

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO.41 OF 2014

Dated: 22nd April, 2015.

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member.**

IN THE MATTER OF:

Steel Authority of India Limited,)
Bhilai Steel Plant, Bhilai – 490001,)
Chhattisgarh.) ... Appellant

Versus

1. Central Electricity Regulatory)
Commission, 3rd and 4th Floor,)
Chanderlok Building, 36,)
Janpath, New Delhi – 110 001.)
2. Western Regional Load Dispatch)
Centre, F-3, MIDC Area, Marol,)
Andheri (East), Mumbai – 490)
003.) ... Respondents

Counsel for the Appellant(s) ... Mr. M.G. Ramachandran
Ms. Anushree Bardhan
Ms. Poorva Saigal.

Counsel for the Respondent(s) ... Mr. M.S. Ramalingam for **R-1**.

Mr. S.B. Upadhyay, Sr. Adv.

Mr. Kaustuv P. Patha

Mr. Pawan Upadhyay for **R-2**.

JUDGMENT

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON

1. The Appellant - Steel Authority of India Limited is a company incorporated under the Companies Act, 1956. Respondent No.1 is the Central Electricity Regulatory Commission ("**CERC**") and Respondent No.2 is Western Regional Load Dispatch Centre ("**WRLDC**").

2. The case of the Appellant could shortly be stated:

NTPC-SAIL Power Company (P) Ltd. ("**NSPCL**") is a Joint Venture Company of the Appellant and NTPC Limited. It has set up a 2x250MW Captive Power Plant at Bhilai in the State of Chhattisgarh. The power plant has been set up primarily for the

captive use of the Appellant at its steel plant at Bhilai including to meet the electricity requirements of expansion program.

3. According to the Appellant, there is one double Circuit 220 KV dedicated transmission line and another double Circuit 220 KV dedicated transmission line was under commissioning at the time when the petition was filed before the CERC, for transfer of power from the generating station (captive power plant of the Appellant) at Bhilai to the Appellant facilities. These lines are fully owned and maintained by the Appellant.

4. The facilities of Bhilai are also connected by a 220 KV transmission line laid down as a radial line commissioned in 1993-94 from the substation of Chhattisgarh State Transmission Company Limited (“**CSPTCL**”) at Khedamara also within the State of Chhattisgarh. This line was laid down at the cost of the Appellant for the purpose of the supply of power by Chhattisgarh Power Distribution Company Limited (“**CSPDCL**”) to the Appellant’s facilities under the agreement for such supply

entered into between CSPDCL and the Appellant with a contract demand of 225 MVA.

5. In addition to the above, NPSCL (not the Appellant) has established a connectivity to the 400 KV substation at Raipur of the Central Transmission Utility for transfer of power from the generating station to the purchasers other than the Appellant outside the State of Chhattisgarh for which NSPCL has also taken open access.

6. The sole purpose of 220KV transmission lines between NSPCL and the Appellant is to meet the captive power consumption of the Appellant. These lines are installed, owned and maintained by the Appellant. These lines are dedicated transmission lines of the Appellant conveying electricity to the Appellant from its Captive Power Plant owned by NSPCL within the territory of the State of Chhattisgarh.

7. On 15/06/2010, the CERC notified the Central Electricity Regulatory Commission, (Sharing of Inter State Transmission Charges and Losses) Regulations 2010 (“**ISTS Regulations, 2010**”). In terms of the ISTS Regulations, 2010, the Implementing Agency Power System Operation Corporation Limited (“**POSOCO**”) has notified a Detailed Procedure for implementation.

8. On 11/01/2011 in the 57th Commercial Committee meeting of Western Region Power Committee (“**WRPC**”), it was submitted that the Appellant would be treated as embedded entity of CSPDCL and combined schedule for CSPDCL and the Appellant would be given by WRLDC-the Respondent No.2 herein. It was decided that the ISTS charges and losses will be applied to CSPDCL on its transaction and it will not be applied to the Appellant which has direct connectivity with NSPCL. It was further decided that the transaction between the Appellant and CSPTCL on BSP (Appellant’s plant) - CSPTCL inter-connection will be settled as per the mutual agreement. The Appellant has referred to two meetings held between WRLDC, WRPC, NSPCL

CSPTCL, CSPDCL dated 9/3/2011 and 25/4/2011 where the above agreement is stated to have been reiterated. The Appellant has referred to the 58th Commercial Committee Meeting of WRPC held on 7/4/2011 where the same decision is stated to have been again reiterated.

