

In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

Appeal No 299 of 2015 and
I.A. No. 479 of 2015

Dated: 8th March, 2017

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

In the matter of :-

Jharkhand Urja Sancharan Nigam Ltd
Engineering Bhawan,
HEC, Dhurwa
Ranchi- Jharkhand- 834004

... Appellant

Versus

1. M/s Kohinoor Power Pvt. Ltd.
16 A- Everest House, 46C
J.L. Nehru Road
Kolkata-71

...Respondent No.1

2. Jharkhand State Electricity Regulatory
Commission
2nd Floor Sainik Bhawan,
Main Road, Ranchi P.O., G.P.O. & P.S.
Lower Bazar, District- Ranchi- 834001

...Respondent No.2

Counsel for the Appellant(s): **Mr. Ajit Kumar, Sr. Adv.**
Mr. Himanshu Shekhar
Mr. Navin Kumar
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Mr. Sunil Kumar

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Ms. Arpita B
Mr. Abraham C Mathews
Mr. Vaibhav Niti ...for R-1

Mr. Farrukh Rasheed for ...for R-2

JUDGMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal is being filed by Jharkhand Urja Sancharan Nigam Ltd. (herein after referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 challenging the Order dated 26.05.2015 (“**Impugned Order**”) passed by the Jharkhand State Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) in Petition No.01/2015, in the matter regarding recovery of supervision charges @ 21.5% by the Appellant for connectivity to 1x66 MW Captive Power Plant (CPP) of the Kohinoor Power Pvt. Ltd. (“**Respondent No. 1**”) on the entire estimate of construction of 132 kV Mini Switch Yard (Grid Sub-Station) connected through LILO of 220 kV Hatia- Chandil transmission line charged at 132 kV.
2. The Appellant, Jharkhand Urja Sancharan Nigam Ltd. is the transmission company under Companies Act, 1956 and is the State Transmission Utility under Section 39 to the Electricity Act, 2003.

3. The Respondent No.1 is M/s Kohinoor Power Pvt. Ltd. who is setting up 1x66 MW CPP at Kuchidih, Kandra, Distt. Saraikela Kharsawan in the State of Jharkhand.
4. The Respondent No.2 i.e. Jharkhand State Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) is the Electricity Regulatory Commission for the State of Jharkhand exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.
5. **Facts of the present Appeal:**
 - a) The State Commission on 28.07.2005 notified the JSERC (Electricity Supply Code) Regulations, 2005 (hereinafter referred as ‘**Regulations, 2005**’). These Regulations provide recovery of supervision charges upto 15% of the labour cost that would have been incurred by Distribution Licensees in carrying out such work, on works related to laying service line and/ or dedicated distribution facilities carried out by consumers at their own cost and supervised by distribution licensees. These Regulations are applicable to Distribution Licensees in the State of Jharkhand.
 - b) There are no such regulations notified by the State Commission for recovery/ levying of supervision charges on the works carried out for extension of the transmission system by the applicants/ consumers and supervised by the transmission licensee in the State of Jharkhand.

- c) The State Commission in other Petition No. 01 of 2011 (Kohinoor Steel Pvt. Ltd. Vs. JSEB and others) vide order dated 25.3.2011 has held that the then Jharkhand State Electricity Board (JSEB) can charge supervision charges not exceeding 15% of the labor cost as prescribed in Regulations, 2005. During that time i.e. 2010-11, JSEB was not unbundled into separate companies viz. Jharkhand Urja Vikas Nigam Ltd, Jharkhand Bijli Vitran Nigam Ltd, Jharkhand Urja Sancharan Nigam Ltd and Jharkhand Urja Utpadan Nigam Ltd.
- d) Respondent No. 1 vide letter dated 24.8.2012 requested connectivity of its 1x66 MW Captive Power Plant (CPP) to the grid by construction of 132 kV Mini Switch Yard (Grid Sub-Station) through LILO of 220 kV Hatia- Chandil transmission line charged at 132 kV. The said works were to be carried out by the Respondent No. 1 under supervision of the Appellant. It is the case of the Appellant that for carrying out supervision works, the Appellant is entitled to charge supervision charges @ 21.5% of the estimated cost of the works based on Bihar State Electricity Board (BSEB) Financial and Account Code (herein after referred as the “**Code**”).
- e) In February 2013, the Appellant furnished feasibility report with sanctioned estimate of Rs. 10,10,31,380 including supervision charge of Rs. 1,78,77,981 (i.e. @21.5% of the estimated cost of the works to be carried out). In April 2013, the Appellant through a letter clearly brought out that the supervision charges are to be deposited by the Respondent No. 1 before the start of work as JSEB norms. Respondent No. 1 through letter dated 14th May, 2013 stated that supervision charges will be paid as per prevalent law of JSEB. The Respondent No.1 on 2nd May, 2014 again

confirmed to pay supervision charges as per estimate and also for future estimates as per prescribed norms.

