

*Working paper*

## **Return to sender: The misuse of remand orders by appellate tribunals**

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September 26, 2025

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## Abstract

Appellate tribunals were established to ensure speedy and expert adjudication of appeals from regulators' orders. However, tribunals in India frequently remand matters to regulators, resulting in prolonged delays and undermining regulatory certainty. This paper provides introductory overviews of the Securities Appellate Tribunal (SAT) and the Appellate Tribunal for Electricity (APTEL) and analyses orders issued by these tribunals in 2024. We find that 13/228 SAT orders (5.7%) and 28/171 APTEL orders (16.4%) direct remands. We also evaluate whether these remands are consistent with recognised legal principles regarding when a remand may be ordered. In the absence of specific rules governing when tribunals can remand matters, we rely on the Code of Civil Procedure, 1908 (CPC) and judicial decisions to determine the limits of tribunals' powers of remand. We classify reasons in the CPC and judicial decisions as "Permissible Reasons", and all others as "Other Reasons" and find that several remands by both tribunals are for Other Reasons. Such remands increase costs, create uncertainty, and defeat the purpose for which tribunals were established. We suggest that clear limits on tribunals' power to remand, similar to those on courts' remands powers, should be codified in parent statutes and made uniformly applicable across tribunals.

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# 1 Introduction

Appellate tribunals have been established to determine appeals from the adjudicatory and regulatory orders<sup>1</sup> of various regulatory authorities in India. Two reasons are usually cited to justify the establishment of such tribunals: (1) to alleviate backlog in the judicial system, and (2) to provide technical expertise in the adjudication of sector-specific matters.<sup>2</sup>

As such, tribunals are ‘expert’ bodies that are well-equipped to provide speedy and efficient resolutions. A defining feature of their institutional design is the inclusion of both judicial and technical members. Judicial members possess legal training and skills and can ensure the application of, and compliance with, judicial principles, such as the principles of natural justice. Technical members are expected to bring sector-specific knowledge relevant to the domain of the tribunal’s work.<sup>3</sup> Regulators such as the Securities and Exchange Board of India (SEBI) do not have provisions for judicial representation in their adjudication processes and therefore, in some cases, tribunals are arguably better placed to adjudicate matters than the regulatory bodies from whose orders appeals lie before them, since they have both judicial and technical expertise.

Since appellate tribunals have combined judicial and sectoral expertise, it would be incorrect to assume that they lack the technical expertise necessary to decide a matter on merits. In *Clariant International Ltd. and Another v. SEBI*, the Supreme Court has noted that the rule regarding deference to expert bodies applies only to a reviewing court, and not to an expert tribunal.<sup>4</sup> Therefore, it would be incorrect to assume that an appellate tribunal cannot take decisions on the substantive aspects of matters placed before it, and that it has to necessarily refer such decisions back to the regulator by way of a remand.

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<sup>1</sup>Regulatory orders relate to the setting or amending of standards or guidelines that govern the behaviour or compliance requirements of regulated entities. Some examples are setting tariffs for electricity, issuing compliance guidelines, or prescribing prudential norms for banks. Adjudicatory orders, on the other hand, typically follow a quasi-judicial process to resolve disputes, determine violations, or impose penalties or sanctions on specific entities or individuals. Examples include penalty orders for non-compliance, cancellation of licenses, or orders for disgorgement of unlawful gains.

<sup>2</sup>See generally: *L Chandra Kumar v Union of India* 1997 (3) SCC 261; *SP Sampath Kumar v Union of India and Ors* [1987] 1 S.C.R. 435; Law Commission of India, *124th Report on the High Court Arrears-A Fresh Look* (1988); Malimath Committee, *Report of the Arrears Committee* (1989-90)

<sup>3</sup>*L Chandra Kumar v Union of India* (n 2).

<sup>4</sup>*Clariant International Ltd and Another v SEBI* 2004 (8) SCC 524. The Court also cited its previous judgment in *Cellular Operators Association of India and Others v. Union of India and Others*, in which it held that the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) was wrong in assuming that its jurisdiction was limited or akin to the power of judicial review. In *Cellular Operators Association of India and Others v Union of India* 2003 (3) SCC 186, the Court stated that the jurisdiction of the TDSAT “extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the dispute made in an application under sub-section (1) thereof.”

While some aspects of how Indian tribunals function have been studied, the question of remands has not received much attention. As an example, there has been some examination of the potential reasons for problems of capacity at tribunals, such as vacancies on their bench. In 2023, Chirayil et. al. highlighted delays in appointments to the Appellate Tribunal for Electricity (APTEL) bench.<sup>5</sup>

We suggest that it is important to study why tribunals remand matters, since these are a frequent occurrence in India:

1. Our analysis of 764 cases disposed of by the Securities Appellate Tribunal (SAT) from 2009 - 23 reveals that 76 cases (10%) resulted in a remand.<sup>6</sup>
2. Our analysis of 919 cases disposed of by the APTEL from 2013 - 22 reveals that 200 cases (21.7%) resulted in a remand.<sup>7</sup>

The fact that one in ten instances before the SAT and a staggering one in five instances before the APTEL are remanded is a matter of concern. Remands result in additional time and resources being spent on resolving a matter, since the dispute is first heard by the regulator, then in challenge by the tribunal, and then, once again by the regulator. Therefore, it is important to study the reasons provided by the tribunal when it remands a matter. This is an emerging area of study: Patel and Sane 2024 study orders of the Tamil Nadu State Electricity Regulatory Commission in appeal before the APTEL, and analyse the reasons for remand offered, and suggest that there are problems of capacity (including the need for better staffing and training) at the regulator.<sup>8</sup> In this paper, we turn our attention to the tribunal, and ask whether it was actually necessary or legitimate for the tribunal to remand matters to the regulator. While a high frequency of valid remand orders may be a comment on regulatory performance, as pointed out by Patel and Sane 2024, there is also a need to examine whether all remand orders are indeed valid or necessary. We focus on this latter issue in the context of APTEL and SAT.

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<sup>5</sup>Ann Josey Maria Chirayil Shantanu Dixit, “Vacancies at the APTEL: A persistent problem of delayed appointments” [2023] Prayas (Energy Group) (<https://energy.prayaspune.org/power-perspectives/vacancies-at-the-aptel-a-persistent-problem-of-delayed-appointments>).

