

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 36/RP/2022 with IA No. 57/2022**

**Coram:**

**Shri I. S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri P. K. Singh, Member**

**Date of Order: 23<sup>rd</sup> August, 2023**

**In the matter of:**

Seeking review of the Order dated 28.08.2022 passed by this Hon'ble Commission in Petition 182/MP/2020 titled as 'OGPTL vs. WBSEDCL & Ors.' as per Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

**And**

**In the matter of:**

**Odisha Generation Phase II Transmission Limited,**

F-1, The Mira Corporate Suites,

1 & 2, Ishwar Nagar, Okhla Crossing,

Mathura Road, New Delhi – 110 065

**...Review Petitioner**

**Vs**

**1. West Bengal State Electricity Distribution Company Limited,**

Bidyut Bhawan, A-Block,3rd Floor,

Bidhannagar, Kolkata- 700 091.

**2. North Bihar Power Distribution Company Limited,**

2nd Floor, Vidyut Bhawan,

Bailey Road, Patna – 800 001.

**3. South Bihar Power Distribution Company Limited,**

2nd Floor, Vidyut Bhawan,

Bailey Road, Patna – 800 001.

**4. Damodar Valley Corporation,**

DVC Head Quarters, DVC Towers,

VIP Road, Kolkata – 700 054.

**5. Jharkhand Bijli Vitran Nigam Limited,**

Engineer's Building, Dhurwa,

Ranchi – 834 004.



- 6. GRIDCO Limited,**  
Grid Corporation of Orissa Limited,  
Janpath, Bhubneshwar – 751 011
- 7. Energy and Power Department, Govt. of Sikkim,**  
Power Secretariat, Sonam Gyatso Marg,  
Gangtok, Sikkim – 737 101
- 8. Power Grid Corporation of India Limited,**  
HVDC Rihand, “Saudamini” Plot No-2  
Sector-29, Gurgaon – 122 001
- 9. Odisha Power Generation Corporation Limited,**  
Zone-A, 7th Floor, Fortune Towers, Chandrasekharpur,  
Bhubaneshwar, Odisha- 751 023
- 10. SKS Power Generation (Chhattisgarh) Limited,**  
B-501, Elegant Business Park,  
Andheri Kurla Road, J.B. Nagar,  
Andheri East, Mumbai,  
Maharashtra – 400 059
- 11. PFC Consulting Limited,**  
1st Floor, Urja Nidhi,  
1, Barakhamba Lane,  
Connaught Place,  
New Delhi – 110 001.
- 12. Central Transmission Utility of India Limited,**  
Through its Chairman,  
Plot No. 2, Sector-29, Gurgaon,  
Haryana-122001.
- 13. Central Electricity Authority,**  
Power System Project Monitoring Division,  
36, Sector 5, Rama Krishna Puram,  
New Delhi-110066.

.....**Respondents**

**Parties Present:**

Shri Amit Kapur, Advocate, OGPTL  
Ms. Gayatri Aryan, Advocate, OGPTL  
Shri Tushar Mathur, Advocate, CTUIL  
Ms. Aastha Jain, Advocate, CTUIL  
Shri Ranjeet Rajput, CTUIL  
Shri Yogeshwar, CTUIL



## **ORDER**

The Review Petitioner, Odisha Generation Phase II Transmission Limited ('OGPTL'), has filed the present Review Petition seeking review of the Commission's order dated 28.8.2022 in Petition No. 182/MP/2020 ('Impugned order') rejecting the early commissioning of its 765 kV D/C Jharsuguda (Sundargarh)- Raipur Pool line ('JR Line') and consequently, directing the Central Transmission Utility of India Limited ('CTUIL') to raise adjustment bills on the Review Petitioner to recover the amounts disbursed considering the COD as approved vide the Impugned order within a month.

The Review Petitioner has made the following prayers:

*“(a) Allow the present Petition and review the Impugned Order dated 28.08.2022 in Petition No. 182/MP/2020 as prayed in the present Petition;*

*(b) Review and recall the directions issued to CTUIL at Para 46 of the Impugned Order to recover the amounts disbursed to the Petitioner prior to the SCOD of JR Line as per the submissions made in this petition;*

*(c) Pass any such and further orders that this Hon'ble Commission deems fit in the facts of the present Petition.”*

### **Submissions of the Review Petitioner**

2. The Review Petitioner has mainly submitted as follows:

(a) Petition No. 182/MP/2020 was filed by the Petitioner claiming relief for certain change in law and force majeure events under the Transmission Service Agreement dated 20.11.2015 ("TSA). The Commission in Order dated 28.08.2022 in Petition No. 182/MP/2020 ("Impugned Order"), has decided the COD not from the date of early commissioning of JR line but with effect from 8.8.2019 which is the same date as the SCOD of the said line.



