

COURT - I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 206 OF 2016

Dated: 12th April, 2017.

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of :

M/s. Noida Power Company Ltd.

...Appellant(s)

Vs.

Uttar Pradesh Electricity Regulatory Commission & Ors.

...Respondent(s)

Counsel for the Appellant(s)

: Mr. M. G. Ramachandran
Mr. Vishal Gupta
Mr. Kumar Mihir

Counsel for the Respondent(s)

: Mr. C. K. Rai
Mr. Umesh Prasad for R.1

Md. Altaf Mansoor
Mr. Puneet Chandra
Mr. Sunil Rai for R.2

Mr. Neeraj Kumar Jain, Sr. Adv.
Mr. Vivek Narayan Sharma
Mr. Sidharth Mahajan for R.5

ORDER

M/s. Noida Power Company Limited has filed this appeal against Order dated 29.06.2016 passed by the Uttar Pradesh Electricity Regulatory Commission (“**State Commission**”).

The Appellant has filed Petition No. 987 of 2014 before the State Commission with the following prayers:

- “(a) Declare the Petitioner to be the lawful owner of the 220 kV Substation at R.C. Green, Greater Noida and declare that Petitioner is entitled to own, operate and maintain the 220 KV Substation at R.C.Green, Greater Noida being a distribution licensee.*

- (b) Direct Respondents to hand over the physical possession of the 220kV Substation at R.C.Green, Greater Noida to the Petitioner it being its lawful owner, for its operation and maintenance.*

- (c) Pass any other further order(s) as this Hon’ble Commission may deem fit in the facts and circumstances of the case.*

By the impugned order, the State Commission has called upon the Chief Secretary, Uttar Pradesh to convey the views of the State Government as regards the ownership of 220 KV R.C. Green Substation. The relevant observations of the State Commission are as under:

“Before going into several vexed issues pertinent for this case, the Commission observes that the dispute of ownership of 220 KV R.C. Green Substation is between Greater Noida Industrial Development Authority (GNIDA) and UP Power Transmission Corporation Ltd. (UPPTCL)/UPPCL which are both entities owned by the State Government, administered by Industrial Development and Energy Department respectively. It is very important to know the stand of the State Government on the issue of ownership. It would be prudent, therefore, to refer the matter to Chief Secretary, U.P. to convey the views of the State Government in this regard, preferably within one month.”

It appears that the dispute with which the State Commission is concerned is about the ownership of 220 KV R.C. Green Substation at Greater Noida. In our opinion, in deciding the ownership, the State Commission will have to go through the pleadings filed by the parties and the relevant record. The State Commission, if it so desires, can also call for relevant record from the concerned Government department. It is, however, in our opinion, not proper for the State Commission to direct the Chief Secretary of Uttar Pradesh to convey the views of the State Government on the question of ownership of 220 KV R.C. Green Substation at Greater Noida to enable it to come to a conclusion as to who is the owner of the said Substation. The State Commission is expected to decide the issue of ownership independently without being influenced by any such view/opinion and in accordance with law. Asking the Chief Secretary to convey the Government's stand goes contrary to the principles underlying judicial decision making.

We, therefore, direct the State Commission to decide the issue regarding ownership of 220 KV R.C. Green Substation at Greater Noida independently and in accordance with law without at all being influenced by the Chief Secretary's view if it has received it as per the direction issued. We expect the State Commission to decide every issue involved in this matter independently and in accordance with law after perusing the pleadings and hearing the parties.

Learned counsel for Respondent No.2 states that Respondent No.2 has raised certain preliminary objections about the maintainability of the petition before the State Commission. The State Commission is expected to decide the objections raised as to the maintainability of the petition also

independently and in accordance with law. We make it clear that on none of the issues involved in this appeal including the issue of maintainability, we have expressed any opinion.

The appeal is disposed of in the afore-stated terms. Needless to say that the interim order passed by us would continue till the State Commission finally decides and disposes of the petition and it will abide by the State Commission's final order. We record the statement of Mr. M.G. Ramachandran, learned counsel for the Appellant that he will implead Paschimanchal Vidyut Vitran Nigam Limited, Respondent No.5 herein as a party respondent before the State Commission. All the parties are entitled to make appropriate applications before the State Commission and the State Commission shall pass appropriate orders thereon.

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

ts/kt