- f) The supervision charges @21.5% are levied by the Appellant based on the Code. The same was also duly considered by the Board of Directors of the Appellant in its Board Agenda Item 3-10/14-15. The Appellant vide letter dated 9th July 2014, requested the Respondent No. 1 for submission of draft agreement paper for connectivity to 1x66 MW CPP including supervision charge @21.5% of the sanctioned estimate.
- g) In May, 2015 the Respondent No.1 filed a Petition No. 1 of 2015 before the State Commission contesting recovery of supervision charges @ 21.5% on the sanctioned estimated cost. The State Commission passed the Impugned Order by upholding the claim of the Respondent No. 1 that supervision charges @ 15% as per Regulations, 2005 are applicable.
6. Aggrieved by the Impugned Order dated 26.05.2015 passed by the State Commission, the Appellant has preferred the present appeal on following grounds:
- i. Impugned Order passed by the State Commission is bad in law and the State Commission exceeded its jurisdiction while passing the Impugned Order.
 - ii. The State Commission has wrongly relied on the order dated 25.03.2011 passed in Petition No. 01/2011 (M/s Kohinoor Steel Pvt. Ltd. Vs. JSEB and others).
 - iii. The case of Appellant (Transmission Licensee) is different from the case of a Distribution Licensee.

- iv. The State Commission failed to consider that Transmission Licensee has to perform greater responsibility so as far supervision is concerned and it has a greater risk factor to withstand and any mis-happening in the system will cause failure of entire Zonal Grid attracting huge penalty by CERC.
- v. Regulation 3.2.3 of Regulations, 2005 is applicable to distribution Licensee.
- vi. The claim of supervision charges @ 21.5% is supported by BSEB Financial and Account Code, which is saved under the new act.
- vii. The Appellant is charging supervision charges @ 21.5% from other entities.
- viii. The State Commission has committed judicial impropriety while passing the Impugned Order and subsequent orders.

7. QUESTIONS OF LAW

The Appellant has raised the following questions of law in the present appeal:

- a. Whether the respondent who had already committed to pay the supervision charges @ 21.5% can be allowed to back track?**
- b. Whether in facts and circumstances of the case the law of estoppel applies to the respondent?**
- c. Whether the supervision works done by the distribution licensee can be equated with that of the transmission licensee?**
- d. Whether the earlier judgement of the JSERC in case of M/s**

Kohinoor Steel Private Ltd. Versus Jharkhand State Electricity Board & others in case no. 01 of 2011 applies in present case?

e. The order of the CERC is bad on account of non-joinder/mis-joinder of necessary parties?

8. We have heard at length the learned counsel for the parties and considered carefully their arguments and written submissions. Gist of the same is discussed hereunder;

9. The learned counsel for the Appellant has made following arguments/submissions for our consideration :

a) The State Commission has erred in holding that the Appellant cannot recover the supervision charges from the Respondent No. 1 @ 21.5% on entire estimate for construction of 132 kV Mini Switch Yard (Grid Sub-Station) connected to the proposed Group Captive power plant (1x66 MW) of Respondent No.1 through Loop in Loop Out (LILO) of the 220 kV Hatia-Chandil Transmission line charged at 132 kV. As per the Impugned Order of the State Commission, the supervision charges can be recovered by the Appellant @ 15% in light of Regulations, 2005.

b) The Impugned Order is based on clause 3.2.3 of the Regulations, 2005 of the State Commission. As per clause 1.2 of the Regulations, 2005, these regulations are applicable to Distribution Licensees in the State of Jharkhand. Whereas the Appellant is the Transmission Licensee in the State of Jharkhand. Hence, the

provisions of Regulations, 2005 are not applicable to the Appellant and it has rightly claimed the supervision charges.