(b) The Review Petitioner has developed the transmission system comprising two elements whose details regarding scheduled and actual date of commercial operation are as follows:

Sl. No.	Transmission Line	SCOD	COD	Status as per Order dated 28.8.2022
1	OPGC-Jharsuguda 400 kV D/C Transmission line ("OJ Line")	31.07.2017	30.08.2017	COD Approved as 30.08.2017
2	Jharsuguda-Raipur 765 kV D/C Transmission line ("JR Line")	08.08.2019	06.04.2019	COD approved as 08.08.2019

(c) The present Review Petition relates to findings at paras 42 and 46 of the Impugned Order which read as follows:

*"42..... We observe that since there was no technical requirement of JRL Line to be commissioned earlier than SCOD and nothing is on record regarding safety and security of grid w.r.t JR Line as required while declaring COD prior to SCOD nor there is any agreement of LTTCS to declare COD prior to SCOD, this line cannot be considered COD prior to SCOD. Accordingly, the COD of JR Line shall be approved as its SCOD.*

*46. Consequently, CTUIL is directed to raise adjustment bills to the Petitioner to recover the amounts disbursed to the Petitioner, considering COD as approved vide this Order, within a month of issue of this Order. The transmission charges shall be allowed only from the date of approved COD as per this Order."*

(d) The Impugned Order has ignored the following facts:

(i) The Review Petitioner had commissioned JR Line on 06.04.2019 which is earlier than its SCOD (i.e. 08.08.2019) in terms of Ministry of Power's Policy for incentivizing early commissioning of Transmission projects dated 15.07.2015 ("**Early Commissioning Policy**") as conveyed by letter dated 19.09.2016.



(ii) The early commissioning of JR Line was duly recognised by Central Electricity Authority ("**CEA**") in minutes of the meetings *viz*:

(a) Meeting dated 26.10.2016 (minutes issued on 16.11.2016)

(b) Meeting dated 27.12.2016 (minutes issued on 11.01.2017)

(c) Meeting dated 19.02.2018 (minutes issued on 28.03.2018)

(d) Meeting dated 12.09.2018

(iii) Early commissioning has been recognized by this Commission in the Validation Committee meeting dated 12.09.2018 as recorded in the minutes issued on 03.10.2018.

(iv) The JR Line was commissioned, put into use, included in POC and the bill issued by the Petitioner to CTUIL has been disbursed by the beneficiaries of the TSA for utilizing the JR Line.

(v) The issue of early commissioning of JR Line was never pleaded by any party, nor was there any prayer with respect to COD of JR Line in Petition No. 182/MP/2020. In the said petition, the Review Petitioner had only sought relief for "change in law relief" in the form of compensation for the additional expenditures incurred while commissioning the JR Line.

(vi) The Review Petitioner from time to time had submitted to the LTTCs its Monthly Progress Reports as required under Article 5.3 of the TSA. In these reports, the Review Petitioner had clearly highlighted that the anticipated date of Commercial Operation is earlier than the Scheduled Commercial Operation date as notified under the TSA. Further, the reports have clearly shown the progress and completion status of JR Line. No comments or objections were ever raised



by the LTTCs regarding early completion of the JR Line despite the LTTCs being parties to the proceedings.

(vii) The Commission missed to notice that by Order dated 11.01.2022 in Petition No. 665/TT/2020 (PGCIL vs. MPPMCL & Ors.), COD was accepted w.e.f. 07.04.2019 for PGCIL's 2 nos. bays each at Jharsugda and Raipur substations which are connected to JR Line. The Commission approved the COD of the said bays w.e.f. 07.04.2019 on the basis of CEA energization certificate and RLDC charging certificate. The Review Petitioner had kept the LTTCs informed about its intention to commission JR Line prior to its SCOD which was never objected to. In support, the Review Petitioner has relied upon the following:

(viii) The Review Petitioner's notice dated 30.04.2018 under Article 6.1.1 of the TSA issued to the LTTCs giving prior intimation of its intention to connect JR Line.

(ix) The Review Petitioner's declaration of commercial operation (DOCO) letter dated 08.04.2019 informing the LTTCs that JR Line has been declared under commercial operation w.e.f. 06.04.2019. The LTTCs did not raise any objection to the early COD declared by the Petitioner.

(x) By the Order dated 11.01.2022 in PGCIL's Petition No. 665/TT/2020, the Commission allowed recovery of the transmission charges for the said bays from the POC pool w.e.f. 07.04.2019. PGCIL's terminal bays could not have been put to use (and consequently included in POC pool) if the connecting JR Line was not put to use. This shows that JR Line was put into use on the date of its COD.



(e) The Impugned findings of the Commission directing CTUIL to recover the transmission charges paid to the Review Petitioner for the period prior to SCOD (i.e., from 06.04.2019 to 07.08.2019) are causing undeserved hardship to the Petitioner when the transmission asset has been completed, commissioned and put to use. It is noteworthy that no arguments were heard by this Commission on this issue, before the order to recover transmission charges from the Petitioner was passed.

**IA No. 57/2022 dated 06.09.2022**

3. The Review Petitioner vide IA No. 57/2022 has made the following prayers:

(a) *During pendency of the Review Petition, grant Interim protection to the Review Petitioner from any coercive action by CTUIL including recovery/future adjustment of transmission charges from 06.04.2019 till 08.08.2019 as directed by the Impugned Order (in para 46);*

(b) *Pass any such and further orders that this Hon'ble Commission deems fit in the facts of the present Petition.*

4. The Commission vide order dated 23.09.2022 admitted the review petition and issued the following directions to CEA and CTUIL:

*"6. The Petitioner and the Respondents, CEA and CTUIL are directed to clarify/include, in their reply/rejoinder, as to whether there was any specific/categorical approval of CEA for early commissioning of the JR Line considering its requirement/ usefulness at the relevant point of time and whether any mutual Indemnification Agreement has been signed between the parties in terms of Office Memorandum dated 15.1.2016 (MOP OM) issued by the Ministry of Power pursuant to Policy of Ministry of Power dated 15.7.2015. The Petitioner is directed to submit whether as per MOP OM, in any meeting of such Committee, LTTCs and CEA have agreed for early commissioning of JR Line.*