<sup>6</sup>Natasha Aggarwal and others, “Balancing Power and Accountability: An Evaluation of SEBI’s Adjudication of Insider Trading” [2025] (13) Trustbridge Rule of Law Foundation Working Papers (<https://trustbridge.in/work/balancing-power-and-accountability-an-evaluation-of-sebis-adjudication-of-insider-trading/>).

<sup>7</sup>Chitrakshi Jain, Bhavin Patel, and Renuka Sane, “Examining the performance of ERCs at APTEL” [2025] (<https://blog.theleapjournal.org/2025/07/examining-performance-of-ercs-at-aptel.html#gsc.tab=0>).

<sup>8</sup>Bhavin Patel and Renuka Sane, “Assessing regulatory capability in Tamil Nadu electricity regulation: Evidence from appeals” [April 26, 2024] Trustbridge Working Paper Series ([https://trustbridge.in/RePEC/papers/2024ELECTRICITY\\_REGORDERS.pdf](https://trustbridge.in/RePEC/papers/2024ELECTRICITY_REGORDERS.pdf)).

There may be some speculation that tribunals remand matters to regulators since regulators are better resourced, in terms of personnel, technology and funding, than tribunals, and so can more easily deal with the substantial questions involved in such matters. However, we limit our study to examining the reasons offered by tribunals when remanding matters, and questioning the need for remand in such instances on the basis of the reasons provided.

In this context, we ask the following questions:

1. What costs do remands impose on the parties and the adjudicatory infrastructure of regulators?

Our examination of two matters, one originating at SEBI and the other originating at the Kerala Electricity Regulatory Commission, shows that remands cause delays that span up to 14 years.<sup>9</sup> This defeats one of the primary reasons for establishing tribunals, that is, to ensure speedy justice.

2. What reasons does the law recognise as valid for remands by tribunals?

Our earlier studies demonstrate frequent remands by SAT and APTEL. Indian law circumscribes the instances in which courts may order remands.<sup>10</sup> These boundaries are set in the Code of Civil Procedure, 1908 (CPC) and in judicial decisions of superior courts. The CPC, parent statutes that establish tribunals, and rules of procedure framed by tribunals for themselves do not, however, clearly identify when tribunals may remand matters. There is limited guidance on this in superior court decisions. We argue that the reasons for which courts can order remands should also limit the discretion of tribunals in remanding matters. We call these reasons “Permissible Reasons” for remand, and classify any other reasons provided by tribunals when remanding matters as “Other Reasons”.

3. How many matters were remanded by SAT and APTEL in 2024? What reasons were provided? Are the reasons permissible under law?

We study the orders of SAT and APTEL for 2024, in which there are 13/228 (5.7%) remands ordered by SAT and 28/171 (16.4%) remands ordered by APTEL. We find that the SAT ordered a remand for Permissible Reasons in 21 appeals and for Other

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<sup>9</sup>This is a small sample, and is merely illustrative of the delays that may be caused by remands.

<sup>10</sup>See, for example, Aggarwal and others (n 6); Jain, Patel, and Sane (n 7).

Reasons in four appeals. The APTEL remanded the matter for Permissible Reasons in 26 appeals and for Other Reasons in 37 appeals.

We suggest some measures that may ameliorate the problem of a high frequency of remands by tribunals. The first of these is that the circumstances in which tribunals may remand matters should be codified into their parent statutes. Incorporating these limits in the parent statute will help provide the necessary guardrails on tribunals' discretion in such matters. We also argue that the same limits that apply to courts in such matters should be made applicable to tribunals. This may be ignored if a strong argument can be made out for why tribunals' powers of remand should be different from those of courts; however, we do not notice any such argument.

This chapter proceeds as follows: Sections 2.1 and 2.2 provide an overview of the SAT and APTEL, respectively. Section 3 describes the time-cost of remands. Section 4.1 examines the reasons that a tribunal may remand a matter. This is followed by a description of our data, how we study the reasons for remand offered by the SAT and the APTEL, and the results of our study. Finally, we offer our conclusions and recommendations.

## **2 Securities Appellate Tribunal and Appellate Tribunal for Electricity**

In this section, we discuss the two tribunals that this chapter focuses on - the SAT and the APTEL. We discuss the legal basis for the creation of each tribunal, the procedural limits on their adjudicatory powers and the absence of procedural rules on remand, and their composition. We also discuss emerging concerns regarding their functioning, particularly in relation to vacancies on the bench.

### **2.1 Securities Appellate Tribunal Establishment and scope**

The SAT was established by Section 15K of the Securities and Exchange Board of India Act, 1992 (the SEBI Act) to hear appeals against orders of the SEBI or its adjudicating officers.<sup>11</sup> Its jurisdiction has since been expanded to include appeals against orders of the Pension Fund Regulatory and Development Authority (PFRDA)<sup>12</sup> and the Insurance Regulatory and

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<sup>11</sup>Section 15T, Securities and Exchange Board of India Act 1992.

<sup>12</sup>Section 36, Pension Fund Regulatory and Development Authority Act 2013.

Development Authority (IRDAI).<sup>13</sup> Appeals from orders of the SAT may be preferred before the Supreme Court.<sup>14</sup>

### **Procedural limits on adjudicatory powers**

The SEBI Act provides that the SAT shall not be bound by the procedure under the CPC, but that it shall be bound by the principles of natural justice.<sup>15</sup> This is significant for the purposes of our study, since it suggests that the rules laid down under the CPC regarding when a matter may be remanded may not apply analogously to the SAT. The SEBI Act also provides that the SAT shall have powers to regulate its own procedure, but it has not framed any rules in relation to when it may remand a matter.<sup>16</sup> Moreover, the SAT has been given powers analogous to those of a civil court.<sup>17</sup> These include the power to summon, require the discovery and production of documents, and review its own decisions.