- c) The Respondent No. 1 vide letter dated 24.08.2012 requested for permission of LILO from 220 kV Hatia-Chandil transmission line between tower no. 316 & 317. The Appellant vide letter dated 22.02.2013 submitted feasibility report with sanctioned estimate and related drawing for Rs. 10,10,31,380 including supervision charges of Rs. 1,78,77,981. Further, vide letter dated 25.04.2013, the Appellant clearly indicated that before starting the work as per norms of JSEB, the firm will have to deposit the requisite supervision charges.
- d) The Respondent No. 1, vide letter dated 14.05.2013 accepted supervision charges as per prevailing law of JSEB. In response to further communications from the Appellant for payment of supervision charges @ 21.5%, the Respondent No. 1 vide letter dated 02.05.2014 confirmed to pay supervision charges as per estimate and also for the future estimate as per prescribed norms.
- e) The matter was brought before the Board of Directors of the Appellant as Agenda item No. 3-10/14-15. Thereafter the Appellant vide letter dated 09.07.2014 informed the Respondent No. 1 for submission of draft agreement paper as per details brought out in the letter for connectivity to 1x66 MW CPP including supervision charge @21.5% of sanctioned estimate.
- f) The Transmission Licensee has to perform greater responsibility as far as supervision is concerned than that of the Distribution Licensee. The works of the Distribution Licensee are restricted to 33

kV and below whereas the Transmission Licensee works on the voltage level 132 kV and above. The Appellant is guided by the Central Electricity Authority (CEA) (Grid Standards), Regulations, 2010. Any mis-happening will lead to Zonal Grid failure as well as levy of huge penalty by CERC.

g) The supervision works done by the Appellant (Transmission Licensee) cannot be compared with supervision works done by any Distribution Licensee. The supervision charges @21.5% of entire cost estimate are justified in view of the nature of the work carried out by the Appellant and the fact that had been accepted by the Respondent No.1.

10. The learned counsel for the Respondent No. 1 has made following arguments/submissions on the issues raised in the present Appeal for our consideration:

a) The State Commission while issuing the Impugned Order has observed that the claim of supervision charges @ 21.5% are not supported by any provision of law, Electricity Act, 2003 or regulation framed by the State Commission.

b) The State Commission while passing the Impugned Order has relied on its earlier order dated 25.3.2011 in Petition No. 1 of 2011 (M/s Kohinoor Steel Pvt. Ltd. Vs. JSEB & others). In this order the State Commission has held that the BSEB Financial and Accounting Code is not saved by the provisions of the Electricity Act, 2003. As such the licensee is devoid of any authority for estimating supervision charges as per the aforesaid Code. This decision has

not been challenged by anyone till date. Therefore the aforesaid Code does not survive to rely upon by the licensees after the enactment of the Electricity Act, 2003. Even in the present Appeal, the Appellant has not pointed out any provision of law which forms the basis of its claim of supervision charges @ 21.5%.

- c) The judgements of the Hon'ble Supreme Court in **PTC India Ltd. V CERC (2010) 4 SCC 603 [prs 17 & 28]** and **JSEB V Laxmi Business and Cement Co. Pvt. Ltd., (2014) 5 SCC 236,** strengthens the stand of the Respondent No. 1 that after the enactment of the Electricity Act, 2003, the electricity Boards or the licensees cannot rely upon any sub-ordinate legislation other than that is expressly saved under Section 185 of the Electricity Act, 2003. The grant of permission by JSEB to M/s Kohinoor Steel Ltd. is deemed to be permission by the Transmission Division of JSEB.
- d) Respondent No. 1, is responsible for ownership of the proposed sub-station and has to comply with the requirements in view of JSERC (Grid Code), 2008. The supervision charges by the Appellant @ 21.5% amounts to compulsory extraction of the money and is in the nature of tax. The same is in violation of Article 265 of the Constitution of India.
11. The learned counsel for the State Commission besides adopting the submissions of the Respondent No.1 as above, has also taken us through the findings of the Impugned Order.