*7. CTUIL is directed not to take any coercive action against the Review Petitioner including recovery/future adjustment of transmission charges (mentioned in Paragraph 46 of the Impugned order) in respect of JR Line from 6.4.2019 to 8.8.2019 till further order. The said direction was pronounced in presence of the Representative of CTUIL. Accordingly, IA No. 57/2022 is disposed of.*



*8.CEA is directed to depute the officer well conversant with the subject matter in the next date of hearing.”*

### **CTUIL’s Submission**

5. CTUIL vide affidavit dated 23.12.2022 has mainly submitted the following:

(a) In the meeting of the CEA Committee held on 26.10.2016 constituted for the purpose of ensuring smooth operationalization of the Policy for early commissioning of Transmission Projects, the request of M/s OGPTL for early commissioning of its Jharsuguda (Sundargarh)-Raipur Pool 765kV D/c ISTS line was referred to CEA (PSPM Division) to arrive at a mutually agreed date of early commissioning of the transmission system. Both M/s OGPTL and POWERGRID agreed for early commissioning of the Jharsuguda – Raipur Pool line in the monitoring meeting of CEA (PSPM) held on 12.09.2018. Subsequently, CEA conveyed to CTUIL vide its letter dated 01.04.2019 that both OGPTL and POWERGRID have completed their respective scope of work and are ready for charging. Thereafter, JR line was charged in April 2019.

(b) CTUIL has no information as per the records, regarding signing of any mutual indemnification agreement between the parties in terms of Office Memorandum dated 15.01.2016 of Ministry of Power.

### **CEA’s Submission**

6. CEA vide its letter dated 28.11.2022 addressed to CTUIL has provided its inputs for onward submission to the Commission. CEA’s letter dated 28.11.2022 was taken on record and a copy thereof was provided to the parties. CEA has broadly stated the following in its letter dated 28.11.2022:





(a) Jharsuguda-Raipur Pool 765 kV D/c line (JR line) was agreed as part of common transmission system for Phase-II generation projects in Odisha in the meeting of the Standing Committee on Power System Planning of Eastern Region held on 02.05.2014. JR line was approved to be implemented through TBCB route in 33rd meeting of the Empowered Committee on Transmission held on 30.9.2014. JR line is an inter-regional link between ER and WR.

(b) MoP vide OM No. 15/1/2013-Trans dated 05.10.2016 constituted a Committee under CEA to ensure smooth operationalization of the Policy for early commissioning of Transmission Projects issued vide its letter dated 15.07.2015.

(c) The first meeting of the Committee was held on 26.10.2016 to discuss the issues related to the operationalization of the policy and to discuss the proposal received from M/s Sterlite for early commissioning of its transmission projects. The issues were deliberated in detail and the following points related to Odisha Generation Phase-II Transmission Ltd (OGPTL) were agreed during the meeting;

(i) All the transmission schemes (5 nos) for which request has been made by M/s Sterlite for early commissioning do not qualify for consideration as the request has not been well in advance (i.e. 24 months in advance of the intended early SCOD). But as these schemes were under implementation before the constitution of the Committee, PSPM Division of CEA may hold meetings with the TSP and the implementing agencies of interconnecting (upstream/downstream) elements so that a mutually agreed early commissioning date (before SCOD) could be arrived at through mutual consultation.



(ii) The committee may take a decision on early commissioning, based on usefulness of the early commissioning for transmission system. Mutual indemnification agreements would be signed between the transmission licensees/STU /POWERGRID/ existing transmission licensee/ Generation developer, as the case may be, whose transmission elements/assets are involved. Accordingly, the committee would finalize the Revised SCOD (RSCOD) and the TSA would stand modified mutatis mutandis.

(iii) PSPM Division of CEA would review the progress of the transmission elements involved in the early commissioning and assess their commissioning in matching RSCOD. The deviations may be brought to the notice of the Committee.

(iv) Regarding early commissioning of OGPTL, it was decided that Sterlite will discuss with POWERGRID for mutually agreeable date for 2 nos. of 765 kV bays at Raipur substation of POWERGRID.

(v) Accordingly, a meeting was taken by CE (PSPM) of CEA on 27.12.2016 with M/s OGPTL and POWERGRID to decide the revised scheduled commercial operation date (RSCOD) for common transmissions system for Phase-II generation Project in Odisha and immediate evacuation system of OPGC project, wherein, following discussions were held:

(a) POWERGRID communicated that a meeting was held in POWERGRID in September, 2016 with SGL representatives wherein it was decided to complete the terminal bays for Jharsuguda – Raipur 765 kV D/C line by October, 2018 with best effort.



(b) POWERGRID and OGPTL were advised to have a joint meeting to arrive at mutually agreed revised schedule COD for Jharsuguda – Raipur 765 D/C line and submit report to CEA for further necessary action.

(vi) Subsequently, a meeting was taken by CE (PSPM) on 12.9.2018 to review the progress of transmission projects awarded through TBCB route, wherein, the progress of Jharsuguda – Raipur 765 kV D/C line was inter-alia discussed. In the meeting “M/s OGPTL informed that the line was in advance stage of completion and would be ready by October 2018. M/s OGPTL also informed that in the meeting held at CEA on 19.02.2018, they have proposed the commissioning of 765kV Jharsuguda - Raipur transmission line PGCIL representative stated that the construction of bays will be completed by October, 2018 with best efforts.

