

**Before the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)**

Appeal Nos. 49 of 2015, 93 of 2014 and 94 of 2014

Dated : 04th November, 2015

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. INDERJIT KAPOOR, TECHNICAL MEMBER**

In the Matter of:

(1) Appeal No. 49 of 2015

Chhattisgarh State Power Distribution Co. Ltd.

Vidyut Seva Bhavan, Danganiya,
Raipur – 492 013, Chhattisgarh
Through its Additional Chief Engineer (RAC)

... Appellant(s)

Versus

1. Chhattisgarh State Electricity Regulatory Commission

Shanti Nagar, Irrigation Colony,
Raipur – 492 001 (Chhattisgarh).

... Respondent

2. M/s Hira Power and Steel Ltd.

Regd. Office : 567 B, 568 & 553 B,
Urla Industrial Complex,
Raipur – 492 003 (Chhattisgarh).

... Respondent/Petitioner

Counsel for the Appellant(s) : Ms Suparna Srivastava, Ms. Nishtha Sikroria,
Mr. Kumar Harsh

Counsel for the Respondent(s) : Mr. C. K. Rai, Mr. Buddy A. Ranganadhan,
Mr. Raunak Jain

(2) Appeal No. 93 of 2014

Chhattisgarh State Power Distribution Co. Ltd.

Vidyut Seva Bhavan, Danganiya,
Raipur – 492 013 (Chhattisgarh)
Through its Additional Chief Engineer (RAC)

... Appellant(s)

Versus

1. Chhattisgarh State Electricity Regulatory Commission

Shanti Nagar, Irrigation Colony,
Raipur – 492 001 (Chhattisgarh).

... Respondent

2. M/s Godawari Power & Ispat Ltd.

Regd. Office : 428/2, Phase-I,
Industrial Area, Siltara,
Distt. Raipur – 493 111 (Chhattisgarh)

... Respondent/Petitioner

Counsel for the Appellant(s) : Ms. Suparna Srivastava, Ms. Nishtha Sikroria, Mr. Kumar Harsh, Ms. Swapna Seshadri, Mr. P. V. Sajeev, Advs.

Counsel for the Respondent(s) : Mr. C.K. Rai, Mr. Ravin Dub, Advs., Mr. Mukesh Nahar, Director (Tariff), Mr. Buddy A. Ranganadhan and Mr. Raunak Jain

(3) Appeal No. 94 of 2014

Chhattisgarh State Power Distribution Co. Ltd.

Vidyut Seva Bhavan, Danganiya,
Raipur – 492 013 (Chhattisgarh)
Through its Additional Chief Engineer (RAC)

... Appellant(s)

Versus

1. Chhattisgarh State Electricity Regulatory Commission

Shanti Nagar, Irrigation Colony,
Raipur – 492 001 (Chhattisgarh)

... Respondent

2. M/s Hira Ferro Alloys Ltd.

Regd. Office : 567 B, 568 & 553 B,
Urla Industrial Complex,
Raipur – 492 003. (Chhattisgarh)

... Respondent/Petitioner

Counsel for the Appellant(s) : Ms. Suparna Srivastava, Mr. A. Bhatnagar, Ms. Nishtha Sikroria, Ms. Swapna Seshadri, Mr. P.V.Sajeev and Mr. Kumar Harsh

Counsel for the Respondent(s) : Mr C. K. Rai, Mr. Arindam Dey, Mr. Ravin Dubey, Advs., Mr. Mukesh Nahar, Director (Tariff), Mr. Buddy A. Ranganadhan and Mr. Raunak Jain

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

The **Appeal No.49 of 2015** has been filed under Section 111 of the Electricity Act, 2003 against the Impugned Order dated 29.11.2014 passed by the Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as **State Commission**) in Petition No. 30/2013(D) in **M/s Hira Power & Steel Ltd. Vs. Chhattisgarh State Power Distribution Co. Ltd.**, whereby the supplementary bill dated 02.04.2013 raised by the appellant towards power generating company (respondent herein) towards the difference of Parallel

Operation Charges (**POC**) from January, 2009 to February, 2013 has been set aside giving liberty to the appellant to raise bills subject to the general law of limitation and anything falling due prior to three years from the date of making the claim would be barred by limitation as prescribed in the Limitation Act 1963. According to the appellant, the State Commission, in the Impugned order having found no infirmity in raising the supplementary bill, has held the recovery of difference in POC as barred by limitation even if the said recovery of the difference of POC has been the result of vigilance inspection where under-billing of POC on account of suppression of material information from the Power Generator as required under the Orders of the State Commission has been detected.