12. **After having a careful examination of all the aspects brought before us on the issues raised in Appeal and the above submissions made by the Appellant and the Respondents for our consideration, our observations are as follows:-**

a) The present case pertains to decision of the State Commission on disallowance of supervision charges levied by the Appellant @21.5% on the entire estimate for construction of 132 kV Mini Switch Yard (Grid Sub-Station) connected to the Group Captive power plant (1x66 MW) of Respondent No.1 through Loop in Loop Out (LILO) of the 220 kV Hatia-Chandil Transmission line charged at 132 kV. The Impugned Order of the State Commission has allowed the supervision charges only @15% of the labour cost as per its Regulations, 2005 instead of @21.5% of estimated cost.

b) On question no. (a) i.e. **Whether the respondent No.1 who had already committed to pay the supervision charges @ 21.5% can be allowed to back track?, we decide as follows:**

i) The State Commission vide Impugned Order has held as below:

“22. From the statements made in the counter affidavit as also the communication made with the petitioner regarding claim of supervision charges @ 21.5%, the Commission does not find the same supported by any provision of law or regulation framed by this Commission. The respondents have taken plea that the claim of supervision charges @21.5% is validly based on the provision of the Bihar

State Electricity Board Financial and Account Code (for short "BSEB Code").

23. *The petitioner controverted the said claim and submitted that the BSEB Financial and Account Code, which was deemed regulation under Section 79 (1) of the Electricity (Supply) Act, 1948, stood repealed by the new enactment i.e. the Electricity Act, 2003. The respondents had earlier taken the same plea in M/s Kohinoor Steel (Supra) which was rejected by the Commission after thorough consideration, and recording detailed reasons in paragraphs 22 and 23 of the said order, which are reproduced hereinbelow:-*

"22. Section 185 of the Electricity Act, 2003 which has been reproduced hereinabove, does not speak about the saving of regulations framed under section 79 (1) of the Electricity (Supply) Act, 1948. From this, we come to the conclusion that the said Code, under which the respondent-licensee-JSEB is claiming supervision charges, is not saved by the Electricity Act, 2003 and, as such, the respondent-licensee-JSEB is devoid of any authority to include in the estimate the supervision charges under "the Code". True the respondent licensee-JSEB has charged supervision charges @21.5% on the entire estimated cost from two other entities viz. M/s Usha Martin Limited and Road Construction Department of Government of Jharkhand. But "the Code" under which the respondent-licensee-JSEB have charged the

supervision charges itself has not survived after the Electricity Act, 2003 has come into force and as such, the respondent-licensee JSEB's action in the case of these two entities would not validate their action in this behalf. Therefore, this plea is not tenable.

23. *It will be relevant here to refer to Sections 45, 46 and 47 of the Electricity Act, 2003 which provides for power to recover charges, power to recover expenditure and power to require security respectively. Under Section 45 of the Act, which provides for how to recover charges, section 62 is also mentioned which speaks about determination of tariff. Broadly, these are the legal provisions under which a licensee can levy various charges and recover the same. Sub-Section 45 (5) of the Act says that the charges fixed by the distribution licensee shall be in accordance with the provisions of the Electricity Act, 2003 and the Regulations made thereunder. Obviously, "the Code" is not a Regulation made under the Electricity Act, 2003 and to us, after coming into force the Electricity Act, 2003, that Code does not have legal sanctity."*

24. *In view of the above, the ground on which the petitioner has based its claim became nonest.*

25. *The Electricity Act, 2003 provides elaborate provision of recovery of charges such as expenditure, security deposit etc. No provision of Electricity Act has been referred to by*

the respondents in support of their claim. Any provision of the Regulation framed by this Commission has also not been shown, giving such authority to the respondents to claim supervision charges @ 21.5%.

26. The Commission had taken note of those legal provisions while passing order in Case No. 1 of 2011 (Supra). It was also noticed that the Commission has framed regulations for levying of various charges including the cost of service connection/extension/up-gradation, charges of electricity supplied, security deposit and the schedule of charges. The JSERC (Utilization of Surplus Capacity of Captive Power Plants based on Conventional Fuel) Regulations, 2010 provide for the Grid interconnection/parallel operation. The Commission had considered the relevant clauses of the said Regulations. In view of the provisions of JSERC (Utilization of Surplus Capacity of Captive Power Plants based on Conventional Fuel) Regulations, 2010 and JSERC Electricity Supply Code Regulation, 2005, the Commission had come to the conclusion that the supervision charges cannot exceed 15% of the labour cost.

27. In view of the above discussion and in our considered opinion, the petitioner's claim of supervision charges @ 21.5% has not been supported by any provision of law or any provision of the Regulations framed by this Commission and, as such, is not legally justified."