### **Composition**

Currently, the SAT comprises a presiding officer, a technical member, and a judicial member. However, this was not always the case - when the SEBI Act was originally enacted, the SAT was envisaged to comprise only a presiding officer. In 2002, an amendment to Section 15L of the SEBI Act mandated that the SAT have a presiding officer and two other members.<sup>18</sup> In 2017, Section 15L was amended once again to clarify that any bench must include one technical member and one judicial member.<sup>19</sup>

### **Some concerns on functioning**

The SAT has only one functioning bench, and vacancies on the bench have raised concerns. Most notably, SAT did not have a presiding officer between November 2011 - July 2013 and July 2018 - December 2018.<sup>20</sup> In September 2018, the Supreme Court noted that the SAT was functioning with only a technical member and urged the appointment of a judicial member.<sup>21</sup> Moreover, the SAT did not have a technical member from March 2021 - March 2022<sup>22</sup> and, in this context, an order by the SAT in May 2021 stated that "the Tribunal

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<sup>13</sup>Section 110, Insurance Act 1938.

<sup>14</sup>Section 15Z, Securities and Exchange Board of India Act 1992.

<sup>15</sup>Section 15U, Securities and Exchange Board of India Act 1992.

<sup>16</sup>Securities Appellate Tribunal (Procedure) Rules 2000.

<sup>17</sup>Section 15U, Securities and Exchange Board of India Act 1992.

<sup>18</sup>Section 20, Securities And Exchange Board Of India (Amendment) Act 2002.

<sup>19</sup>Section 148, Finance Act 2017.

<sup>20</sup>Securities Appellate Tribunal, Presiding Officer(s).

<sup>21</sup>Quantum Securities Private Limited v Vishvapradhan Commercial Private Limited (Supreme Court).

<sup>22</sup>Securities Appellate Tribunal, Members.

does not come to a grinding halt whenever there is an absence or vacancy of a Member.”<sup>23</sup> Moreover, Section 15R of the SEBI Act states that “no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.”<sup>24</sup> Nonetheless, such vacancies arguably undermine one of the core rationales for establishing tribunals (that is, ensuring decisions benefit from both judicial expertise and technical specialisation).

## 2.2 Appellate Tribunal for Electricity

### Establishment and scope

The APTEL was established in 2005 under Section 110 of the Electricity Act, 2003 (the Electricity Act).<sup>25</sup> Its creation followed a judgment of the Supreme Court in 2002, which underscored the necessity of an appellate forum to hear challenges to orders issued by State Electricity Regulatory Commissions (SERCs).<sup>26</sup> The Court observed that the establishment of such a tribunal would “make the relief of appeal more effective.”<sup>27</sup>

The APTEL hears appeals against orders of the Central Electricity Regulatory Commission (CERC), SERCs,<sup>28</sup> and the Petroleum and Natural Gas Regulatory Board (PNGRB).<sup>29</sup> Appeals against orders of the APTEL lie before the Supreme Court.<sup>30</sup> Moreover, the APTEL has supervisory authority over the CERC and SERCs, and can issue directions for performance of their statutory functions.<sup>31</sup>

### Procedural limits on adjudicatory powers

Similar to the SAT, the APTEL is not bound by the procedure under the CPC, but is bound by the principles of natural justice and has also been given powers analogous to those of a civil court.<sup>32</sup> The APTEL is also empowered to regulate its own procedure, but has not framed any rules in relation to when it may remand a matter.<sup>33</sup> Therefore, similar concerns and questions arise as regards when the APTEL may remand matters.

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<sup>23</sup> *Axis Bank v SEBI* (SAT).

<sup>24</sup> Section 15R, Securities and Exchange Board of India Act 1992.

<sup>25</sup> Section 110, Electricity Act 2003.

<sup>26</sup> *West Bengal Electricity Regulatory Commission v CESC Limited* 2002 (8) SCC 715.

<sup>27</sup> *Ibid.*

<sup>28</sup> Section 111, Electricity Act 2003.

<sup>29</sup> Section 30, Petroleum and Natural Gas Regulatory Board Act 2006.

<sup>30</sup> Section 125, Electricity Act 2003.

<sup>31</sup> Section 121, Electricity Act 2003.

<sup>32</sup> Section 120, Electricity Act 2003.

<sup>33</sup> Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules 2007.

## Composition

The Electricity Act prescribes that the APTEL will be composed of one chairperson and three other members.<sup>34</sup> A proposed amendment in 2022 sought to increase the strength to seven members with the aim to set up multiple benches of the APTEL.<sup>35</sup> However, this amendment was not passed, and the APTEL currently comprises a chairperson, a judicial member, and two technical members for electricity. The APTEL has not had a technical member for its appeals from PNGRB since May 2024.<sup>36</sup> At present, there is one principal bench of the APTEL. While there are also three circuit benches, they have not been functional since 2014.<sup>37</sup>

## Some concerns on functioning

There have been several vacancies on the APTEL bench: most notably, there was no judicial member in August 2016 - September 2017, May 2019 - December 2019 and December 2022 - November 2023, and no technical member from July 2015 - March 2016 and December 2019 - May 2020.<sup>38</sup> Such prolonged vacancies affect the timely disposal of cases and undermine the tribunal's ability to deliver specialised and efficient adjudication. As of early 2024, the APTEL recorded a 70% rise in pending cases compared to the previous year, which has been attributed to these prolonged vacancies.<sup>39</sup> However, the number of pending cases has reduced from 3,709 as of March 2024 to 2,627 as of December 2024.<sup>40</sup>

Moreover, parties have often bypassed the APTEL by filing writs before high courts. Aggarwal and Patel 2024 note this trend in the context of orders of the Telangana Electricity Regulatory Commission, and conclude that over half of these writs involved substantive issues, such as determination of subsidiary surcharges, that fall squarely within APTEL's jurisdiction.<sup>41</sup>

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<sup>34</sup>Section 112, Electricity Act 2003.

<sup>35</sup>Section 31, Electricity (Amendment) Bill 2020; Power Ministry floats draft Electricity Act(Amendment) Bill 2020 2020.

<sup>36</sup>This may be because the PNGRB did not have a legal member from September 2023 to June 2025, and consequently, did not pass any orders which may be appealed before the APTEL in that period. With the appointment of a legal member at the PNGRB in June 2025, this situation may change, necessitating the appointment of a technical member for appeals from the PNGRB at APTEL.

<sup>37</sup>Maria Chirayil (n 5).

<sup>38</sup>Appellate Tribunal for Electricity, Present Members.

