

COURT - I

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

**APPEAL NO. 16 OF 2017 &
IA NOS. 38 AND 39 OF 2017**

Dated: 15th February, 2017

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

In the matter of :

**The Chief Engineer/SLDC, Rajasthan Vidyut Prasaran Nigam Ltd. & Ors. ...Appellant(s)
Vs.
Central Electricity Regulatory Commission & Ors. ...Respondent(s)**

Counsel for the Appellant(s) : Mr. Pradeep Mishra
Mr. Manoj Kumar Sharma

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Mrs. Swapna Seshadri for R.2

ORDER

In this appeal, the Appellant/Rajasthan Vidyut Prasaran Nigam Limited has challenged the record of proceedings dated 27.10.2016 passed by the Central Electricity Regulatory Commission (**Central Commission**).

It appears that Respondent No.2/Rajasthan Steel Chamber had filed a petition before the Central Commission seeking directions for preparation of UI account for under-drawal against collective transactions within specified time and for that payment of UI charges in terms of the Central Commission Regulations read with the Regulations of the State Commission.

The following prayers are made in the petition:

“In the facts and circumstances mentioned above, it is respectfully prayed that the Hon’ble Commission may be pleased to:

- (a) Direct the Respondents to compile and provide the UI Energy Accounts of the members of the petitioner for the period from March 2012 (Billing Month) till date and continue to provide the same on a regular basis in future;*
- (b) Direct the Respondents to pay for the under-drawals, the UI charges computed based on the energy accounting in terms of the Inter-State Regulations, 2008 of the Hon’ble Commission as applicable to Intra-state entities, namely under-drawals worked out at the periphery of the Regional entity (that is at interface of Rajasthan Rajya Vidhyut Prasaran Nigam with Northern Grid) and intra-state UI rate as per the Regulations;*
- (c) Direct that on and after 17.2.14, frequency linked charges for deviation as per CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 is to be considered as inter state UI rate and applied for the payment of under drawls;*
- (d) Direct the Respondents to pay interest at the rate of 15% per annum for the delay in the payment of UI compensation in terms of the Regulations;*
- (e) Award costs of the present proceedings;*
- (f) Pass such other further order(s) as the Hon’ble Commission may deem just in the facts of the present case.”*

The impugned record of proceedings indicates that the Appellant herein raised an objection to the maintainability of the petition before the Central Commission. However, the Central Commission did not deal with

the preliminary objection. While listing the matter for further hearing the Central Commission passed the following direction in the impugned record of proceedings:

“20. Noting the submission of learned counsel for Rajasthan Discoms, the Commission directed Discoms to submit ABT data to SLDC on or before 30.11.2016 and directed SLDC to settle the UI accounts of the petitioner by 10.12.2016 and file an affidavit by 15.12.2016.”

Mr. Pradeep Misra, learned counsel appearing for the Appellant submitted that the Central Commission ought to have decided the preliminary objection first and ought not to have passed a direction, which we have quoted here-in-above. Counsel submitted that the said direction indicates that the Central Commission has proceeded with the matter without deciding the objection with regard to maintainability of the petition. He submitted that therefore this appeal needs to be admitted.

Mr. Anand K. Ganesan, learned counsel appearing for Respondent No.2, on the other hand, submitted that all that the Central Commission had done is, to call for the data. Drawing our attention to the order of the Supreme Court dated 18.10.12 in **PTC India Limited v. Gujarat Electricity Regulatory Commission and Anr.** in Civil Appeal No. 7524 of 2012, counsel submitted that the Supreme Court has observed therein that since the Electricity Act, 2003 , ensures expeditious adjudication of the disputes raised by the parties, there is no warrant for entertaining

preliminary/interlocutory objections raised by either party and decide the same by long-drawn hearing and by recording lengthy orders. The Supreme Court has further observed that the State Commission and the Tribunal should, while deciding the main matter consider all objections including the one relating to their jurisdiction to entertain the matter. Counsel submitted that in view of this observation of the Supreme Court, no interference is necessary with the impugned order at this stage, inasmuch as the Central Commission will at the time of finally deciding the petition consider the issue of maintainability also.

Having perused the Supreme Court's order, we find substance in the contention of counsel for Respondent No.2. But, at the same time, the Central Commission cannot before deciding the matter finally pass any order, which will, in any way, result in disposal of the petition itself. The Central Commission will have to hear the parties on all aspects. But the preliminary objection will have to be decided at the outset. Needless to say, if the Central Commission comes to a conclusion that it has no jurisdiction, it cannot proceed further and it will have to record that it has no jurisdiction. However, if it comes to a conclusion that it has jurisdiction, it can proceed with the matter and finally decide the petition. In this view of the matter, it is not necessary for us to interfere with the impugned order at this stage.

By the impugned record of proceedings the Central Commission has called for some data which may be, according to the Central Commission, necessary for final determination of the issues involved in this case, in case it holds that it has jurisdiction to entertain Respondent No.2's petition. It has also directed SLDC to settle the UI accounts of the petitioner by 10.12.2016 and file an affidavit. However, we make it clear that no order or direction which will finally decide the issues involved in this case can be passed by the Central Commission till it decides the preliminary objection as regards maintainability.

In the circumstances we feel that the following order will meet the ends of justice.

Let the data be furnished as directed by the Central Commission. We direct the Central Commission to dispose of the petition filed by Respondent No. 2 independently and in accordance with law. Needless to say that the preliminary objection shall be decided by the Central Commission first. Needless to say further that if the Central Commission comes to a conclusion that it has no jurisdiction to entertain the petition it cannot proceed further. The Central Commission shall not pass any order or direction which will finally dispose of Respondent No.2's petition till it decides the preliminary objection regarding maintainability. We make it clear that we have not expressed any opinion on the merits of the case.

The Central Commission shall decide the matter as expeditiously as possible.

The petition is disposed of in the aforestated terms.

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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