As per the State Commission, the claim of the Appellant for charging supervision charges @ 21.5% of the estimated cost under

Code is not legal as it is not survived under section 185 of the Electricity Act, 2003.

The State Commission while deciding supervision charges @15% of the labour charges has relied on legal provisions i.e. sections 45, 46 & 47 of the Electricity Act, 2003. The State Commission has also considered the provisions of JSERC (Utilization of Surplus Capacity of Captive Power Plants based on Conventional Fuel) Regulations, 2010 and JSERC Electricity Supply Code Regulation, 2005 while arriving at this conclusion.

- ii) The provisions of the section 45, 46 and 47 of the Electricity Act, 2003 which fall under **Part VI (Distribution of Electricity)** are as below:

“Power to recover charges

45. (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;

.....
.....
.....

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

Power to recover expenditure

46. *The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.*

Power to require security.

47. (1) *Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as determined by regulations, for the payment to him of all monies which may become due to him-*

.....
.....
.....

These provisions of the Electricity Act, 2003 are specifically applicable to the Distribution Licensee in a State. These provisions are not applicable to the State Transmission Utility/Transmission Licensee (here in this case the Appellant).

- iii) Regulations, 2005 are notified by the State Commission in exercise of the power conferred by Clause (x) of sub-section (2) of Section 181 read with Section 50 of the Electricity Act, 2003 and all power enabling it in that behalf. The clause 3.2.3 and clause 17 of these regulations are reproduced below:

“3.2.3 Where the licensee permits the applicant to carry out works of laying service line and/or dedicated

distribution facilities for the power supply requisitioned by him, the licensee shall not be entitled to recover expenses relating to such portion of work so carried out by the applicant.

Provided however that the licensee shall be entitled to recover from the applicant, supervision charges as per schedule of charges approved by the Commission in accordance with Clause 17 of these Regulations, not exceeding 15 percent of the labor cost that would have been incurred by licensee in carrying out such work.

.....
.....

17. Schedule of Charges-

17.1 Every Distribution licensee including the deemed licensee shall within three (3) months from the date of notification of these regulations or within three(3) months of the grant of licensee, whichever is later, file with the Commission for approval, a Schedule of Charges for matters contained in these Regulations and for such other matters required by the Distribution Licensee to fulfill his obligations to supply electricity to the consumers under the Act or rules and regulations there under.

Provided that the Distribution licensee shall file the Schedule of Charges along with every application for determination of tariff under Section 64 of the Act together with such particulars as Commission may require.

17.2 The Commission shall after examining the schedule of charges filed by the licensee and after considering the views of all interested parties issue an order granting its

approval thereon with such modifications, alterations or such conditions as may be specified in that order.

Provided that the schedule of charges approved by the Commission shall unless and otherwise amended or revoked, continue to be in force.

17.3 The existing Schedule of Charges of the Distribution Licensee shall continue to be in force until such time as the schedule of charges submitted by the Distribution Licensee under Clause 17.1 of these Regulations is approved by the Commission.”

It is very clear that Regulations, 2005 are applicable to the Distribution Licensees only as section 50 of the Electricity Act, 2003 is also related to distribution of electricity and the said provisions under Regulations, 2005 related to supervision charges of 15% are in respect of works related to distribution of electricity only.

Thus the contention of the Appellant that the Regulations, 2005 are not applicable to it is right.

- iv) The JSERC (Utilization of Surplus Capacity of Captive Power Plants based on Conventional Fuel) Regulations, 2010, were notified by the State Commission in exercise of the powers conferred by Sub-Section (b) of Section 86 of the Electricity Act, 2003 and all powers enabling it on that behalf. These Regulations deal with regulation of electricity purchase and procurement process of the distribution licensees. The relevant

extracts of these regulations relied upon by the State Commission are reproduced below:

“A4: GRID INTERCONNECTION/PARALLEL OPERATION

4.1 The CPP and dedicated transmission/distribution lines and substations shall be established, operated and maintained, as per the technical, safety and grid standards specified by the Transmission Licensee/Distribution Licensee or the Commission as the case may be.

4.2 As per section 9 of the Act, the supply of electricity from a CPP through the grid shall be regulated in the same manner as the generating station of a generating company. For this purpose, the CPP shall comply with the directions issued by the SLDC for exercising supervision and control as may be necessary for ensuring integrated grid operations and for achieving the maximum safety, economy and efficiency in the operation of power system in the state.

