendments in question, in exercise of its power conferred under Section 178 of the Electricity Act, 2003, read with Section 79 (1)(c) of the said Act. The notifications had been published, on 5.3.2012, and they had come into effect, on 2.4.2012. The said amendments had been introduced only with a view to regulate the operating frequency of electricity supply, in view of the near misses of total collapse of the grid, in the past. By changing the frequency of the electricity supply, by 0.2 Hz, from 49.50 Hz - 50.20 Hz to 49.70 Hz - 50.20 Hz the petitioner is not going to be affected, in any manner.

65. The learned counsel had further stated that the petitioner is a member of the Standing Committee. While so, they had not agreed for the construction of the required transmission lines, for the transmission of electricity. Further, the petitioner had not taken the necessary efforts to link the Southern Grid, with the NEW Grid even though it had been warned, on several occasions, and when fines had been imposed for not following the Grid Code Regulation introduced in the year, 2009. He had further submitted that the petitioner has not been in a position to demonstrate as to how the amendments to the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2012, are arbitrary and unreasonable. In fact, the impugned notifications, which are applicable to all the regions in India, cannot be challenged by the petitioner, merely on the ground that the petitioner has certain grievances, which are peculiar to the State of Tamilnadu. If such regulations are not introduced respondents 2 to 4 would not be in a position to monitor and regulate the supply of power in an effective manner. He had also submitted that the cost of establishing the grid is on the Central exchequer and therefore, the larger interests of the country, as a whole, had to be taken into account while considering the necessity for such regulations. As such, the writ petitions, filed by the petitioners, are devoid of merits and therefore, they are liable to be dismissed.

66. The learned counsel appearing on behalf of the respondents 2 to 4 had relied on the decision reported in M/s.Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. (2011) 1 SCC 640

67. In the common rejoinder, filed on behalf of the petitioner, it has been stated that the observation made by the Appellate Tribunal is that it is desirable to maintain grid frequency, as close as possible to 50 Hz. Considering the prevailing shortage of power and load imbalances it has been specifically stated that Central Electricity Regulatory Commission should encourage additional generation to discourage overdrawal of electricity, during low frequency conditions.

68. It has been further stated that the order passed by the Appellate Tribunal deals with UI rates for overdrawal by the buyer and the under injection by the generator. It does not, in any manner, support the case of the respondents to reduce the utility frequency bandwidth, while the under injection by the generator or the overdrawal by the beneficiaries have the same impact on the grid security. There is discrimination between the generators and the beneficiaries, due to the difference in the cap rates. As such, the regulations of the Commission are more generator friendly, comparatively, even though the main object of the Electricity Act, 2003, is to protect the interests of the end consumers.

69. It has also been stated that the concept of operating in a narrow frequency bandwidth should be brought into effect only after ensuring that there is sufficient power available to meet the demend. As such, the primary requirement before narrowing down the frequency bandwidth is to ensure that sufficient power is made available to meet the demand.

70. It has been further stated that a comparison of the utility frequency with that of advanced countries in Europe and the United States of America is not appropriate, as such countries are self sufficient in electricity generation, unlike the Indian situation. Therefore, the real issue that needs to be addressed is the increase in the generation of electricity. Therefore, the regulations introduced, by the Commission, for the reason of ensuring grid security, by way of amendments, are liable to be held as arbitrary, unreasonable and ultra vires the Constitution of India.

71. In the common reply affidavit filed on behalf of the first respondent, as a reply to the rejoinder filed on behalf of the petitioner, it has been stated that the issue raised by the petitioner, relating the discriminatory treatment meted out to the generators of electricity and its consumers, cannot be accepted. It has been further stated that UI is not a prerogative. It is primarily a mechanism for settlement of deviations from schedules. It also provides incentives to all the parties to do the right thing. The Commission is basically reducing, consciously, the incentive for coal, lignite and Administrative Price Mechanism gas fired stations to overgenerate. This has been considered to be necessary for removing any perverse incentives for flogging the plants, manipulating the availability declaration etc. and for reducing the opposition to the tariff rationalization. Therefore, the cap provided for over injection by coal and lignite fired stations and the stations burning only Administrative Price Mechanism Gas is neither arbitrary nor discriminatory in nature.

72. It has also been stated that the drawal of UI power in the real time load generation balancing is permitted, by the Commission, so that if one State faces a load crash the other States can use the available surplus power through the UI balancing tool. As such, the Commission has taken a conscious decision to permit flexibility for overdrawal within certain limits, so as to enhance grid security.