(vii) RIO, Kolkata granted approval for energization of the above line vide its letter dated 14.12.2018. Subsequently, OGPTL requested CTUIL for issuance of the charging instruction after the bays at both ends were completed by PGCIL. CTUIL vide email dated 28.03.2019 addressed to OGPTL mentioned that SCoD of said line is 07.08.2019 (SPV transferred on 08.04.2016 + 40 months) and requested OGPTL to arrange approval of CEA/“Committee to ensure smooth operationalization of the policy for early commissioning of transmission projects” for early commissioning of the subject line.

(viii) In response, PSPM Division, CEA, vide its letter dated 01.04.2019 addressed to CTUIL conveyed that both OGPTL and PGCIL have completed the commissioning of their respective assets with best efforts as per decision of meeting taken in CEA and are ready for charging and CTUIL was requested to



take early necessary action for charging of line as well as bays at terminal stations. Subsequently, the line was charged in April, 2019.

### **Conclusion**

- i. Line and terminal bays were with different organizations but got completed almost at the same time.
- ii. JR Line was being developed as a part of system strengthening scheme (ER-WR). The discussion on JR Line started in 2016 and since 2016, the intention was that OGPTL and PGCIL arrive at a mutually agreed date for commissioning the JR Line along with PGCIL's bays and was recapitulated in follow up meetings dated 27.12.2016, 19.02.2018 and 12.09.2018. JR Line was commissioned with best efforts on 06.04.2019. CEA was involved in the early commissioning of the transmission system through meetings and discussions.
- iii. PSPM Division, CEA, vide its letter dated 01.04.2019 addressed to CTUIL conveyed that both OGPTL and Powergrid have completed the commissioning of their respective assets with best efforts as per decision in meetings taken in CEA and are ready for charging. CTUIL was requested by CEA to take early necessary action for charging of line as well as bays at terminal stations. Subsequently, the line was charged in April, 2019.
- iv. It is worth mentioning that MoP in its order dated 15th July 2015, has issued a policy for incentivizing early commissioning of Transmission projects. Such efforts are motivating factor and worth emulating by the transmission system developers, facilitating the flow of power over the system.

### **Review Petitioner's rejoinder**

7. The Review Petitioner, vide rejoinder dated 27.02.2023 to CTUIL reply and CEA's response, has mainly submitted that the Review Petitioner (OGPTL) being an 'implementing agency' took a proposal in the prescribed manner as provided in the 2015 MoP Policy to CEA for deciding whether JR Line can be commissioned early. Pursuant to OGPTL's proposal to CEA, all directions given by CEA from time to time in various meetings were duly followed. The Review Petitioner coordinated with developer of upstream and downstream i.e. PGCIL (then undivided i.e. including functions of CTUIL) for a mutually agreed date of commissioning. The Review Petitioner also informed its long term transmission customers ("LTTCs") as per the Transmission Service Agreement dated 20.11.2015 ("TSA") on 30.04.2018 of its intention to connect early. Therefore, the approving agencies i.e. CEA, CTUIL, POSOCO and LTTCs all accepted the early COD and allowed the recovery from POC pool. If any agency (including the LTTCs) had objected to the early commissioning of the JR Line, the Review Petitioner would have waited till SCOD for declaring the COD. On the date of actual COD of the JR line i.e. 6.4.2019, the line was put into regular service and has been serving its intended purpose.

### **Written Submissions of the Review Petitioner**

8. The review petition was heard at length. Subsequent to the hearing, the Review Petitioner vide affidavit dated 23.03.2023 has filed the written submission as under:

- (a) The Commission is empowered to prevent miscarriage of justice. OGPTL has shown 'sufficient reason' to invoke the power of this Commission under Section 94 (1) (f) of the Electricity Act, 2003 ("Act") read with Regulation 103 of CERC (Conduct of Business) Regulations 1999.



(b) The Commission in exercise of powers of review is to be guided/governed by Order 47. Order 47 Rule 1 which provides that review can be sought on the grounds of (i) the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made; or (ii) on account of some mistake or error apparent on the face of record; or for any sufficient reasons.

(c) The following documents which were not placed before the Commission in Petition No. 182/MP/2020 have been brought on record in the review petition by CEA and CTUIL:

(i) Instructions issued by CEA dated 01.04.2019;

(ii) Charging instructions issued by CTUIL dated 02.04.2019 upon receiving instructions from CEA on 01.04.2019;

(iii) CEA and CTUIL have admitted in their replies to the review petition that CEA was involved in early commissioning of JR Line;

(iv) The error or omission in the present case pertains to: (a) omission of consideration that CEA Committee Meeting dated 26.10.2016 had delegated the function of approval of early commissioning of JR Line to the CEA's Power System Project Monitoring ("PSPM") Division; (b) Omission of granting an opportunity to OGPTL in a hearing to make good the case of early commissioning of JR Line; (c) Petition No. 182/MP/2020 was filed seeking relief for force majeure and change in law events and not for approval of COD of JR Line. On 23.06.2020, the main petition was admitted and the Commission sought details



of approvals of CEA for JR Line from the Review Petitioner. The Review Petitioner vide its affidavit dated 23.7.2020 submitted the details of CEA Committee dated 26.10.2016, CEA (PSPM) meetings dated 27.12.2016, 19.02.2018, 12.09.2018 and validation committee meeting dated 03.10.2018; (d) Since the petition was filed only for force majeure and Change in Law reliefs, the Review Petitioner merely submitted documents related to early commissioning as sought for by the Commission. The Review Petitioner was not given an opportunity of hearing to explain its case for early commissioning of JR line; and (e) The Review Petition ought to be allowed as per the Supreme Court's decision in Union of India v. Sandur Manganese & Iron Ores Ltd., [(2012) 9 SCC 683] in which it was held that non-grant of opportunity of hearing is a valid ground for review.