For supply at 33/11kV, the CPP shall be required to comply with the directions issued by the Licensee for exercising necessary supervision and control.

Provided that if any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction issued by SLDC it shall be referred to the Commission for the decision. However pending the decision of the Commission, the CPP shall comply with the directions issued by the SLDC/ Licensee, as the case may be.

4.3 CPP, connected in parallel with the grid, shall ensure compliance of Grid Code and the Regulations issued by

the Central Electricity Authority, amended from time to time.

4.4 The connectivity to the system network shall be provided by the Licensee only after the CPP completes all the formalities as prescribed by the Licensee with respect to seeking connection of the CPP to the grid. The CPP shall also be required to maintain the statutory clearances throughout the term of connectivity with the grid.

4.5 The CPP shall provide the infrastructure for connecting the generating plant (if not existing earlier) to the network of the Transmission Licensee/Distribution Licensee as the case may be.

4.6 In case the CPP requires the Transmission Licensee/Distribution Licensee to build the infrastructure to connect the CPP with the Licensee's network then the CPP shall have to bear the cost as per the applicable rates for extending network facility, for the HT consumers at the corresponding voltage level.

4.7 The scheme of synchronising the CPP with the concerned Licensee's network shall have to be approved by the Transmission Licensee/Distribution Licensee as the case may be.

4.8 The charges applicable for Grid Interconnection, Parallel operation & reactive energy shall be as per the Open Access Regulations."

These regulations are for the regulation of power procurement by the Distribution Licensee by utilization of Surplus Capacity of

Captive Power Plants based on Conventional Fuel. As such these regulations are applicable to the Distribution Licensees. The references to the Transmission Licensee in these regulations are only incidental to facilitate the power procurement as there may be requirement for carrying out intervening transmission related works for facilitating connections to the HT consumers. The HT consumers come under the purview of the Distribution Licensee. Further, these regulations also do not specify any supervision charges to be recovered by the Transmission Licensee.

- v) The State Commission in its order dated 25.3.2011 in petition no. 1 of 2011 at para 27 has held as below:

“From a reading of clause 4.6 above, it seems that for Grid interconnection and parallel operation, networking facility of a CPP has been equated with that of HT consumers at the corresponding voltage level. But these Regulations do not provide for supervision charges. This takes us to the JSERC (Electricity Supply Code) Regulations, 2005 because the Electricity Supply Code defines H.T. consumers and provides for supervision charges when the works are supervised by the licensee.

.....
.....”

The conclusion that for Grid interconnection and parallel operation, networking facility of a CPP is equated with that of HT consumers, drawn by the State Commission is misplaced since the works related to intervening transmission system, if

required are entirely different than those related to Distribution system. Hence the same cannot be equated. After equating the works, the State Commission has justified applicability of supervision charges under its Regulations, 2005. In our considered view, the conclusion drawn by the State Commission is not in order.

- vi) It is clear that there were no regulations of the State Commission to deal the situation where any rate is available for applying supervision charges by Transmission Licensee. However, the State Commission's Order dated 25.3.2011 in case no. 1 of 2011 which was not challenged by the Appellant, achieved finality is applicable to it. The Appellant has been accepting supervision charges @15% of the labour charges from M/s Kohinoor Steel Pvt. Ltd.
 - vii) The Respondent No. 1 vide its letters dated 14.5.2013 and 2.5.2014 agreed to pay supervision charges as per JSEB law/as per norms prescribed which implies that Respondent No. 1 is referring to the law laid down by the State Commission vide its order dated 25.3.2011
 - viii) In view of our analysis as above the Respondent No. 1 has never committed payment of supervision charges @21.5% and hence there is no question of back tracking by it.
- c) On question no. (b) i.e. **Whether in facts and circumstances of the case the law of estoppels applies to the respondent?, we decide as follows:**

- i) To invoke the doctrine of estoppels, three conditions need to be satisfied;
 - (i) Representation by one party to another
 - (ii) The other party should have acted upon the said representation and
 - (iii) Such action should have been detrimental to the interests of the person to whom the representation has been made.

From the discussions at 12 vi), vii) & viii) above, it is clear that Respondent No.1 has not committed to pay supervision charges @21.5% to the Appellant.

Hence the doctrine of estoppels does not apply to the Respondent No.1.