9. According to the Appellant from 1/8/2011 onwards, WRLDC changed the procedure and charged ISTS losses to the Appellant. The Appellant therefore filed a petition being Petition No.211/MP/2011 under Regulations 20 and 21 of the ISTS Regulations, 2010 praying inter alia that it may be clarified that the Appellant shall not be subjected to sharing of the ISTS losses in regard to transmission of power from the generating facility to the place of captive consumption. The Appellant sought a direction to WRLDC not to levy the ISTS losses to the Appellant. The CERC by the impugned order disposed of the Appellant's petition observing that the Appellant being an intra-State entity of CSEB, which is a designated ISTS customer, is liable to share the transmission losses under the ISTS Regulations, 2010. It

was observed that the estimated zonal transmission losses are applied on net drawl schedule prepared for regional CSEB as a whole and as the Appellant is an intra-State entity under CSEB, the same shall become applicable on its schedule. Being aggrieved by the said order, the Appellant has filed this Appeal.

10. We have heard Mr. Ramachandran, learned counsel appearing for the Appellant, Mr. Ramalingam for Respondent No.1 and Mr. Upadhyay learned senior counsel for Respondent No.2. We have perused the written submissions filed by the parties.

11. Gist of written submissions filed by the Appellant is as under:

- (a) The levy of inter State transmission charges or apportionment of losses of ISTS can arise only for use of the ISTS and not for conveyance of electricity through the dedicated transmission lines.

- (b) In the present case since both the generating station and the steel plant are located within the State of Chhattisgarh and there is only use of dedicated transmission lines from the power plant to the place of consumption, the dedicated transmission line is not the ISTS and use of dedicated transmission line cannot be termed as use of ISTS for levy of transmission charges or for sharing of transmission losses in such ISTS.
- (c) The dedicated line for supply of power to the Appellant's facilities is not inter connected with any ISTS line for flow of power to the Appellant. On the one side it originates from the generating station and at the end it reaches the Appellant facilities. The supply of power from the generating Station of NSPCL to the Appellant is not by use of any ISTS line in any manner.

- (d) The Appellant is not therefore the user of any segment or element or node of the ISTS either directly or indirectly even by any accidental flow of power. The drawal of power has been directly from the bus bar of the generating station through the dedicated transmission line installed by the Appellant. The injection of the power drawn by the Appellant is totally independent of the power injected in the ISTS.
- (e) The quantum of power injected into the Dedicated Transmission Line are separately recorded and separate scheduling is being shown as accepted in paragraph 20 of the impugned order. A captive consumer taking power through a dedicated transmission line within the State or a person taking power within the State through an intra-State transmission line cannot by any stretch of imagination be said to be using any part of the ISTS. The fact that

the control area of the generating station from which the power is taken is with the Regional Load Dispatch Centre and not with the State Load Dispatch Centre does not necessary lead to the implication that all power generated by the generating station shall be deemed to be using the ISTS. The control area concept is only for scheduling and dispatch activities and cannot change the use of dedicated transmission line or the ISTS.

- (f) The submission by the WRLDC and NLDC that a dedicated transmission line can as such be deemed to be part of ISTS without even the generating company applying for a license to the CERC or any other due process is ex-facie incorrect. In this regard reference may be made to the order of the CERC dated 19/12/2011 in Petition No. 116 of 2011. Reference may also be made to order dated 8/6/2013 passed by the CERC in Petition No.189 of 2012.

(g) In so far as the use of the line from CSPTCL sub station is concerned, there is no open access use by the Appellant. The Appellant has an independent contract demand from CSEB/CSPDCL and as a consumer of CSEB/CSPDCL the Appellant draws power from CSEB/CSPDCL for which the Appellant pays all the applicable charges including demand charges as in the case of any other consumers. The Appellant has entered into an Agreement with CSPDCL on 26/10/2009 for supply of power to the Appellant by CSPDCL during the exigencies of tripping of captive Unit 1 of NSPCL or during reduced generation. Under this PPA the Appellant is maintaining 225 MVA contract demand with CSPDCL and paying Rs.7.7 crore per months towards contract demand charges to ensure power security. The reliability of the Grid being available to the Appellant is legitimately based on the contract demand as in the case of any other

consumers and there is no extra or special privilege taken by the Appellant.

- (h) The steel plant operates on 24x7 hr basis. The power failure in certain facilities inside the steel plant may lead to catastrophic situation causing major accidents and damage to men & machinery. In view of this, the reliability of power supply to the steel plant is of utmost importance and to ensure the same the Appellant has entered into the agreement with state utility (CSPDCL). Though the average drawl of power by the Appellant from CSPDCL is about 40-45 MW, the Appellant has kept a contract demand of 225 MVA and pays about Rs.7.7 Cr/month as demand charge to ensure availability/reliability of power during the outage of the captive unit at the generating station. It is pertinent to mention that the demand charges for 40- 45 MVA is approximately Rs.2 crores per month but to maintain the reliability of power supply during

the tripping of generating station the Appellant is paying an excess amount of Rs.5.7 Crores approximately per months by keeping a contract demand of 225 MVA.