### **Analysis and Decision**

9. We have considered the submissions made by the Review Petitioner and the Respondents. The Commission in order dated 28.08.2022 in Petition No. 182/MP/2020 had issued the following directions:

*“39. We observe that there has been no discussion regarding requirement or usefulness of early commissioning of instant JR Line in any meeting taken by CEA on 26.10.2016, 27.12.2016 and 12.9.2018. Since the Petitioner had proposed for early commissioning of its transmission lines, PGCIL was advised to bring bays in its scope earlier than schedule date. It is noticed that there is nothing mentioned on requirement of the JR Line prior to SCOD.*

*40. We observe that the Commission, vide Record of Proceedings for the hearing dated 23.6.2022 directed the Petitioner to submit the following information:*

*“(a) CEA clearance certificate for energization of both transmission lines in terms of the Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010;*

*(b) RLDC certificate for trial operation of the OJ Line;*



(c) Documents declaring COD/Deemed COD of both transmission lines;  
 (d) In terms of Clause 1.1.1 of the TSA, COD shall not be a date prior to SCOD unless mutually agreed to by all parties. The Petitioner has declared COD of JR line on 6.4.2019 whereas SCOD was 8.8.2019. Submit the agreement of all parties declaring COD before SCOD; and

41. In response to the above, the Petitioner vide its affidavit dated 26.7.2022 has relied upon the discussion held in meetings taken by CEA on 26.10.2016, 27.12.2016 and 12.9.2018 and has placed on record the minutes of meetings of the meeting. However, the Petitioner has not placed on record the agreement of all parties declaring COD before SCOD, which was specifically asked from the Petitioner.

42. It is further noticed from RLDC trail run certificate dated 27.5.2019 that first circuit and second circuit of JR Line were energized on 4.4.2019 at 21:11 hrs and on 5.4.2019 at 23.32 hrs respectively. Both the circuits have been declared under Commercial Operation w.e.f 6.4.2019 as per the letter of the Petitioner to ERPC dated 8.4.2019. **We observe that since there was no technical requirement of JR Line to commissioned earlier than SCOD and nothing is on record regarding safety and security of grid w.r.t JR Line as required while declaring COD prior to SCOD nor there is any agreement of LTTCs to declare COD prior to SCOD, this line cannot be considered COD prior to SCOD. Accordingly, the COD of JR Line shall be approved as its SCOD.**

45. In the light of above discussions, we conclude that COD of the elements of the Project shall be as under:

Sl. No.	Element	SCOD	Actual COD declared by Petitioner	COD as approved vide this Order
1	OPGC-Jharsuguda 400 kV D/C Transmission line	31.07.2017	30.08.2017	30.08.2017
2	Jharsuguda-Raipur 765 kV D/C Transmission line	08.08.2019	06.04.2019	08.08.2019

46. Consequently, CTUIL is directed to raise adjustment bills to the Petitioner to recover the amounts disbursed to the Petitioner, considering COD as approved vide this Order, within a month of issue of this Order. The transmission charges shall be allowed only from the date of approved COD as per this Order”.

10. As per the decision in order dated 28.08.2022 in Petition No. 182/MP/2020, the claim of the Review Petitioner to declare the COD of the Jharsuguda-Raipur 765 kV D/C Transmission line (‘JR Line’) from the date of early commissioning with effect from 6.4.2019 was not approved and the COD of JR line was approved as 8.8.2019 which





is same as SCOD in terms of the Transmission Service Agreement (TSA). The Review Petitioner through the review petition has sought review of the said decision seeking COD of the JR line from the date of early commissioning i.e. 6.4.2019.

11. Under Section 94(f) of the Electricity Act, 2003 (the Act), the Commission is vested with the same power as are vested in a civil court under the Code of Civil Procedure, 1908 (CPC) in the matter of “reviewing its decisions, directions and orders”. Order 47 Rule 1 of the CPC which deals with review of decree or order reads as under:

*“Any person considering himself aggrieved*

*a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*

*b) by a decree or order from which no appeal is allowed, or*

*c) by a decision on a reference from a Court of Small Causes, and who, **from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed** or order made, or on account of some mistake **or error apparent on the face of the record,** or **for any other sufficient reason,** desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.” (emphasis by us)*

12. From the above provisions, it emerges that review of an order passed by the Commission can be sought on any one of the following grounds:

(a) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the party seeking review or could not be produced by him when the at the time when the decree was passed or order made;

(b) Some mistake or error apparent on the face of record;



(c) For any other sufficient reason.

13. In the present case, the Review Petitioner has sought review of the impugned order on all the three grounds as under:

(a) The Review Petitioner has submitted that that CEA, CTUIL and the Review Petitioner have brought on record the following documents in the review petition which are in the nature of “discovery of new and important matter or evidence” which could not be placed on record in Petition No.182/MP/2020:

(i) Instructions issued by CEA dated 1.4.2019 under which CEA had conveyed to CTUIL that both Review Petitioner and PGCIL have completed their respective assets with best efforts as per the meeting taken in the CEA and are ready for charging and advised CTUIL to take necessary action for charging of line and terminal bays.