- d) On question no. (c) i.e. **Whether the supervision works done by the distribution licensee can be equated with that of the transmission licensee?, we decide as follows:**

- i) The JSERC (State Grid Code) Regulations, 2008 are notified by the State Commission in exercise of the powers conferred by Section 181 read along with clause (1) (h) of section 86 of the Electricity Act, 2003, and all other powers enabling on that behalf. These regulations define STU (here Appellant) as below:

“STU”: mean State Transmission utility – "State Transmission Utility" means the Government company/entity specified as

such by the State Government under sub-section (1) of section 39;

The Appellant being STU under Section 39 of the Electricity Act, 2003 in the State of Jharkhand, is entrusted with many responsibilities under the State Grid Code/ IEGC like transmission system planning & its implementation, compliance to technical standards / grid standards for O&M of transmission lines, modification to the existing grid system, system safety, energy audit etc. specified by the Authority under Section 73 of the Electricity Act, 2003.

In view of the above and our observations at 12 b (iv) and 12 b (v), it is clear that the supervision works carried out by the Distribution Licensee and by the State Transmission Utility are different and cannot be equated.

e) On question no. (d) i.e. **Whether the earlier judgement of the JSERC in case of M/s Kohinoor Steel Private Ltd. Versus Jharkhand State Electricity Board & others in Petition No. 1 of 2011 applies in present case?**, we decide as follows:

i) In 2010-11, the JSEB was an integrated entity performing all the functions of Generation, Transmission and Distribution. The order of the State Commission in Petition No. 1 of 2011 was applicable to the then entity i.e. JSEB. The order of the State Commission was based on the Regulations, 2005 which are applicable to the Distribution Licensee.

- ii) The Impunged Order of the State Commission came after unbundling of the JSEB into four entities vide notification 18 dated 6.1.2014 of the Energy Department, Govt. of Jharkhand, is applicable to the Appellant, which is a STU.
- iii) Section 185 of the Electricity Act, 2003 is reproduced as below:

“Repeal and saving.

185.(1) *Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.*

(2) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under section 67 to 69 of this Act are made;.

- (c) *Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made force till the regulations under section 53 of this Act are made.*
- (d) *all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 shall continue to have effect until such rules are rescinded or modified, as the case may be;*
- (e) *all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.”*
- (3) *The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.*
- (4) *The Central Government may, as and when considered necessary, by notification, amend the Schedule.*
- (5) *Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.”*
- iv) From Section 185 of the Electricity Act, 2003 as brought out above, it is clear that the Electricity (Supply) Act, 1948 stands

repealed subject to save as otherwise in the Electricity Act, 2003.

- v) The present situation has arrived in absence of any regulatory provisions to recover supervision charges by Appellant for such nature of jobs in the state of Jharkhand.
- vi) Order dated 25/03/2011 passed by the State Commission in Petition No. 1 of 2011 was based on JSERC Electricity Supply Code Regulations 2005. It is pertinent to note that the Supply Code is applicable to only distribution licensees and not to transmission licensees. However, the said order has not been challenged. It has attained finality and, therefore, it covers the present case. We have already discussed the said order in para-12 above. In the facts of this case, at this stage we do not want to say anything more.
- vii) In view of the fact that there is no Regulation or Code or any Guideline under which the supervision charges can be levied by a Transmission Licensee, the Commission may consider taking necessary steps in that behalf.
- f) On question no. (e) i.e. **The order of the CERC is bad on account of non-joinder/mis-joinder of necessary parties?, we decide as follows:**

We do not find any order of CERC quoted by the Appellant in the instant appeal. Hence there is no requirement to deal with this question.

- g) On the issues of General Clause Act, 1897, Continuation of orders, etc. issued under enactments repealed and re-enacted and this Tribunal in Judgement dated 19.1.2017 in Appeal No. 282 of 2014 Haryana Vidyut Prasaran Nigam Ltd. v. Haryana Electricity Regulatory Commission and Ors., we are of the opinion that the conditions envisaged in these do not apply in the present case.

ORDER

We are of the considered opinion that the issues raised in the present appeal and I.A. have no merit as discussed above. The Appeal and I.A. are hereby dismissed.

The Impugned Order dated 26.05.2015 passed by the State Commission is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **8th day of March, 2017.**

(I.J. Kapoor)
Technical Member

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(Mrs. Justice Ranjana P. Desai)
Chairperson

REPORTABLE/NON-REPORTABLE

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