<sup>39</sup>Times of India, "Power sector sees 70% rise in backlog of disputes" [2024] The Times of India (<https://timesofindia.indiatimes.com/business/india-business/power-sector-sees-70-rise-in-backlog-of-disputes/articleshow/107440985.cms>).

<sup>40</sup>Ministry of Power, Government of India, *Annual Report 2024–25* (Annual Report, Ministry of Power 2025) ([https://powermin.gov.in/sites/default/files/uploads/MOP\\_Annual\\_Report\\_Eng\\_2024\\_25.pdf](https://powermin.gov.in/sites/default/files/uploads/MOP_Annual_Report_Eng_2024_25.pdf)); Ministry of Power, Government of India, *Annual Report 2023–24* (Annual Report, Ministry of Power 2024) ([https://powermin.gov.in/sites/default/files/uploads/MOP\\_Annual\\_Report\\_Eng\\_2023-24.pdf](https://powermin.gov.in/sites/default/files/uploads/MOP_Annual_Report_Eng_2023-24.pdf)).

<sup>41</sup>Natasha Aggarwal and Bhavin Patel, "Bypassing expert tribunals through writs: Judicial overreach in review of the Telangana State Electricity Regulatory Commission's orders" [December 20, 2024] Trustbridge

### 3 Cost of remands

We study the problem of remands by tribunals since they impose significant costs on those involved, and the cumulative impact is a lack of certainty, predictability, and procedural efficiency. First, they increase the overall cost of adjudication for the parties involved. Further, the regulator to which the matter has been remanded has to expend additional administrative and legal resources to adjudicate the matter. Third, remands create uncertainty. When final orders are routinely set aside and matters are sent back for reconsideration, it disrupts predictability in regulatory enforcement. This lack of certainty affects market participants' confidence in the regulator, since they are not sure what fate a regulatory order will face in appeal, and so, are not able to plan their business activities based on the regulator's initial pronouncements.

It is important to acknowledge that tribunals often order remands because an appealing party prays for such an order. This may be for various reasons, including that they are incentivised to delay the final resolution of certain matters. As an example, a defaulting party in a contractual dispute before an Electricity Regulatory Commission may find that it is in their interests to delay the final resolution of the matter so as to avoid the consequences of default imposed on them by the Commission. But this only underscores the problems caused when remands are ordered without good reasons. Such behaviour is detrimental to the non-defaulting party and undermines confidence in the quality of regulation in the sector.

Finally, and demonstrably, remands contribute to substantial delays. There may also be further challenges to the reconsidered order that the regulator issues once the appellate tribunal has remanded a matter to it, resulting in further delays. As shown in Figure 1, in the case of Satyam Computer Services Limited, SEBI issued show-cause notices in 2009, but the most recent order following multiple remands by the SAT was delivered over 14 years later in December 2023.<sup>42</sup>

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Working Paper Series <[https://trustbridge.in/RePEc/papers/2024ELECTRICITY\\_REGORDERS.pdf](https://trustbridge.in/RePEc/papers/2024ELECTRICITY_REGORDERS.pdf)>.

<sup>42</sup>WTM/RKA/SRO/64-68/2014 (SEBI); WTM/RKA/EFD-SRO/108-117/2015 (SEBI); WTM/G-M/EFD/67/ 2018-19 (SEBI); WTM/AN/SRO/SRO/29840/2023-24 (SEBI); WTM / AN /SRO/SRO/29861/ 2023-24 (SEBI); Appeal No 463 of 2015, 451 of 2015, 452 of 2015, 453 of 2015, 458 of 2015, 459 of 2015, 460 of 2015, 461 of 2015, 462 of 2015 (SAT); Appeal No 286 of 2014, 287 of 2014, 284 of 2014, 282 of 2014, 285 of 2014 (SAT); Appeal No 1 of 2019, 2 of 2019, 3 of 2019, 5 of 2019, 53 of 2019 (SAT); *Chintalapati Srinivasa Raju v Securities and Exchange Board of India* (2018) 7 SCC 443.