- 2) The **Appeal No. 93 of 2014** has also been filed by the same distribution company of the State of Chhattisgarh under section 111 of the Electricity Act, 2003 against the Impugned Order dated 25.01.2014 passed by the Chhattisgarh State Electricity Regulatory Commission (in short State Commission) in Petition No.47/2013(D) in ***M/s. Godawari Power & Ispat Ltd. Vs. Chhattisgarh State Power Distribution Co. Ltd.*** whereby the learned State Commission having found no infirmity in raising the supplementary bill dated 05.06.2013 raised by the appellant on the power generating company (respondent herein) towards difference in POC for the period from 01.01.2009 to 30.04.2013 has set aside the supplementary bill and the recovery of the difference in POC has been held as time barred giving liberty to the appellant to raise the bills subject to law of limitation further clarifying that anything falling due prior to three years from the date of making claim would be barred by limitation as prescribed by the Limitation Act, 1963, even when the recovery of said difference has been the result of vigilance inspection where under-billing of POC on account of suppression of material information as required under the orders of the Commission has been detected.
- 3) The **Appeal No. 94 of 2014** has also been filed by the same distribution licensee of the State of Chhattisgarh under Section 111 of the Electricity Act, 2003 against the Impugned Order dated 25.01.2014 in Petition No.48/2013(D) in ***M/s. Hira Ferro Alloys Ltd. Vs Chhattisgarh State Power Distribution Co. Ltd.*** whereby the learned State Commission having

found no infirmity in the supplementary bill dated 01.04.2013 raised by the appellant on the power generating company (respondent herein) towards difference in POC for the period from January 2009 to February 2013 has set aside the supplementary bill and the recovery of the difference in POC has been held as time barred giving liberty to the appellant to raise the bills subject to law of limitation clarifying that anything falling due prior to three years from the date of making claim would be barred by limitation as prescribed by the Limitation Act, 1963, even when the said recovery of difference has been the result of vigilance inspection where under-billing of POC on account of suppression of material information as required under the orders of the Commission has been detected.

- 4) Since all these appeals, though arisen from different Impugned Orders, having been filed by the same distribution licensee of the State and involving same issue i.e. whether the learned State Commission in spite of holding the legality of raising the supplementary bill for various periods against respective respondent/power generating company, raised by each of the appellants towards difference of POC could hold that the recovery of difference in the Parallel Operation Charges (POC) is barred by the Law of Limitation as prescribed under the Limitation Act, 1963 ignoring the fact that the said recovery has been the result of vigilance inspection where under-billing of the POC on account of suppression of material information has been detected. We have heard all these appeals together and now we are deciding these appeals by this common judgment.
- 5) Each appellant is a distribution licensee in the State of Chhattisgarh. Respondent No.1 in each of the appeal is the State Commission and Respondent No.2 is the power generating company. The respondent/power generating company filed the afore said separate petitions before the State Commission under section 86(1)(f) and Section 142 read with 146 of the Electricity Act, 2003 praying, *inter alia* for the following reliefs:
 - (i) quash/set aside the supplementary bill raised for recovery of the difference of parallel operation charges for the period mentioned in the respective petitions.

- (ii) quash/set aside the draft notice of disconnection of HT consumers for non-payment of electricity charges issued under Section 56 of the Electricity Act, 2003, threatening to disconnect supply of electricity to the generating company.
 - (iii) proceed against the appellant herein under Section 142 read with section 146 of the Electricity Act, 2003.
- 6) The State Commission, by the respective Impugned Order, applying ratio laid down by this Appellate Tribunal in Appeal No. 74 of 2007 has set aside the respective supplementary bill raised by the appellant to the extent of claim for the period prior to three years from the date of issuance of bill, *inter alia*, holding that the amount claimed by the appellant, is subject to general law of limitation and any claim falling due prior to three years from the date of making the claim would be barred by limitation as prescribed in the Limitation Act, 1963. The respective Impugned Order, as stated above, has been assailed by the distribution licensee/appellant in the aforesaid respective appeals.
- 7) The main grievance of the appellant, in the respective appeals, is that the learned State Commission, in the Impugned Order, despite holding that it is not only the right but also the duty of the appellant to collect the amounts that have been left undercharged, the State Commission has wrongfully held that the action of the appellant in issuing the supplementary bill towards difference in POC to the respective power generating company is against commercial interest and against public interest and that too of such gravity and the State Commission had stopped short of taking penal action against the appellant. In other words, the State Commission despite having found no infirmity in the raising of supplementary bills by the appellant on the respondent/power generating company, has disallowed the recovery of difference of POC raised through supplementary bill holding that the said recovery of difference of POC for the said period is barred by limitation as provided under the Limitation Act, 1963. According to each appellant, the Impugned Order is completely arbitrary, unreasonable and unsustainable because each appellant has been left to suffer grave financial injury on

account of its inability to recover the difference of POC charges through subsequently raised supplementary bills.

8) In short the relevant facts are as under :

8.1) that in the State of Chhattisgarh, a number of captive power plants have been set up to generate power primarily for their own use. At times and subject to availability of surplus power, if any, generated from such CPPs and in accordance with the contractual arrangements and/or availability of open access in the State or Regional system, the CPPs also supply such surplus power generated from their plants to third parties and State utilities. For the purpose of drawing grid support so as to provide stability and efficiency to the operation of their generating stations, the CPPs choose to operate their load in parallel with the system of the appellant and for that purpose, seek connectivity with the said system of the appellant upon payment of POC as determined by the State Commission from time to time. That each of the respondent/power generating company had also set up captive power plant to meet the power requirements of their steel plants which is its connected load and had been permitted to operate in parallel with the appellant's system. Each power generating company/respondent herein, is liable to pay the POC to the appellant.