(ii) Charging instructions dated 2.4.2019 issued by CTUIL upon receiving the instructions from CEA.

(iii) Letter dated 30.4.2018 sent to LTTCs by the Review Petitioner informing them about its intention to connect the JR line by 30.6.2018.

(iv) Order dated 11.1.2022 in Petition No.665/TT/2020 where the Commission allowed PGCIL’s petition to recover the transmission charges for PGCIL’s bays associated with JR line with effect from 7.4.2019.

(v) Both CEA and CTUIL have admitted in their replies that CEA was involved in early commissioning of JR line.

(b) The Review Petitioner has further submitted the following with regard to the errors or omission in the impugned order:



(i) Omission of consideration that the CEA Committee in its meeting dated 26.10.2016 had delegated the functions of approval of early commissioning of JR line to the CEA's PSPM Division.

(ii) Omission of granting an opportunity to OGPTL in a hearing to make good the case of early commissioning of JR line in the light of the documents submitted in response to Commission's directions, viz. details of CEA Committee meeting dated 26.10.2016, CEA(PSPM) meetings held on 27.12.2016, 19.2.2018, and 12.9.2018 and Validation Committee meeting dated 3.10.2018.

(iii) Omission to notice that the Commission by its order dated 11.1.2022 in Petition No.11.1.2022 in Petition No.665/TT/2020 accepted the COD of 2 bays of PGCIL at Jharsuguda and Raipur sub-stations with effect from 7.4.2019 which corresponds to the date of early commissioning of JR line of the Review Petitioner.

(c) There is "sufficient reasons" for review of the impugned order since the Review Petitioner has complied with the intent and procedure for early commissioning by obtaining the CEA's permission/approval for JR line. In the absence of the documents such as instruction issued by CEA dated 1.4.2019, Charging Instruction issued by CTUIL dated 2.4.2019, letter dated 30.4.2018 issued by Review Petitioner to LTTCs regarding its intention to connect the JR line by 30.6.2018, order of the Commission dated 11.1.2022 in Petition No.665/TT/2020 and admission of CEA and CTUIL in their replies that they were involved in early commissioning of JR line, it was perceived by the Commission that the Review Petitioner did not have the CEA's permission/approval for early commissioning. Once these documents are considered



along with CEA's response to the present petition, it would be clear that there are sufficient reasons to review the impugned order to meet the ends of justice.

### **Legal Position on the grounds of review**

14. In *Ramaswami Padeyachi vs. Shanmuga Padayachi*, [(1959) 2 Mad LJ 201], the Hon'ble High Court of Madras has held that when review is sought on the ground of discovery of new evidence, the evidence must be relevant and of such a character that if it had been given in the petition, it might have possibly altered the judgment. Relevant extract of the judgement is reproduced hereunder:

*"When a review is sought under O.47, R. 1, Civil Procedure Code, on the ground of discovery of new evidence, such evidence must be (1) relevant and (2) of such a character that, if it had been given in the suit, it might possibly have altered the judgment. The new evidence must at least be such as is presumable to be believed, and, if believed, would be conclusive. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made. The party seeking a review should prove strictly the diligence he claims to have exercised and also that the matter or evidence which he wishes to have access to is, if not absolutely conclusive, at any rate, nearly conclusive. A bare assertion in the affidavit that the party could not trace the documents earlier will not do. It is not the proper function of a review application to supplement the evidence or to make it serve the purpose of merely introducing evidence which might possibly have had some effect upon the result."*

15. As regards the ground "error apparent on the face of record", the courts have held that the error must be self-evident and cannot be detected through a process of reasoning. Review cannot be treated as an appeal in disguise.

(a) In *Parsion Devi and Ors. Vs. Sumitri Devi and Ors*, [(1997) 8 SCC 715], the Hon'ble Supreme Court explained the scope of review on the ground of "error apparent on the face of record" as under:

*"Under Order 47 Rule 1 CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to*



*exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."*

(b) In *Inderchand Jain v. Motilal* [(2009) 14 SCC 663], Hon'ble Supreme Court held as under:

*"10. It is beyond any doubt or dispute that review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgement is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order."*

16. As regards the ground of "sufficient reasons", Hon'ble Supreme Court in *Lily Thomas & Ors v. Union of India* [(2006) 6 SCC 224] held as under:

*"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* [(1971) 3 SCC 844: AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. **If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error....."***

Further, in *Board of Control for Cricket in India v. Netaji Cricket Club*, [(2005) 4 SCC 741], Hon'ble Supreme Court held as under:

*"89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.*

*90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient*



*reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words “sufficient reason” in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine “actus curiae neminem gravabit”.*

*93. It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake.”*

17. In *S. Marali Sundaram V. Jothibai Kannan and Others* [2023 SCC OnLine SC 185], Hon'ble Supreme Court has dealt with the scope of review under Order 47 Rule 1 as under:

*“15.....After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under:*

*“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.*

*(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

*(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.*

*(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.*

*(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”*

18. In the light of the above judicial principles, we are proceeding to consider the case of the Review Petitioner for review of the impugned order.