**Figure 1** Insider trading matter involving the securities of Satyam Computer Services Limited

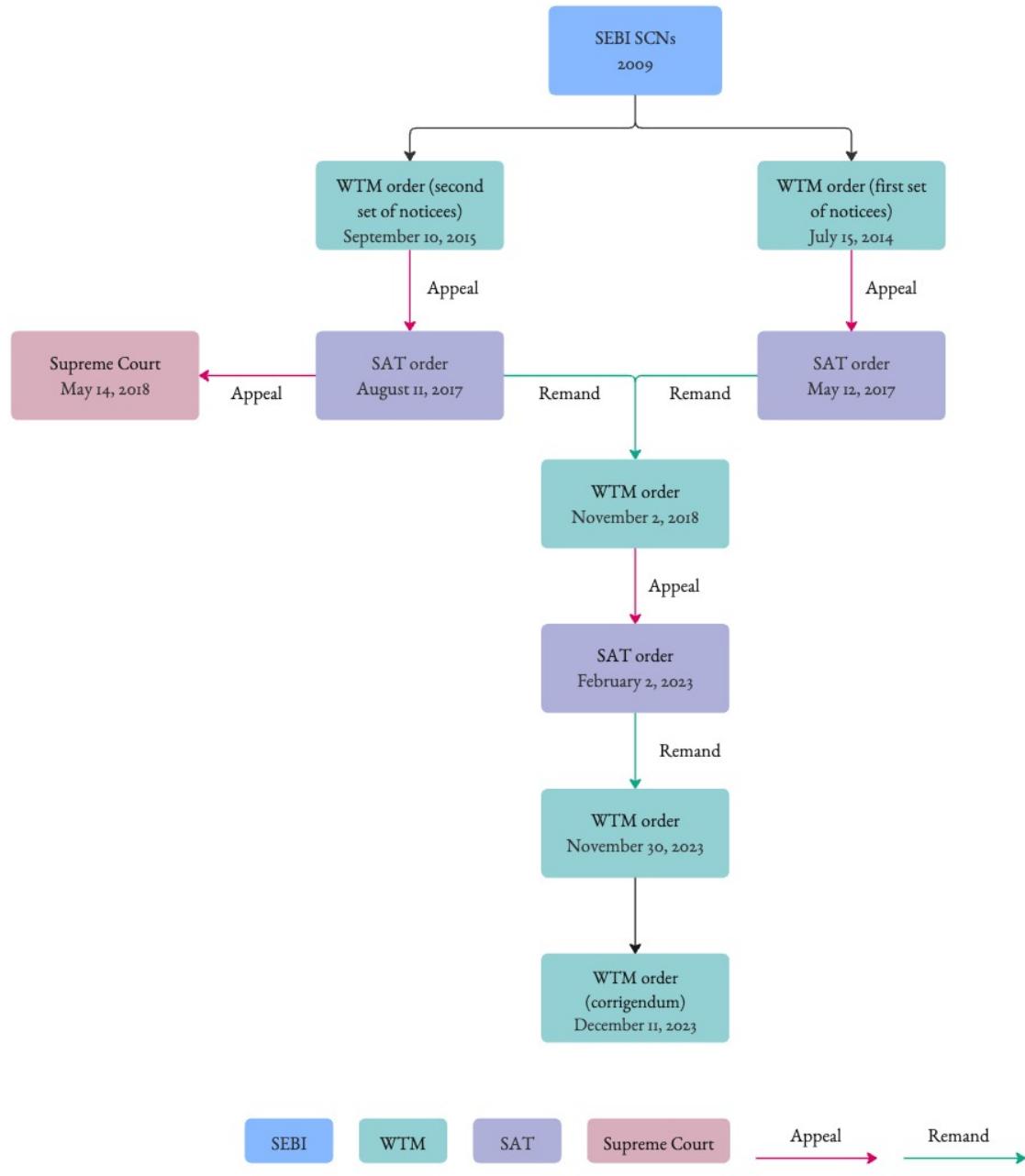


Figure 1 depicts two parallel streams arising from SEBI's show-cause notices.<sup>43</sup> Two orders were passed by SEBI's whole-time members (WTMs) in 2014 and 2015, which were appealed before the SAT. On May 12, 2017, the SAT issued an order on the first set of noticees, and another order for the second set of noticees on August 11, 2017, both of which resulted in

<sup>43</sup> WTM/RKA/SRO/64-68/2014 (SEBI); WTM/RKA/EFD-SRO/108-117/2015 (SEBI).

remands to the SEBI.<sup>44</sup> The SAT remanded the matter because the impugned orders imposed a blanket sanction on all appellants without application of mind. In 2023, the SAT remanded the matter again for calculation of sanctions.<sup>45</sup> Notably, this remand was issued despite the tribunal having the power to modify orders and re-determine or modify sanctions. The final WTM order was issued in November 2023, followed by a corrigendum in December 2023.<sup>46</sup> The total span between the first show-cause notices and the latest order exceeds 14 years.

Similarly, a matter involving SRM Power Private Limited was remanded by APTEL four years after the initial order, culminating in a final decision almost seven years later.

**Figure 2** Electricity dispute involving SRM Power Private Limited

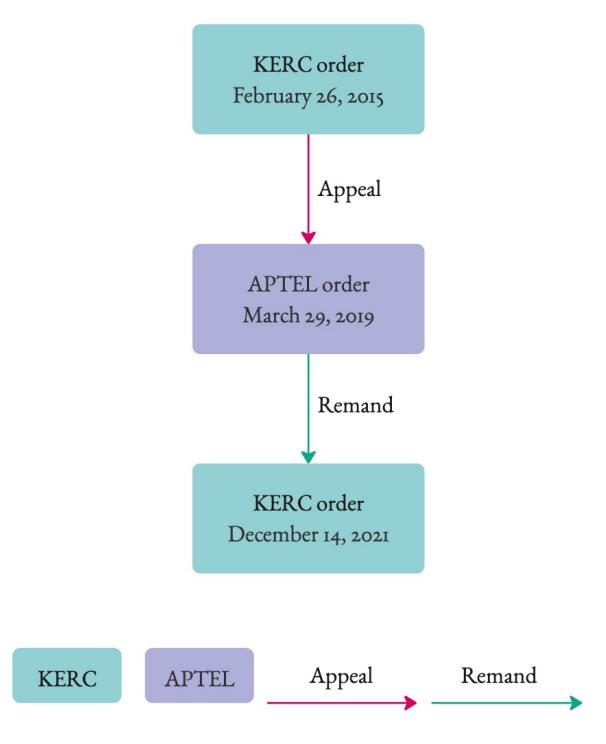


Figure 2 illustrates the trajectory in *SRM Power Private Limited v BESCOM*. The original order was issued by the Karnataka Electricity Regulatory Commission (KERC) on February 26, 2015,<sup>47</sup> and was challenged before the APTEL. The APTEL published its order on March

<sup>44</sup>Appeal No 463 of 2015, 451 of 2015, 452 of 2015, 453 of 2015, 458 of 2015, 459 of 2015, 460 of 2015, 461 of 2015, 462 of 2015 (SAT); Appeal No 286 of 2014, 287 of 2014, 284 of 2014, 282 of 2014, 285 of 2014 (SAT); Appeal No 1 of 2019, 2 of 2019, 3 of 2019, 5 of 2019, 5 of 2019, 53 of 2019 (SAT).

<sup>45</sup>Appeal No 1 of 2019, 2 of 2019, 3 of 2019, 5 of 2019, 5 of 2019, 53 of 2019 (SAT).

<sup>46</sup>WTM/AN/SRO/SRO/29840/2023-24 (SEBI); WTM / AN /SRO/SRO/29861/ 2023-24 (SEBI).

<sup>47</sup>OP No.15/2013 (KERC).

29, 2019.<sup>48</sup> Rather than deciding the matter conclusively, the APTEL remanded the matter to the KERC for reconsideration. This matter was remanded by the APTEL because the KERC's order did not take "a holistic approach" and did not include any "discussion or reasoning."<sup>49</sup> The KERC issued a fresh order on December 14, 2021.<sup>50</sup> The timeline illustrates the extended duration such remand cycles can entail, with nearly seven years elapsing between the initial and final KERC orders. Such delays caused by remands undercut the rationale for the establishment of specialised tribunals - that is, the promise of speedy and expert resolution of regulatory and adjudicatory matters.