8.2) That over a period of time and in the process of undertaking checks and balances through the internal mechanism of vigilance, it came to the knowledge of the appellant that the CPPs were majorly deviating from the contracted supplies under the PPAs with the appellant and the consented quantum under open access. These deviations in contracted/consented capacities had been noticed many times during a given month. As a result, correct computation of captive/non-captive load of CPPs was not taking place leading to incorrect POC levy. Then the vigilance Department of the appellant inspected the premises/records of the various CPPs (respective respondents herein) in the State and also obtained relevant data from State Load Dispatch Centre. The examination of records and data showed that there were substantial variations in the actual contracted and consented quantum of supplies affected by the CPPs so that the captive/non-captive load comprising in such supplies was more than what had been taken into

account while calculating POC. This extra captive/non-captive load of the CPPs (respondent herein) which had wrongly been included under either column 'C' or column 'D' of the tabulated formula for which the Vigilance Department of the appellant appropriately devised to bill.

- 8.3) That in the aforementioned circumstances, respective supplementary bill was raised by the appellant on the respective power generating company (respondent herein) of the amounts mentioned in the supplementary bill towards difference in the POC for various periods for each respondent, power generating company. That there is no retrospective revision of POC or any change in billing modality of POC as alleged by the respondent, power generating company, but is the billing of difference in billing of POC after detection of unbilled captive/non-captive load during vigilance operations. Similarly, supplementary bills were also raised by the appellant on various other CPPs in the State for the difference in POC which ought to have been billed earlier on account of variation in actual supply from the contracted/consented supply and most of them had either paid or are in the process of paying the amount under the supplementary bills.
- 8.4) That notwithstanding that the respective supplementary bill was raised by the appellant on the respective power generating company (respondent herein) as per order dated 13.10.2009 passed by State Commission in petition No.20/2009(M) and the tabulated formula approved thereafter in accordance with the said order of the State Commission which requires POC to be billed on actuals. The power generating company (respondent herein) protested the raising of the supplementary bill contending that the calculations made in the bill were incorrect and the POC had already been paid in full by respective power generating company and as such respective power generating company requested the appellant to withdraw/cancel the supplementary bill forthwith.
- 8.5) That since the respective power generating company had failed to pay the amount of difference towards POC raised in the supplementary bill, the appellant was constrained to serve a notice of disconnection under Section 56 of the Electricity Act, 2003 for severing the connectivity with the

premises of respective power generating company (respondent herein). Instead of paying the amounts raised in the supplementary bill to the appellant, distribution licensee, the respondent power generating company reiterated that there were discrepancies in calculation of POC under the supplementary bill and thereafter the respective generating company/respondent approached the Station Commission by filing the aforesaid petitions with the afore mentioned prayers.

8.6) That the State Commission failed to appreciate that the period of limitation in a case of recovery of money is necessarily in the context of a demand raised which remains unpaid. When a deliberate suppression is detected at a later stage which gives rise to a fresh demand for an antecedent period, then the period of limitation for such demand begins to run when fresh demand is raised and received by the person on whom the demand is being raised. As such the finding of the State Commission, in the Impugned Order that the claim for difference in the POC had been made by the appellant belatedly and law of limitation applies to such billing, is completely erroneous.

8.7) That the learned State Commission despite having found no infirmity in raising of supplementary bill by the appellant, gave a curious finding that :

“65. Though the action of licensee is not in its commercial interest and also the public interest action under section 142 and 146 is not initiated at this stage.....”.

8.8) That it is incomprehensible as to when the Commission had itself held that it is not only the right but also the duty of the appellant to collect amounts that have been left undercharged, then how could the action of the appellant in issuing the supplementary bill towards difference in the POC to the power generating company can be held against the commercial interest and against public interest.

9) We have heard Ms. Suparna Srivastava and Ms. Swapna Seshadri learned counsels for the appellants and Mr. C. K. Rai and Mr. Buddy A.

Ranganadhan for the respondents. We have also perused the written submissions made on behalf of the respondent/State Commission.

- 10) The **following issues arise for our consideration:**
- (a) **whether the supplementary bill raised by the appellant after under billing of POC upon the captive power generating company (CPP) on account of suppression of material information by the said generator, discovered/detected during the course of vigilance investigation is barred by provisions of the Limitation Act, 1963?**
 - (b) **Whether in view of provisions of Chhattisgarh State Electricity Supply Code, 2011, can power purchase bills raised by the appellant be adjusted towards charges for service rendered by the appellant?**
 - (c) **Whether the supplementary bill raised by the appellant after under billing of POC upon the respondent captive generator on account of suppression of material information, discovered/detected during the course of investigation can be held to be not in its commercial interest as well as public interest requiring the State Commission to initiate penal action under section 142 and 146 of the Electricity Act 2003?**

11. Since all these issues are interconnected, we deem it proper to consider and decide them together. The following are the contentions raised on behalf of the appellant, distribution licensee, in support of their pleas on the said issues:

11.1) That the findings, recorded in the Impugned Order of the State Commission that the supplementary bill raised by the appellant in so far as it seeks to recover claims prior to three years from the date of supplementary bill is subject to the general law of limitation and anything falling due prior to three years from the date of making the claim is made, would be barred by limitation as prescribed in the Limitation Act 1963 is quite wrong and

contrary to law because the State Commission failed to appreciate that the period of limitation in case of recovery of money due is in the context of a demand raised and which remains unpaid. The period of recovery of such money under the demand raised begins to run when the said demand is received by a person on whom such notice is raised. When a deliberate suppression is detected at a later stage which gives rise to a fresh demand for an antecedent period and on which demand would have been earlier raised had that suppression not been deliberately made then the period of limitation begins to run when such demand is raised and received by a person on whom the demand is being raised. That being so the plea of limitation cannot be raised with respect to the demand raised in supplementary bill towards difference in POC computed after detecting escaped billing on detection of suppression by respondent/respective power generating company so as to gain wrongful pecuniary gains.

- 11.2) That this Appellate Tribunal in judgment dated 14.11.2006, in the matter of ***Ajmer Vidyut Vitaran Nigam Ltd. Vs. M/s Sisodia Marble and Granites Pvt. Ltd. & Ors.*** had already held as under:

“17. Thus, in our opinion, the liability to pay electricity charges is created on the date the meter reading is recorded or the date the meter is found defective or the date theft of electricity is detected, but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date on which the amount shall become due and it is from the date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running...”

- 11.3) That the respondent captive power generating company in the State is required to submit details to the appellant in the manner set out in the formula devised for that purpose in pursuance of orders of the State Commission. Laying down for the computation of POC, the CPPs have been enjoined to submit details as per formula for computation of POC and the power generating company has submitted such details only initially and subsequently failed to submit the same.

- 11.4) That the aforesaid deliberate non-submission of details had been the ulterior motive to seek wrongful pecuniary gain by depicting to the appellant of its limited POC dues. In the absence of necessary details submitted by the power generating company, the appellant had collected relevant data interdepartmentally and through load despatch centre, through which CPPs have been undertaking open access transactions and accordingly raised POC bill on them. Subsequently, during the process of vigilance check, the appellant came to know that CPPs were majorly deviating from the contracted supplies under the PPA and the open access owing to which incorrect computation of captive/non-captive load of CPPs was taking place and consequently incorrect POC was being levied. As such the Vigilance Department of the appellant had investigated the records including that of the power generating company. The data obtained revealed substantially that extra captive/non-captive load either in column 'C' or 'D' of the format had been included.
- 11.5) It was after correcting this wrong inclusion that supplementary bill had been raised on respondent power generating company, levying the difference in the POC for the subsequently detected but under-billed captive/non-captive load. Since the under billing had been a clear resultant of suppression of information, at a later stage it gave rise to a fresh demand and the limitation was necessary to begin from the date it was made and received by the respondent power generating company.
- 11.6) That it is not as if the relevant details were known to the appellant at the time of computation and yet the appellant had not taken them into account while raising the POC bills. The State Commission had completely lost sight of this aspect of the matter and wrongly denied the appellant to recover the differences of POC in the respective supplementary bill even after categorically holding that there was no infirmity in raising the said bill.
- 11.7) That the learned State Commission, while passing the Impugned Order wrongly held that the power purchase bills raised by the appellant on the respective power generating company/respondent could not be adjusted for

POC of captive load of the respondent with its system permitted by the appellant.

11.8) The State Commission failed to appreciate that the grievance with regard to adjustment of supplementary bill in the regular power bill, for the relevant head, under the head “other charges” is unfounded. That such an adjustment does not suffer from any illegality.

11.9) That regulation 9.29 of the Supply Code 2011 provides as under :

“The consumer may accept the bill and deposit the amount of this bill. In case of non-payment within due date the amount of supplementary bill is liable to be added in next month regular monthly bill.”

11.10) That accordingly, the adjustment of the amount demanded under the supplementary bill and remaining unpaid by respective power generating company had been adjusted in the next regular monthly bill of the respective power generating company. The said adjustment having been done according to the provisions of Supply Code, there remains no illegality or infirmity and the findings of the State Commission to the contrary are not legal and sustainable.

11.11) That the finding of the State Commission in the Impugned Order that action of the appellant licensee was not in commercial interest and in the public interest for initiating penal action under section 142 and 146 of the Electricity Act, 2003 is also unfounded.

11.12) That the appellant is under obligation to raise correct bills as per applicable charges and cannot be estopped from doing so. The State Commission has found the appellant culpable enough for the same and liable to proceed with penal action.

11.13) That the appellant having found the supplementary bill to have been raised in accordance with the applicable charges, the appellant could not be

directed to approach the State Commission for correction of wrong bills which was not in the jurisdiction of the State Commission.