**Discovery of new and important matter or evidence**



19. The Review Petitioner has submitted that five important documents could not be produced by it at the time of the passing of the impugned order namely, (a) CEA Instruction dated 1.4.2019 issued to CTUIL confirming that both Review Petitioner and PGCIL have completed their respective assets with best efforts as per the meetings taken by CEA and are ready for charging; (b) Charging Instruction dated 2.4.2019 issued by CTUIL to Review Petitioner; (c) Petitioner's letter dated 30.4.2018 issued to LTTCs regarding early commissioning; (d) Order dated 11.1.2022 in Petition No.655/TT/2020 approving the COD of PGCIL's bays (connected to JR line) with effect from 7.4.2019; and (e) replies of CEA and CTUIL confirming that CEA was involved in early commissioning of JR line. One of the reasons given for not bringing some of these documents on the record in Petition No.182/MP/2020 is that the petition was filed for force majeure and change in law, and not for approval of the date of early commissioning and hence the Review Petitioner could not place these documents on record. The replies of CEA and CTUIL are events which have occurred after the issue of the impugned order.

20. We have considered the submissions of the Review Petitioner, CEA and CTUIL. In our view, all the above information or documents are relevant for determining the issue of early commissioning of JR line. Though some of the documents were in the possession of or in the knowledge of the Review Petitioner during the proceedings of Petition No.182/MP/2020, we find merit in the submission of the Review Petitioner that those documents could not be produced at the pleading or hearing stage of Petition No.182/MP/2020 since the said petition was filed for relief under change in law and force majeure, and not for approval of the early commissioning of JR line. Further, some documents like replies of CEA and CTUIL were filed in response to the queries of the Commission during the proceedings of the Commission in the review petition



and could not have been in the knowledge or possession of the Review Petitioner during the proceedings of Petition No.182/MP/2020. Therefore, a case is made out for review on the ground of discovery of new and important matters of evidence which could not be produced by the Review Petitioner in the proceedings of Petition No.182/MP/2020.

**Error apparent on the face of record**

21. The Review Petitioner has further submitted that the Commission's omission to consider (a) the decision of CEA Committee delegating the function of approval of early commissioning to its PSPM Division, (b) to grant an opportunity of hearing to the Petitioner to explain its case and (c) to consider the order dated 11.1.2022 in Petition No.665/TT/2020 are errors apparent on the face of the record. In our view, omission in the impugned order to consider the decision in the CEA committee delegating the responsibility to CE(PSPM) to find a mutually agreed date of commissioning of JR line and PGCIL's bays, even though the said letter was placed on record and has also been quoted in the impugned order is an error apparent in the order since the decision of the CEA is relevant to the early commissioning of JR line. Further, the Commission in its order dated 11.1.2022 in Petition No.665/TT/2020 also omitted to consider that the COD of two bays of PGCIL was approved as per the date matching with the early commissioning of JR line as per the decision of PSPM Division of CEA, is an error apparent on the face of record and needs to be rectified in review.

**Sufficient Reasons**

22. The Review Petitioner has also invoked the ground of sufficient reason for seeking the review of the decision regarding the COD of JR line in the impugned order. The Review Petitioner has submitted that in the light of the submissions made by CEA





and CTUIL in the review petition, there is sufficient material to establish that the Review Petitioner had complied with the procedure for obtaining approval for early commissioning of JR line and CEA had given its express approval to early commissioning by issuing instructions to CTUIL. The Review Petitioner has relied on the judgement in Board of Control for Cricketing India v Netaji Cricket Club [(2005) 4 SCC 741] in support of its contention that nothing would preclude a court from taking a decision in order to secure ends of justice.

23. As per the judgements quoted in paras 16 and 17 above, the Court can review its decision for “sufficient reasons” which encompass misconception of fact or law by the court. Further, subsequent events can be taken into consideration by the court for the purpose of rectifying its own mistake. An application for review can also be allowed by way of invoking the doctrine “*actus curiae neminem gravabit*” which means that the act of court shall prejudice no one.

24. In the impugned order, the Commission did not accept the date of early commissioning as COD of JR line by observing as under:

*“42.....We observe that since there was no technical requirement of JR Line to commissioned earlier than SCOD and nothing is on record regarding safety and security of grid w.r.t JR Line as required while declaring COD prior to SCOD nor there is any agreement of LTTCs to declare COD prior to SCOD, this line cannot be considered COD prior to SCOD. Accordingly, the COD of JR Line shall be approved as its SCOD.”*

While arriving at the above decision, the Commission omitted to consider that the Central Government has laid down a policy for incentivizing early commissioning of ISTS line and for that purpose a committee has been constituted under the CEA to decide the date of early commissioning after consulting the parties involved. Further, CTUIL and CEA in their replies in the review petition have confirmed that the Review Petitioner’s JR line was commissioned early alongwith the bays of PGCIL pursuant to



the policy of Central Government and was being duly monitored and decided by PSPM Division of CEA.