- (i) There has been no occasion where the Appellant has drawn the power from NSPCL for its captive consumption in excess of the power generated by NSPCL and declared available for consumption by the Appellant, as contended by WRLDC before the Central Commission. There was, therefore, no question of any power from Raipur being drawn by the Appellant through the bus bar of NSPCL.
- (j) The Appellant is not in any manner an Open Access customer of any Inter State Transmission Line or for that matter even any Intra State Transmission Line of CSPDCL or CSPTCL. In the absence of the 'loop flow' in the dedicated transmission line, the Appellant cannot be made to share the losses in the ISTS.

- (k) The change of control area jurisdiction from SLDC to WRLDC was sought by NSPCL as per the provisions of the Indian Electricity Grid Code Regulations 2010 (**IEGC**) which provides for demarcation of responsibilities between the SLDCs and the RLDCs. The IEGC dealing with the demarcation of responsibilities, does not necessarily lead to the position that all power transmitted from the generating station shall amount to inter-state transmission or intra-state transmission. It is not correct to proceed on the basis that all such power transmitted, even if it is considered as intra state transmission, as in the present case should be deemed to be an inter-state transmission being subject to sharing of ISTS Charges and Losses.
- (l) In the circumstances, the impugned order deserves to be set aside.

12. Written submissions supported by affidavit of Mr. Mukhopadhyay, General Manager of Respondent No.2 have been filed on behalf of Respondent No.2. The gist of the written submission is as under:

- (a) The dedicated line from NSPCL to the Appellant is part of the loop and it is not radial. The CERC has also noted the submission of Respondent No.2 that the four 220 KV transmission lines of the Appellant lose the character of dedicated transmission lines due to formation of loop in parallel to the transmission lines in the ISTS network. These transmission lines not only draw 105 MW of power of the Appellant, but also wheel the power of CSEB. Since the transmission lines wheel power of others, they no more remain dedicated transmission lines. The Appellant's system is interconnected with ISTS, NSPCL, CSPTCL (STU) and within the Appellant's plant. This aspect was considered by the CERC in the Review Petition No.2 of

2014 preferred by the Appellant. The CERC observed that the Appellant has retained both STU and ISTS connectivity for its reliable supply. Therefore, Respondent No.2 would have to act as per the ISTS Regulations and the Grid Code and allocate the transmission losses to the regional entities i.e. NSPCL and CSPTCL including the Appellant which is an embedded entity of CSPTCL. The billing is done as per the mechanism created by the CERC and not as per the procedure that has been stated by the Appellant. Under the present mechanism, the commercial tariff paid to the generating station is based on declared capacity and scheduled energy and not on actual meter reading.

- (b) The Generator, NSPCL recovers its tariff by way of two components, i.e. Capacity Charge (fixed cost) and Energy Charge (Variable Cost). The third component, Deviation charge (i.e. the deviation of actual

injection/Actual drawal from the scheduled injection/scheduled drawal as the case may be) does not form a part of the Generation tariff. This charge is determined only for the purposes of accounting deviation from the schedule, priced as per the frequency for that particular time block.

- (c) In the present case, the capacity charge is recovered on the basis of the availability declared by the Generator, NSPCL for the next day, on day ahead basis. On the other hand, the Energy charge is recovered on the basis of the energy scheduled (requisitioned) by its beneficiaries at the generator's bus bar for the next day, on day ahead basis. The total tariff for the generating station is recovered through the above mentioned mechanism.
- (d) The actual meter readings are used only to find the deviations from its schedule in a given control area

(e.g. for a generator, DISCOM) and is termed as Deviations (earlier known as Unscheduled Interchange). These deviation charges are calculated as per the provisions of the Deviation Settlement Mechanism Regulations, 2014.

- (e) The billing of the Appellant by NSPCL is done as per the Ex-bus schedule at NSPCL bus and not according to the meter reading of the NSPCL-BSP dedicated line.

- (f) CSPDCL is a designated ISTS customer and a regional entity in the control area jurisdiction of Respondent No.2. As far as Respondent No.2 is concerned, the Appellant does not form a separate control area for Respondent No.2 but is embedded entity of CSPDCL i.e. a Designated ISTS customer. Further, Respondent No.2 cannot apply two different methods to schedule any transactions to its regional entities, CSPDCL and NSPCL in the present case.