12) **Per contra**, the following are the contentions raised on behalf of the respondent No.2, power generating company, in support of their pleas on the said issues:

12.1) That the contention of the appellant in each appeals that there was suppression of material information by generators, is wrong because the State Commission, in the Impugned Order, had found that the case basically pertains to the format for calculation of captive/non-captive load of the Captive Generating Plants (CGP). The format submitted by the appellants, distribution licensee, for calculation of captive and non-captive load consists of four columns. Column 'A' pertains to installed capacity of power plant, Column 'B' relates to auxiliary load of the power plant, Column 'C' is meant for contracted power (PPA) between the distribution licensee, appellant and the generating company and the Column 'D' pertains to quantum of open access sought by the power generating company. The dispute emerged in the present matters because of the fact that the appellant in the relevant year had changed the figures for Column 'C' and 'D' from the original considered numbers for the relevant period during which the difference of POC was sought to be recovered by raising supplementary bills.

12.2) That in the State of Chhattisgarh most of the power generating companies including the CPPs, respondent herein, availed inter-State open access to sell their surplus power. It was clarified in the format designed for computing captive and non-captive load that in case the same quantum of power was supplied by the power generating company during off peak hours and under the inter-State during peak hours to the appellant, distribution licensee, then this quantum of power shall be accounted only once either as 'C' or as 'D' and not both.

12.3) Hence, variations in the actual contracted and consented quantum of supply affected the respective power generating companies which were basically

permissible variations and were bound to happen in open access transactions as are contemplated in the Central Electricity Regulatory Commission (open access in inter-State transmission) Regulations 2008.

- 12.4) That the appellant a State distribution licensee could have been more vigilant and prompt in identifying these variations and rectify it in a timely manner. The appellants negligently followed the incorrect methodology for a very long time during that period and it was only through the aforementioned respective supplementary bills that the appellant had belatedly tried to rectify itself, this belated action of the appellants had been found by the Commission as not in the commercial and public interest.
- 12.5) That the learned State Commission while passing the Impugned Order had relied on the judgment of this Appellate Tribunal in Appeal No. 74 of 2007 wherein the Tribunal held that the general law of limitation is applicable in transactions of this nature and anything falling due prior to three years from the date on which the claim is made would be barred by limitation as prescribed in Limitation Act 1963.
- 12.6) That the state Commission, in the Impugned Order, had not found the present cases to be that of the suppression of facts but the cases of the incorrect methodology applied negligently by the appellant during the relevant period with regard to each power generating company/respondent herein.
- 12.7) That the appellant is wrongly relying on the second part of clause 9.29 of the Supply Code . The complete provisions from clause 9.26 to 9.34 of the State Supply Code 2011 are required to be considered. The relevant clauses of State Supply Code 2011 are necessary to be reproduced, which are as under:

“Supplementary (other than regular) bill:

9.26 Separate (supplementary) bills shall be issued for audit recovery and recoveries other than the regular monthly bill except for demand of additional security deposit.

9.27 While issuing the supplementary bill (for other than cases related to prejudicial use of energy) to the consumer the licensee along with the supplementary bill shall send a written details to the consumer explaining the reason, basis and period of such billing by giving fifteen days time for payment. For billing in respect of prejudicial use of energy the procedure as stated in clause 11.10 to 11.26 and 11.33 to 11.39 of this Code shall be followed.

The consumer may accept the bill and deposit the amount of supplementary bill. In case of non-payment within due date the amount of supplementary bill is liable to be added in next months regular monthly bill.

9.28 The consumer within seven days of receipt of supplementary bill may ask for further details related to supplementary bill, if so required, which shall be provided by the licensee within next 15 days, by giving 7 days time for payment.

The consumer may accept the bill and deposit the amount of this bill. In case of non-payment within due date the amount of supplementary bill is liable to be added in next month regular monthly bill.

9.29 The consumer within 7 days of receipt of additional information/within 15 days of issue of supplementary bill as the case may be, may file an objection if any to the bill issuing authority. After according reasonable opportunity of hearing and considering oral/written material fact submitted by the consumer, the licensee may review/confirm the bill already issued in writing within next 15 days time indicating the reasons for acceptance/rejection of representation of consumer by giving next 7 days time for payment.

The consumer may accept the bill and deposit the amount of this bill. In case of non-payment within due date the amount of supplementary bill is liable to be added in next month regular monthly bill.

9.30 Aggrieved with the review/confirmation of supplementary bill the consumer may prefer representation to respective Executive Engineer or equivalent for LT connection and respective Regional Chief Engineer or equivalent of licensee for HT and EHT connection or any other officer designated by licensee provided that 50% of the billed amount is deposited with licensee and documentary evidence of such deposit has been enclosed with representation.

9.31 The authority to whom representation is made will dispose the representation after hearing both the sides and convey his decision within 30 days of representation by the consumer. During the

hearing the officer concern shall give due consideration to the fact submitted by the consumer, and pass a speaking order. The order shall also contain the submission made by the consumer during hearing, and reasons for acceptance or rejection of the same. The consumer will be served a revised bill if any to be paid in 7 days. The consumer may accept the bill and deposit the amount of this bill. In case of non-payment within due date the amount of supplementary bill is liable to be added in next month regular monthly bill.

9.32 In case the authority to whom representation is made has come in to conclusion that there is no case of supplementary billing or the amount already paid on this account is in excess of actual amount payable, the balance amount be credited to consumer's account in next month's bill along with an interest @ 1% per month or part thereof on the amount refundable till the date of its payment.

9.33 Aggrieved with decision of authority to whom representation is made the consumer may approach Consumer Grievance Redressal Forum (CGRF) framed under section 42(5) of the Act.