## 4 Results

### 4.1 When may tribunals remand matters?

Remands by courts are only permissible under certain specific circumstances in Indian law. However, the specific circumstances in which a *tribunal* may order a remand have not been specifically defined. Some reasons why an appellate court can remand a matter back to the trial court are set out in Order XLI of the CPC (detailed below). As detailed in Sections 2.1 and 2.2, the statutes governing the SAT and the APTEL provide that these tribunals shall not be bound by the procedure laid down by the CPC. The relevant provisions also provide that the tribunals would have powers to "regulate their own procedure".<sup>51</sup> Neither the Securities Appellate Tribunal (Procedure) Rules, 2000 nor the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 however, provide any guidance on when remands may or should be ordered. Decisions by high courts indicate that a tribunal's power to remand should be limited to instances in which there is a lack of relevant evidence or the impugned order was passed *ex parte*.<sup>52</sup> Our approach offers more leeway for tribunals than these decisions, as we look to the CPC and the rules laid down in judicial decisions to determine when these tribunals can or should order remands.

The reasons for remand permitted by the CPC include:

- Where the lower court has disposed of a suit upon a preliminary point, and the lower court's decision is reversed in appeal (Rule 23);
- Where the lower court has disposed of a suit otherwise than on a preliminary point,

<sup>48</sup> *SRM Power Pvt Ltd v Bangalore Electricity Supply Co Ltd & Ors* Appeal No. 294 of 2015.

<sup>49</sup> *Ibid.*

<sup>50</sup> OP No.15/2013 (KERC).

<sup>51</sup> Section 15U, Securities and Exchange Board of India Act 1992; Section 120, Electricity Act 2003.

<sup>52</sup> *Jeypore Timber and Veneer Mills (P) Ltd v Commissioner of Income Tax* [1982] 137 ITR 415 (Gauhati).

and the lower court's decision is reversed in appeal, and a retrial is considered necessary (Rule 23-A);

- Where the lower court has omitted to frame or try any issue, or to determine any question of fact which the appellate court thinks is essential to the right decision of the suit (Rule 25).

The Supreme Court has clarified that as a general rule, remands are to be ordered only where there is insufficient evidence on record for the appellate court to determine the matter itself.

In *Arvind Kumar Jaiswal (D) thr. Lr. v Devendra Prasad Jaiswal Varun*,<sup>53</sup> the Supreme Court has held:

“An order of remand prolongs and delays the litigation and hence, should not be passed unless the appellate court finds that a re-trial is required, or the evidence on record is not sufficient to dispose of the matter for reasons like lack of adequate opportunity of leading evidence to a party, where there had been no real trial of the dispute or there is no complete or effectual adjudication of the proceedings, and the party complaining has suffered material prejudice on that account.”

The Court clarified that if evidence has been adduced and the appellate court could decide the matter on the basis of such evidence, then the matter should not be remanded to the lower court, even if the lower court may have omitted to frame any issue(s) or to determine an essential question of fact.

In *Shivakumar and Ors. v Sharanbasappa and Ors.*,<sup>54</sup> the Supreme Court held:

“A conjoint reading of Rules 23, 23-A and 24 of Order 41 brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an appellate court is to follow the mandate of Rule 24 of Order 41 CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the appellate court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice.”

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<sup>53</sup> *Arvind Kumar Jaiswal (D) thr Lr v Devendra Prasad Jaiswal Varun* 2023 SCC OnLine SC 146.

<sup>54</sup> *Shivakumar and Ors v Sharanbasappa and Ors* (2021) 11 SCC 277.

The reasons for remand described in the CPC, as well as the Supreme Court's rulings that remand should only be ordered in specific situations, would suggest that ordering the remand of a matter is a procedural mechanism, intended to ensure a fair and just resolution of a matter by correcting errors in the lower court's proceedings or ensuring that all necessary aspects of a matter are considered. So, it cannot be used in a situation where an appellate or review forum has the evidence as well the technical expertise it needs to decide a matter. This claim is supported by a judgment of the Delhi High Court, which states that a tribunal must exercise its power to remand "judiciously."<sup>55</sup>

Further, the conditions for remand described in the CPC and judicial decisions accord with one of the main reasons provided for the establishment of these tribunals, that is, to ensure the speedy adjudication of matters without increasing the backlog in courts.

Hence, we evaluate the correctness of the SAT's and the APTEL's orders of remand on the same parameters as those laid down in the CPC and in Supreme Court decisions for court orders. We suggest that tribunals should only order remand in limited, permissible situations, since this ensures that they are able to satisfy the objective of speedy resolution of matters. Since tribunals have technical as well as judicial expertise, they are equipped to decide matters substantively, and so, if an appellate tribunal such as SAT or APTEL orders the remand of a matter on grounds other than those permissible under the law, it would amount to an abdication of its jurisdiction.

Based on this analysis, we suggest that some examples of situations where remand may legitimately be ordered are:

- Where the tribunal feels that the regulator has not placed on the record all the material required to decide the matter;
- Where there is an egregious error in the manner the regulator has conducted the adjudication, and which necessitates a retrial; or
- Where the regulator has erroneously decided a matter on a preliminary point (such as its jurisdiction to decide a matter).

We classify these as "Permissible Reasons."

However, a tribunal may not order remand in other instances, such as:

- When there is sufficient evidence on the record for it to decide the matter;

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<sup>55</sup> *VK Modi v The Director, Enforcement Directorate and Ors* Crl. Appeal No. 1060/2008.

- When it disagrees with the regulator’s substantive decision on a matter; or
- On the ground that the regulator would be the appropriate body to decide the matter since it has the technical expertise necessary to do so.

We classify these as “Other Reasons.”

## 4.2 Evidence on remands by tribunals

The orders of the SAT and the APTEL are available on their respective websites. We downloaded all available orders for 2024. Then, we classified them on the basis of the regulator from which the appeals arose, and removed duplicates in the set of SAT orders.<sup>56</sup> Next, we removed interim orders. For SAT orders, we proceeded on the assumption that any order less than three pages in length is likely to be an interim order. We therefore removed all orders less than three pages in length from our dataset. We manually checked for and removed interim orders for the dataset of APTEL orders. This resulted in a final dataset of 228 SAT orders and 171 APTEL orders.