25. In the instant case, admittedly MoP issued a policy vide its OM dated 15.7.2015 for incentivizing early commissioning of transmission projects, particularly transmission system strengthening scheme under tariff based competitive bidding and schemes awarded to PGCIL under compressed time schedule on cost plus basis. MoP vide its OM dated 5.10.2016 constituted a Committee under the Chairmanship of Member (Power System) CEA and provided for a mechanism to be followed by the Committee to determine the revised COD based on the request received 24 months in advance of the intended early SCOD from the transmission licensee seeking early commissioning. As per the said letter, PSPM Division of CEA was vested with the responsibility to convene quarterly meetings to review the progress of the transmission elements involved in the early commissioning and assess their commissioning of matching RSCOD. The Review Petitioner proposed early commissioning of JR line in the first meeting of the Committee held on 26.10.2016. As per the minutes of the said meeting issued on 16.11.2016, the Committee decided that the request of the Review Petitioner did not qualify for early commissioning as the request has not been said to be made 24 months in advance of intended early SCOD. However, the Committee decided that since these schemes were under implementation before the constitution of the Committee, PSPM Division of CEA may hold meetings to arrive at a mutually agreed early commissioning date. Chief Engineer, CEA (PSPM) initiated the process with the meeting held on 27.12.2016 which was followed up by the meetings held on 27.12.2016, 19.2.2018 and 12.9.2018. Thus, since 2016, the approach of CEA was that the Review Petitioner and PGCIL should arrive at a mutually agreed date for commissioning of JR line alongwith bays of PGCIL which was recapitulated in



subsequent meetings. The views of CEA have been placed on record by PGCIL in the review petition. The summary of the CEA's views is extracted as under:

***“Conclusion***

- i. Line and terminal bays were with different organizations but got completed almost at the same time.*
- ii. JR Line was being developed as a part of system strengthening scheme (ER-WR). The discussion on JR Line started in 2016 and since 2016, the intention was that OGPTL and PGCIL arrive at a mutually agreed date for commissioning the JR Line along with PGCIL's bays and was recapitulated in follow up meetings dated 27.12.2016, 19.02.2018 and 12.09.2018. JR Line was commissioned with best efforts on 06.04.2019. CEA was involved in the early commissioning of the transmission system through meetings and discussions.*
- iii. PSPM Division, CEA, vide its letter dated 01.04.2019 addressed to CTUIL conveyed that both OGPTL and Powergrid have completed the commissioning of their respective assets with best efforts as per decision in meetings taken in CEA and are ready for charging. CTUIL was requested by CEA to take early necessary action for charging of line as well as bays at terminal stations. Subsequently, the line was charged in April, 2019.*
- iv. It is worth mentioning that MoP in its order dated 15th July 2015, has issued a policy for incentivizing early commissioning of Transmission projects. Such efforts are motivating factor and worth emulating by the transmission system developers, facilitating the flow of power over the system.”*

26. It is evident from the above that JR line was planned to be developed as a System Strengthening Scheme (ER-WR) and its early commissioning matching with PGCIL bays was being monitored by the CEA pursuant to the MoP's policy on early commissioning. Thus, CEA was involved in the early commissioning of both JR line and PGCIL's bays through meetings and discussions pursuant to the directions of MoP. PSPM Division of CEA vide its letter dated 01.04.2019 addressed to CTUIL conveyed that both the JR line and PGCIL's bays have completed the commissioning and advised CTUIL to take necessary action for charging of the JR line and PGCIL's bays. Pursuant to the same, the JR line was charged in April 2019. CEA has commented that such efforts of early commissioning are motivating factors and worth emulating by the transmission system developers, facilitating the flow of power over



the system. Therefore, we are of the view that there is sufficient reason to review our earlier decision taken in the impugned order with regard to the early commissioning of the JR line, particularly when the facts now placed on record show that implementation of early commissioning was monitored by CEA and its necessity and usefulness has endorsed by the CEA in its letter to CTUIL. We further notice that the Commission in its order dated 665/TT/2020 has allowed the COD of PGCIL bays from 7.4.2019. Since the PGCIL bays and JR line were commissioned in a matching time schedule under the aegis of CEA, it will be appropriate and meet the end of justice if the COD of JR line is aligned with the COD of the bays of PGCIL. For the aforesaid reasons, we are of the view that the review petition has merit and the prayers in the review petition deserve to be allowed.

27. The question arises as to what should be taken as the COD of JR line. Clause 6.2.1 of the Transmission Service Agreement (TSA) dated 20.11.2015, provides as under:

*“6.2 Commercial Operation:*

*6.2.1 An Element of the Project shall be declared to have achieved COD seventy-two (72) hours following the connection of the Element with the Interconnection Facilities.....”*

*As per above, an element of the Project shall be declared to have achieved COD seventy-two (72) hours following the connection of the element with the Interconnection Facilities.*

28. We observe from the Charging certificate dated 27.05.2019 issued by the NLDC that circuit-I of the JR Line were energised at 21:12 Hrs on 04.04.2019 and circuit-II of the JR Line were energised at 23:32 Hrs on 05.04.2019 respectively. Since the circuit-II of the JR Line was charged at 23:32 hrs on 05.04.2019, which means JR D/C line can be said to be connected with interconnection facilities only on 5.4.2019, therefore its COD works out to be 09.04.2019, considering 72 hours following the



interconnection. Accordingly, COD of the JR Line is approved as 09.04.2019 in partial modification of the impugned order dated 28.08.2022 in Petition No. 182/MP/2022. Accordingly, in the S. No. 2 of table under Para 45 of the impugned order, COD of the Jharsuguda-Raipur 765 kV D/C Transmission line shall stand revised as 9.4.2019.

29. The Review Petitioner shall be entitled for the transmission charges of JR line from the date of COD approved in this Order. Consequently, CTUIL is directed to raise revised bills on the Review Petitioner by considering COD as 9.4.2019 within a month of issue of this Order.

30. Review Petition No. 36/RP/2022 stands disposed of in terms of the above.

*Sd/-*  
**(P. K. Singh)**  
Member

*sd/-*  
**(Arun Goyal)**  
Member

*sd/-*  
**(I. S. Jha)**  
Member