9.34 The licensee may nominate and authorize it's employee(s)/ officers) to approve issue of supplementary bill based on type of connection / load / amount of supplementary bill, etc.

12.8) That the conjoint reading of the above provisions of State Supply Code 2011 would make it clear, that the above provisions dealt with the supplementary bill pertaining to supply to the consumers of the licensee and not in respect of power purchase. The power purchase by the distribution licensee is regulated under Section 86(1)(b) of the Electricity Act, 2003 and in accordance with the PPA entered into between the parties. Neither the Supply Code nor any other regulations/Order of the State Commission specifies that the power purchase bill of the utility (appellant herein) has to be adjusted towards charges for services rendered by the appellant utility. These issues had been dealt with by the State Commission in the Impugned Order, observing that the power purchase of a distribution licensee is regulated under section 86(1)(b) of the Electricity Act, 2003. POC for the grid support availed by the captive power plant and captive user is regulated under other provisions of the Act. Neither the Supply Code nor any other regulations/order of the State Commission specify that power purchase bills of the utilities have to be adjusted towards charges for services rendered by the utility. Accordingly, the appellant had been directed by the State

Commission, while passing the Impugned order, not to adjust the bills of the power purchase against the bills for additional POC claimed by the appellant against the respective power generating company (respondent herein).

12.9) That the remarks “*not in its commercial interest and also public interest*” made in the Impugned Order of the State Commission cannot be founded faulty just on the ground that these adverse remarks have been made against the appellant, a distribution licensee. The learned State Commission in the respective Impugned Orders found that the licensee had miserably failed to discharge its obligations of raising bill in a timely and accurate manner. The State Commission made the same remarks which were basically borrowed from a judgment of this Appellate Tribunal in Appeal No. 202 and 203 of 2006.

12.10) That since the present dispute is not in the nature of a dispute relating to supply of power to the consumers by a licensee but is a dispute between generating company and the licensee with regard to billing of POCs, the State Commission is fully competent to entertain the petitions filed by the respective power generating companies before the State Commission by invoking powers under section 86(1)(b) of the Electricity Act, 2003.

13) **Our discussion and conclusion:**

13.1) In the upper part of this judgment we have given details of each case, covering each appeal, the issues involved and the rival contentions made by the parties which we do not think proper to repeat here once again. The main point for our consideration in these appeals is whether supplementary bill raised by the distribution licensee, after under billing of the POC on the CPP/CGP on account of suppression of material information by the said CPP/CGP, which is discovered or detected during the course of vigilance investigation of the distribution licensee is barred by the provisions of the Limitation Act, 1963 or by the principle of delay and laches?

13.2) As noted above, the learned State Commission, in the respective Impugned Orders, has set aside the respective supplementary bills raised against the respective CPP/CGP (respondent, herein) giving liberty to appellant,

distribution licensee, to raise the bills subject to law of limitation as prescribed under Limitation Act, 1963. The main grievance of the appellant, a distribution licensee, is that though the State Commission had found no infirmity in raising of the supplementary bill but had held the recovery of difference of POC raised through supplementary bill as barred by limitation and has wrongly ignored the fact that the said recovery of difference of POC had been as a result of vigilance inspection of the appellant, distribution licensee, where under billing of POC on account of suppression of material information required from CPP/CGP had been detected.

- 13.3) As indicated above, the CPP/CGP filed the respective petitions before the State Commission under Section 86(1)(f) and section 142 read with 146 of the Electricity Act, 2003 praying for quashing/setting aside the supplementary bill raised for recovery of difference of POC for the period mentioned in the respective petitions and further for setting aside the draft notice of disconnection of CPP/CGP, respondent herein, for non-payment of electricity charges issued under section 56 of the Electricity Act, 2003 threatening them with disconnection of electricity and further for initiating action against the distribution licensee under section 142 read with section 146 of the Electricity Act, 2003.
- 13.4) The learned counsel for each of the appellants in the aforesaid appeals has vehemently contended that the findings recorded in the Impugned Order to the effect that the supplementary bill raised by the distribution licensee, appellant herein, in so far as it seeks to recover claims prior to three years from the date of supplementary bill subject to law of limitation and holding the amount of supplementary bill beyond the period of three years as barred by law of limitation is quite wrong and illegal because period of limitation in case of recovery of money due begins to run when the said demand is received by a person on whom such notice is raised. When a deliberate suppression is detected at a later stage, which gives rise to a fresh demand for an antecedent period, which demand would have earlier been raised, had supplementary bill not been deliberately raised then the period of limitation would begin to run when such demand is raised and received by a person on whom the demand is being raised. Hence, limitation cannot be pleaded with

respect to the demand raised in the supplementary bill towards difference in the POC computed on detection of suppression of relevant information by the respective power generating company (CPP/CGP).