We identified SAT and APTEL orders in which a remand had been ordered by shortlisting orders that match the following keyword specifications:

- Single instance of ‘remand\*’ OR ‘remit\*’
- The string ‘reconsider\*’ OR ‘fresh consideration’ within 10 words of ‘matter’

We reviewed the orders that matched our keyword specifications and eliminated all orders that did not involve a remand. This resulted in 13 SAT orders and 28 APTEL orders.

Our methods are described in greater detail in Table 1.

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<sup>56</sup>The SAT website uploads multiple copies of the same order for each appeal number in that order.

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**Table 1** Data and methods

Step	SAT	APTEL
Scraping data from websites	5,345 documents*	181 orders
Classification by regulator	5,248 documents related to appeals from SEBI; 97 documents related to appeals from IRDAI	165 orders related to appeals from ERCs; 15 orders related to appeals from PNGRB
Deduplication		
<i>Retained document with latest date for an appeal number</i>	1,404 documents related to appeals from SEBI; 19 documents related to appeals from IRDAI	Not applicable
<i>Deduplication by .pdf hash</i>	938 orders related to appeals from SEBI; 19 orders related to appeals from IRDAI	Not applicable
Removal of interim orders	228 SAT orders (225 orders related to appeals from SEBI; 3 orders related to appeals from IRDAI)	171 APTEL orders (155 orders related to appeals from ERCs; 16 orders related to appeals from PNGRB)
Keyword search for remanded matters	25 orders related to appeals arising from SEBI orders	64 orders (58 orders related to appeals from ERCs; 6 orders related to appeals from PNGRB)
Manual verification of remanded matters	13 orders related to appeals arising from SEBI orders	28 orders (27 orders related to appeals from ERCs; 1 order related to appeals from PNGRB)

\*One document for Appeal No. 117/2024 is not accessible. The SAT website lists 5,346 documents but our scraped dataset comprises 5,345 documents.

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We find that the SAT has remanded 13/228 orders (5.7%) in 2024 and the APTEL has remanded 28/171 orders (16.4%) in the same year.<sup>57</sup> We examined these subsets of orders to identify and extract the reasons provided by SAT and APTEL for remanding these matters.

Our analysis revealed 21 appeals in which the SAT remanded the matter for Permissible Reasons and four appeals in which it remanded the matter for Other Reasons. APTEL remanded the matter for Permissible Reasons in 26 appeals, and for Other Reasons in 37 appeals.<sup>58</sup>

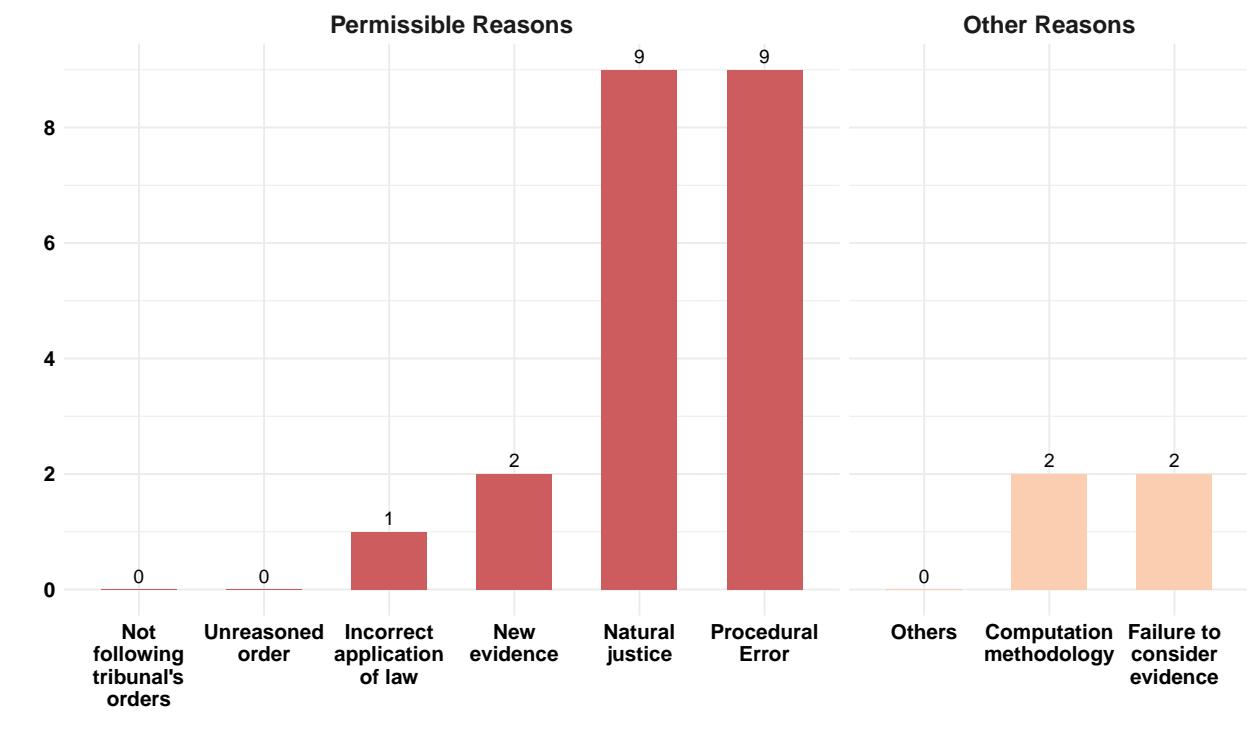
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<sup>57</sup>One order may have multiple appeals. Reasons for remand are examined by appeal.

<sup>58</sup>Each order may contain multiple reasons for remand.

Figure 3 specifies the number of appeals in which the SAT remanded for Permissible Reasons and Other Reasons.