73. In view of the averments made on behalf of the petitioner, as well as the respondents, and in view of the submissions made by the learned counsels appearing on their behalf, and on a perusal of the records available, and on considering the decisions cited supra, it is noted that the first respondent Commission had issued the impugned notifications containing the regulations, seeking to narrow

the operating frequency of electricity supply (Grid Frequency) by 0.2 Hz, from 49.50 - 50.20 Hz to 49.70 to 50.20 Hz, in the Grid Code and to increase the Unscheduled Interchange charges.

74. It is further noted that the Central Electricity Regulatory Commission, in exercise of the powers conferred under Section 178, read with Section 79(1)(C) of the Electricity Act, 2003, had issued the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) (Second Amendment) Regulations, 2012. The said Commission had also brought about certain amendments to the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, in exercise of Clause (h) of sub Section (1) of Section 79, read with Clause (g) of sub section (2) of Section 178 of the Electricity Act, 2003.

75. It is not in dispute that the amendments in the Grid Code and in the UI Regulations have been brought about, by the Commission, in exercise of its delegated powers of legislation. As such, the regulations which have been issued, as subordinate legislation, are subject to judicial review. Accordingly, this court finds that the impugned regulations have been introduced, by the Central Electricity Regulatory Commission, with a view to bring about grid discipline amongst the users of electricity, like the petitioner corporation. The Central Electricity Regulatory Commission, the first respondent herein, has issued the impugned regulations, after having followed all the necessary procedures prescribed by the Electricity Act, 2003.

76. It is also seen, from the records available, that the petitioner corporation had been given sufficient opportunity to raise its objections, when the draft regulations had been notified. The objections raised by the users of electricity, including the petitioner corporation, had been considered by the Commission before the impugned regulations had been issued. It is also noted that most of the users of electricity, including the petitioner corporation, had requested the Commission to postpone the narrowing down of the operating frequency of electricity supply (Grid Frequency). However, the first respondent Commission has issued the impugned regulations to prevent unscheduled overdrawals of power, by its users, with a view to ensure grid discipline. Further, the first respondent Commission has issued the impugned regulations in order to maintain safe, secure and efficient operation of the grid, by maintaining grid discipline.

77. It is clear, from the records available, that the petitioner has been overdrawing power, without maintaining sufficient grid discipline. The mere existence of the under frequency load shedding relays cannot be considered to be sufficient protection against a major grid collapse. It is not open to the petitioner corporation to contend that it would be costly for the consumers of electricity, if

the Unscheduled Interchange Charges are increased and if penalties are levied for unscheduled overdrawal of power, by the petitioner corporation.

78. From the statistical data available, the first respondent Commission had come to the conclusion that it is desirable to maintain grid frequency, as close as possible to 50 Hz. It had also found that any deviation in the frequency would result in the inefficient operation of the generation and load equipment, resulting in the degradation of the quality of electricity reaching the end consumers. It could also result in the collapse of the power system. As such, the overdrawal of power from the grid, by its users, to meet the consumer demand, is not in the interest of grid discipline and grid security. It is for the utilities like the petitioner corporation to plan for procurement of power, on long term, medium term and short term basis, to meet their consumer demands. Therefore, the first respondent Commission has issued the impugned regulations to ensure stable and secure operation of the grid, by bringing the permissible range of frequency band close to the nominal level. This would also encourage the distribution utilities in the various regions of the country to embark on a planned development of power, by setting up new power projects.

79. This court is also of the view that the petitioner corporation has not been in a position to show that the impugned regulations issued by the first respondent Commission are arbitrary, unreasonable and ultra vires the parent Act or the provisions of the Constitution of India. It is a well settled position in law that there is a presumption in favour of the constitutionality or the validity of a legislation, including a subordinate legislation. As such, the burden is on the petitioner corporation to show that the impugned regulations are unconstitutional and invalid in the eye of law. However, the petitioner corporation has failed to persuade this court, to declare the regulations in question, as ultra vires and invalid. The first respondent Commission has issued the impugned notifications only after considering the objections raised by the stakeholders. It had taken into account the various factors, which were found to be relevant, before introducing the amendments, in order to ensure grid discipline and grid security.