13.5) Contrary to the above contentions of the appellants, the learned counsel for the respondent power generating company emphatically argued that there was no suppression of material information by the generators and the State Commission in the respective impugned orders had rightly found that the case basically pertained to the format for calculation of captive/non-captive load of the CPP/CGP. The format submitted by the appellants, distribution licensee, for calculation of captive and non-captive load consists of four columns. Column 'A' pertains to installed capacity of power plant, Column 'B' relates to auxiliary load of the power plant, Column 'C' is meant for contracted power (PPA) between the distribution licensee, appellant and the generating company and the Column 'D' pertains to quantum of open access sought by the power generating company. The dispute had emerged in the present matters because of the fact that the appellant in the relevant year had changed the figures for Column 'C' and 'D' from the original considered numbers for the relevant period during which the difference of POC was sought to be recovered by raising supplementary bills. Further, the CPP/CGP had availed inter-State open access to sell their surplus power. It was clarified in the format designed for computing captive and non-captive load that in case the same quantum of power was supplied by CGP/ CPP during off peak hours under the inter-State open access and during peak hours to the appellant, distribution licensee, then this quantum of power shall be accounted only once either as 'C' or as 'D' and not both.

13.6) Hence, variations in the actual contracted and consented quantum of supply affected the respective power generating companies which were basically permissible variations and were bound to happen in open access transactions as are contemplated in the Central Electricity Regulatory Commission (open access in inter-State transmission) Regulations 2008.

13.7) The appellant, a State distribution licensee could have been more vigilant and prompt in identifying these variations and rectify it in a timely and

reasonable manner. The appellants negligently followed the incorrect methodology for a very long time during that period and it was only through the aforementioned respective supplementary bills that the appellant had belatedly tried to rectify itself, this belated action of the appellants had rightly been found by the State Commission as not in the commercial interest and public interest.

- 13.8) A perusal of the respective Impugned Order of the State Commission makes it evident that the State Commission had not found the present cases to be that of suppression of facts but the cases of incorrect methodology applied negligently by the appellants during the relevant period with regard to each CPP/CGP, respondent herein.
- 13.9) A perusal of the clause 9.26 to 9.34 of the State Supply Code, 2011 makes it further evident that the approach made by the State Commission, in the Impugned Orders, is judicial, legal and correct one requiring no interference in these appeals.
- 13.10) A conjoint reading of the provisions of clause 9.26 to 9.34 of the State Supply Code 2011 would make it clear, that the above provisions deal with the supplementary bill pertaining to supply to the consumers of the licensee and not in respect of power purchase. The power purchase by the distribution licensee is regulated under Section 86(1)(b) of the Electricity Act, 2003 and in accordance with the PPA entered into between the parties. Neither the Supply Code nor any other regulations/Order of the State Commission specify that the power purchase bill of the utility (appellants herein) has to be adjusted towards charges for services rendered by the appellant utility. These issues had been dealt with by the State Commission in the Impugned Orders, observing that the power purchase of a distribution licensee is regulated under section 86(1)(b) of the Electricity Act, 2003. POC for the grid support availed by the captive power plant/captive Generation Plant is regulated under other provisions of the Act. Neither the Supply Code nor any other regulations/order of the State Commission specify that power purchase bills of the utilities have to be adjusted towards charges for services rendered by the utility. Accordingly, the appellant had rightly and legally

been directed by the State Commission, while passing the Impugned orders, not to adjust the bills of the power purchase against the bills for additional POC claimed by the appellant against the respective power generating company (respondent herein).

- 13.11) Further, it is evident from the perusal of the respective Impugned Orders that the learned State Commission while setting aside the said supplementary bills had granted liberty to the appellant, a distribution licensee, to raise bills as per law.
- 14) In these appeals although the learned counsel for the appellants while arguing on the point of limitation has submitted that the findings of the State Commission under the Impugned Orders holding the amount of supplementary bill beyond the period of three years as barred by law of limitation is quite wrong and illegal because the period of limitation in case of recovery of money due begins to run when the said demand is received by a person on whom the notice is raised. When a deliberate suppression is detected at a later stage, which gives rise to a fresh demand for an antecedent period, then the period of limitation would begin to run when such demand is raised and received by a person on whom the demand is being raised. Thus the learned counsel for the appellants strenuously argued on the point when the limitation period is to begin in the matters of recovery of money.
- 15) Since we agree and approve to all the findings recorded by the State Commission in the Impugned orders under these appeals for the reasons mentioned in our judgment on consideration of the relevant facts and circumstances of the instant matters, we reject all the arguments of the appellants' side on the said point of limitation. However, we may cite below the observations made by us in our judgment dated 29.10.2015 in Appeal Nos.285 of 2014 & Batch in the case of ***M/s E.I.D Parry (India) Ltd. Vs. Andhra Pradesh Electricity Regulatory Commission & Ors.*** for further guidance of the State Commissions or Central Commission:
- "11.2) We now directly proceed to decide issues before us in these appeals. First we deal with the issue of limitation and Doctrine of delay and laches. The main question is whether the*