**Figure 3** Appeals in which the SAT ordered remand for Permissible Reasons and Other Reasons



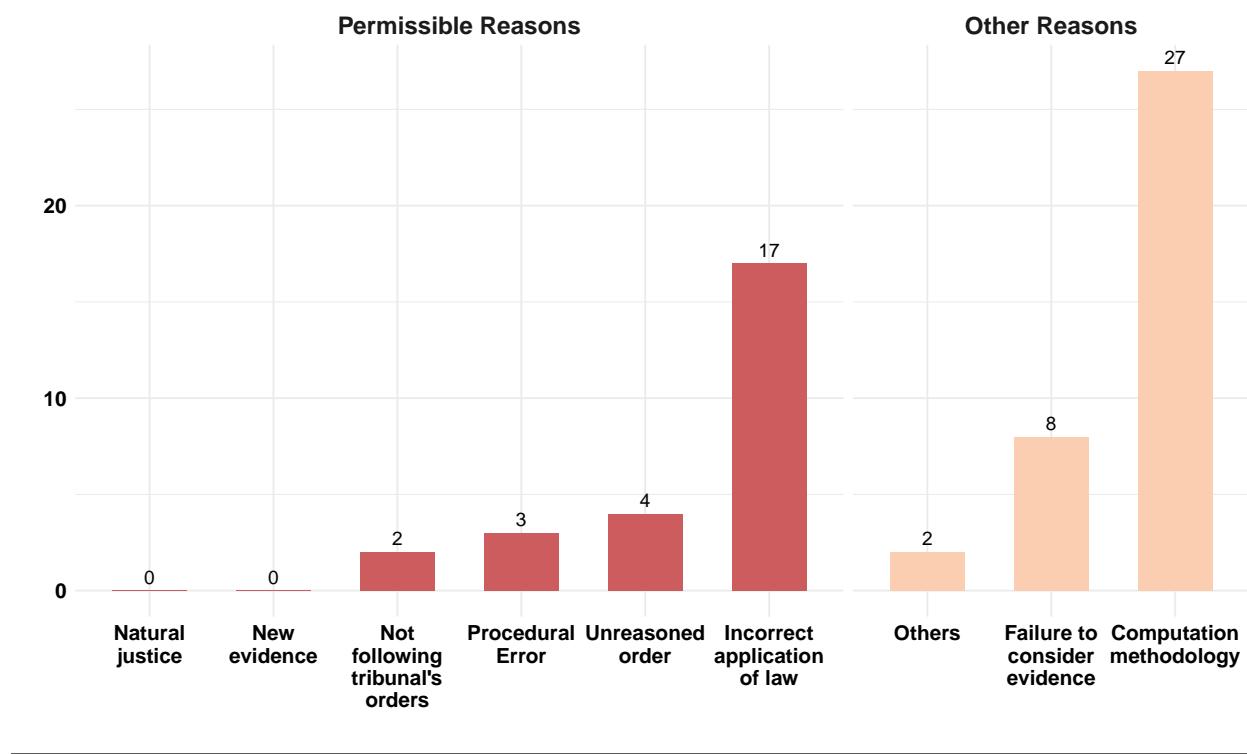
In one instance, the SAT remanded the matter to SEBI for it to reassess the amount of money that the appellant received for portfolio management services.<sup>59</sup> In another appeal, SAT remanded the matter for SEBI to calculate the amount that the appellant received towards investment advisory schemes.<sup>60</sup> Arguably, the SAT has the necessary expertise to recalculate these amounts.

Figure 4 specifies the number of appeals in which the APTEL remanded for Permissible Reasons and Other Reasons.

<sup>59</sup> Appeal No 434 of 2024 (SAT).

<sup>60</sup> Appeal No 580 of 2024 (SAT).

**Figure 4** Appeals in which the APTEL ordered remand for Permissible Reasons and Other Reasons



We find that the APTEL has cited recalculation of financial liability as the reason for remand in 27 out of 39 appeals (69.2%). For instance, the APTEL directed the regulator to recalculate the customers' financial liability based on their average monthly or quarterly energy consumption during the entire financial year 2021–22.<sup>61</sup> In another appeal, the tribunal directed the State Commission to re-determine the capital cost of the project and the resulting revised tariff.<sup>62</sup> These recalculations could have been done by the APTEL itself, since they are technically equipped to understand the intricacies of the sector.

These appeals reveal a pattern of remands that do not fall within the category of Permissible Reasons identified in our analysis. In these appeals, the appellate tribunal does not state that material facts are missing, procedural errors demand a remand, or that threshold questions of jurisdiction require reconsideration. Rather, these are appeals where the tribunal could have conclusively decided the matter on the basis of the materials available on the record. Remanding for arithmetic or accounting determinations undermines efficiency and calls into question the effective use of the tribunals' institutional mandates.

<sup>61</sup> *Appeal No 793 of 2024* (APTEL).

<sup>62</sup> *Appeal No 100 of 2017* (APTEL).

## 5 Conclusion

The absence of clear rules that determine when a matter may be remanded leaves a lot of room for tribunals to exercise their discretion on this question. The parent statutes of Indian tribunals generally provide that the rules of procedure applicable to courts do not apply to them, and that they should observe the principles of natural justice. However, this does not provide clarity on how to decide when a matter should be remanded. Parent statutes also delegate the power to tribunals to make their own rules of procedure but, as we have seen in the case of the APTEL and SAT, these subordinate legislation do not discuss remands. Consequently, we turn to the provisions of the CPC and common law rules that guide courts to determine whether the APTEL and SAT order remands for Permissible Reasons.

We find that remands are often ordered for reasons that are not included in the CPC and applicable common law. Unnecessary remands add time and cost to regulatory proceedings. They undermine investor confidence in regulated sectors, since it is difficult to take business decisions in the face of uncertainty about whether a regulator's orders will have to be reconsidered and modified. This also adversely affects the rule of law requirements of predictability and certainty in regulatory proceedings.

There may be several ways to reduce this problem, including, possibly, by improving order writing practices at the regulators whose orders are challenged in appeal before tribunals. We suggest that it is also useful to consider how this problem can be addressed at tribunals, and therefore recommend that:

- Clear rules determining the scope of the power of ordering a remand should be made applicable to all tribunals. These rules should apply in a consistent manner across tribunals, rather than being framed by each tribunal for itself. This will help ensure consistency and predictability, and limit the discretion of tribunals in this matter.
- These rules should be incorporated in the parent statutes of tribunals.
- In the absence of any reason to deviate from the rules on remand provided in the CPC and applicable common law, the scope of remanding power for tribunals should be the same as that available to courts.

Providing this clarity would help avoid unnecessary and unreasonable orders of remand, and help ensure that the core rule of law principles of consistency, predictability, and clarity are satisfied in the procedural aspects of the functioning of tribunals.