80. The contention raised on behalf of the petitioner corporation that there has been no major grid failure in the recent past and therefore, the reduction in the grid frequency is unnecessary, cannot be accepted. If the petitioner corporation had entered into long term and medium term contracts or agreements, with the suppliers of power, there would be no necessity to overdraw power from the grid, except under extraordinary circumstances. In such circumstances, there would be no need for the petitioner corporation to pay the enhanced Unscheduled Interchange charges or the penalty. Further, if sufficient advance information is given for drawing power

through the grid, for supplying the same to its consumers, there would be no necessity for the payment of congestion charges. By such advance planning the petitioner corporation could avoid the escalation of the cost of power supplied to its end consumers. The lack of synchronisation of the Southern Grid with the NEW Grid cannot be shown as a reason for the overdrawals of power by the petitioner corporation.

81. In fact, the impugned regulations had been introduced only with the object of efficient, integrated and economic supply of electricity. It is also a well settled position in law that when certain policy decisions had been made, based on technical data, the power of judicial review of this court cannot be invoked, to declare the same to be ultra vires and invalid, unless it could be established that such a decision has been made in contravention of the tests laid down by the various decisions of the apex court, cited by the learned counsel appearing on behalf of the first respondent Commission.

82. It is clear from the decisions of the supreme court, cited supra, that the legislature is the sole repository of the power to decide the policy that should be pursued, with regard to the matters covered by the Electricity Act, 2003. Therefore, there is no scope for interference, in such matters, by the courts of law, unless the specific provisions, which are impugned before them, can be said to suffer from serious legal infirmities.

83. If a law is made by a legislature, under its law making power, or by an authority, under the power of delegated legislation, it cannot be questioned before a court of law, unless it can be shown that it is totally beyond the scope of its jurisdiction, or that it is ultra vires the provisions of the Constitution of India, or contrary to the provisions of the parent Act, under which it is made.

84. Under normal circumstances, the courts of law do not act as appellate authorities to examine as to whether the policy decisions of the government concerned, formulated by way of legislations, are correct, appropriate and suitable to achieve the desired results. The scope of judicial review, in such matters, is limited to the extent of finding out if the laws enacted to implement the policy decisions of the government are contrary to the provisions of the Constitution of India, or opposed to the existing statutory provisions and manifestly arbitrary in nature.

85. The courts of law do not interfere with the policy decisions of the government, either on the ground that they are erroneous, or for the reason that a better, fairer or a wiser alternative is available. Any provision of law, which is not just, fair and reasonable, as perceived by the courts of law, cannot be the primary consideration for striking down the same, as there is always a presumption in favour of the constitutional validity of the statute.

In matters relating to the policy making process and in their implementation, the courts of law would be reluctant to interfere, especially, when technical expertise is required to address such issues. Therefore, the determination of the Grid Frequency and the imposition of the Unscheduled Interchange charges are, without doubt, matters involving intricate technical expertise and deep scientific knowledge and therefore, it is not for this court to question the same, by way of judicial review.

86. Further, there is no doubt that the impugned notifications conform to the mandate of the Electricity Act, 2003, and the National Electricity Policy. The fact remains that the petitioner corporation is liable to pay Unscheduled Interchange charges only in case of unscheduled drawals or overdrawals and it would also incur the penalty for such acts, as per the prevailing regulations. In such view of the matter, the contentions raised on behalf of the petitioner corporation cannot be countenanced. As such, this court is of the considered view that the writ petitions, filed by the petitioner corporation, are devoid of merits. Hence, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

//True Copy//

13/9/17

Sub.Asst.Registrar

csh

To

1.The Secretary,
Central Electricity Regulatory Commission,
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110001.

2. The General Manager,
National Load Dispatch Centre
Power System Operation Corporation Ltd.,
(POSOCO)
B-9, Qutab Institutional Area,
Katwari Sarai, New Delhi-110 016.

3.The General Manager,
Southern Region Loa Dispatch Centre
No.29, Race Course Cross Street,
Bangalore-560 009.

4.The General Manager/Commercial,
Power Grid Corporation of India Ltd.
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110 016.

5. The Secretary,
Government of India
Ministry of Power,
New Delhi-110 001.

2 cc to M/s.Aiyar & Dolia, Advocate, Sr.No.57826
2 cc to Mr.G.Vasudevan , Advocate, Sr.No.57634
1 cc to Mr.T.Mohan , Advocate, Sr.No.58162

Writ Petition No.8509 and
8510 of 2012

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