State Commission is justified in allowing the maintenance charges allegedly incurred towards the maintenance of the dedicated transmission lines of the appellants as claimed by respondents from the commercial operation date beyond a period of three years prescribed under the Limitation Act 1963. This legal position is by now settled that the Limitation Act 1963 is not applicable to the proceedings before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission. **The Full Bench of this Appellate Tribunal**, vide judgment dated 13.03.2015, in Appeal No. 127 of 2013, in the case of M/s Lafarge India Pvt. Ltd. Vs. Chhattisgarh State Electricity Regulatory Commission & Anr. has recently observed having referring the law laid down by Hon'ble Supreme Court in its judgment dated 04.04.2014 in Civil Appeal No.4126 of 2013 in the matter of Tamil Nadu Generation & Distribution Corporation Ltd. Vs. PPN Power Generation Co. Pvt. Ltd. as under:

"9. It may also be mentioned here that this Tribunal in GRIDCO LIMITED ODISHA VS. BHUSHAN POWER & STEEL LIMITED reported in 2014 ELR (APTEL) 1344 after referring to Tamil Nadu Generation and Distribution Corporation Limited held that the Limitation Act, 1963 is not applicable to the proceedings before the State Commission.

**10. Hence, we answer the reference as under:
The Limitation Act 1963 is inapplicable to the matters pending before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission."**

11.3) The Hon'ble Supreme Court in a recent judgment dated 04.04.2014 (supra) while dealing with statutory appeal under Section 125 of the Electricity Act, 2003 has observed as under:

"48. The next submission of Mr. Nariman is that the claim of the respondents would have been held to be time barred on reference to arbitration. We are not able to accept the aforesaid submission of Mr. Nariman. On the facts of this case, in our opinion, the principle of delay and laches would not apply, by virtue of the adjustment of payments being made on FIFO basis. The procedure adopted by the respondent, as observed by the State Commission as well as by the APTEL, would be covered under Sections 60 and 61 of the Contract Act. APTEL, upon a detailed consideration of the correspondence between the parties, has confirmed the findings of fact recorded by the State Commission that the appellant had been only making part payment of the invoices. During the course of the hearing, Mr. Salve has pointed out that the payment of entire invoices was to be made each time which was never adhered to by the appellant. Therefore, the respondents were constrained to adopt FIFO method. Learned senior counsel also pointed out that there was no complaint or objection ever raised by the appellant. The objection to the method adopted by the respondents on the method of

FIFO, was only raised in the counter affidavit to the petition filed by the appellant before the State Commission. According to learned senior counsel, the plea is an afterthought and has been rightly rejected by the State Commission as well as the APTEL. We also have no hesitation in rejecting the submission of Mr. Nariman on this issue. In any event, the Limitation Act is inapplicable to proceeding before the State Commission.”

11.4) Thus in view of the recent judgment dated April 4, 2014 of the Hon’ble Supreme Court and the Full Bench judgment dated 13.03.2015 of this Appellate Tribunal, we uphold that the provisions of the Limitation Act 1963 are not applicable to the proceedings before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission.”

.....
.....

26) Before coming to our own individual conclusion, we deem it proper to cite the provisions of Section 56 of the Electricity Act, 2003 which we reproduce as under:

“56. Disconnection of supply in default of payment. - (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days’ notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) An amount equal to the sum claimed from him, or
(b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,
Whichever is less, pending disposal of any dispute between him and the licensee.”

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity

supplied and the licensee shall not cut off the supply of the electricity.”

27) Section 56 of the Electricity Act, 2003 clearly provides that **Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity.** The wordings of the Section 56 clearly specifies that if any person neglects to pay the charges of electricity or any sum other than a charge, the licensee may after giving 15 days clear notice in writing without prejudice to his rights to recover such charge or other sum by a suit cut off the supply of electricity. The amount due has to be demanded in writing and disconnection can be affective only after giving not less than 15 days clear notice in writing. **Sub-section 2 of Section 56 of the Electricity Act, 2003 clearly provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.** Thus sub-section 2 of Section 56 provides that no due from any consumer under this section shall be recoverable after a period of two years when such sum became first due unless the same is shown continuously as recoverable as arrear of charges for the supplied electricity. Further a perusal of the Section 56 of the Act will show that limits have been put on the amount that can be claimed from any person who is in default of payment of any charge for electricity or any sum other than the charge for electricity due from him to a licensee or a generating company, which was not there in the earlier statutes.”

- 16) In view of the above discussions, we don't find any merit in any of the contentions of the appellant, a distribution licensee. The appellant had already been granted liberty by the State Commission in the respective Impugned Orders and hence we do not find any merit in these appeals. All the findings recorded by the State Commission are based on the correct and reasonable interpretation and appreciation of material on record, consequently all the issues are decided against the appellant. The learned State Commission while passing the Impugned Orders had already granted a concession to the appellant, a distribution licensee by holding not to initiate any penal action under section 142 and 146 of the Electricity Act, 2003 in spite of giving clear finding that the said action of the appellant

cannot be held to be in commercial interest of the appellant as well as in the public interest. Consequently, these appeals merit dismissal.

O R D E R

These appeals, being Nos. 49 of 2015, 93 of 2014 and 94 of 2014 are hereby dismissed and respective Impugned Orders there under are hereby upheld.

No costs.

Pronounced in the open court on this **04th day of November, 2015.**

(I.J.Kapoor)
Technical Member

(Justice Surendra Kumar)
Judicial Member



REPORTABLE / ~~NON-REPORTABLE~~