(g) The Appellant is not a Designated ISTS customer or a regional entity. However, CSPDCL is a Designated ISTS customer and a regional entity for Respondent No.2. Therefore, the scheduling to the Appellant is also included in the total schedule of CSPDCL. Since the Appellant is an embedded entity of CSPDCL, having a long term PPA with NSPCL (another DIC and Regional entity of Respondent No.2), scheduling of any long term PPAs to the embedded customers are indicated separately. For clarity, the same are also posted on Respondent No.2's website.

(h) In the circumstances, there is no substance in the appeal. The appeal deserves to be dismissed.

13. The contention of the Appellant is that levy of ISTS charges or apportionment of losses of ISTS can apply only for use of the ISTS and not for conveyance of electricity through the dedicated

transmission lines. Since in this case, both the generating station and the steel plant are located within the State of Chhattisgarh, use of dedicated transmission lines connecting them cannot be described as the use of ISTS. It is submitted that the dedicated line for supply of power to the Appellant is not interconnected with ISTS line for flow of power to the Appellant. On the one side, it originates from the generating station and at the end, it reaches the Appellant facilities. It is contended that supply of power from the generating station of the NSPCL of the Appellant is not by use of any ISTS line in any manner. It is pointed out that it is accepted in the impugned order that quantum of power injected into the dedicated transmission line are separately recorded and separate scheduling is shown and, therefore, the Appellant cannot be held liable for sharing of losses.

14. It is further contended that the Appellant has an independent contract demand from CSEB/CSPDCL and as their consumer, the Appellant draws power from the substation of

CSEB/CSPDCL for which the Appellant pays applicable charges. An agreement with CSPDCL is entered into on 26/10/2009 to supply power to the Appellant during the exigencies of tripping of captive unit of NSPCL or during reduced generation. The Appellant is paying Rs.7.7 crore per month towards contract demand charges. The relevant paragraphs of the petition filed by the Appellant where this point was raised are as under:

“6. Further the Petitioner has an independent contract demand from CSEB/CSPDCL and as a consumer of CSEB/CSPDCL the Petitioner draws power from the Substation of CSEB/CSPDCL for which the Petitioner pays all the applicable charges including demand charges as in the case if any other consumers. It is pertinent to mention that the Petitioner has entered into an agreement with CSPDCL on 26th October of 2009 to supply of power to the Petitioner by CSPDCL during the exigencies of tripping of captive unit of NSPCL or during reduced generation. Under this PPA, the petitioner is maintaining 225 MVA contract demand with CSPDCL and paying Rs.7.7 crore per month towards contract demand charges to ensure power security. The liability of the Grid being available to the Petitioner is legitimately based on the contract demand as in the case of any other consumers and there is no extra or special privilege taken by the Petitioner.

7. The works of the Petitioner at Bhilai, where the captive power is being consumed, is a steel plant which operates on 24x7 hr basis. Power failure in certain

facilities inside the steel plant may lead to catastrophic situation causing major accidents and damage to men and machinery. In view of this, the reliability of power supply to the steel plant is of utmost importance and to ensure the same the Petitioner has entered into the agreement with state utility (CSPDCL). Though the average drawl of power by the Petitioner from CSPDCL is about 40-45 MW, the Petitioner has kept a contract demand of 225 MVA and pays about Rs.7.7 cr/month as demand charge to ensure availability/reliability of power during the outage of the captive unit at the generating station. It is pertinent mention that the demand charges for 40-45 MVA is approximately Rs.2 crores per month but to maintain the reliability of power supply during the tripping of generating station, the Petitioner is paying an excess amount of Rs.5.7 crores approximately per month by keeping a contract demand of 225 MVA.

13. In accordance with the above the electricity which flows to the Petitioner's facilities on the line from the sub-station of CSEB/CSPDCL is entirely such electricity as per the contract which the Petitioner has with CSEB/CSPDCL and not any part of the power supplied by NSPCL to the Petitioner. Similarly, no part of the electricity supplied by NSPCL to any other person, namely, to any person outside the state of Chhattisgarh flows on the dedicated transmission line used for the supply of power to the Petitioner."

15. Counsel for the Appellant submitted that CERC has not dealt with this issue at all. Moreover, it has relied upon a wrong

flow-chart in paragraph 17 of the impugned order. Counsel submitted that therefore the matter needs to be remitted.

16. Counsel for the Respondents has strenuously opposed the submissions of the Appellant and contended that the dedicated line from NSPCL to the Appellant is part of the loop and is not radial. It is contended that the four 200 KV transmission lines of the Appellant lose the character of dedicated transmission lines due to formation of loop in parallel to the transmission lines in the ISTS network.

17. We have given our anxious consideration to the submissions advanced by the counsel. We however find that CERC has not dealt with the Appellant's case that it has an independent contract demand from CSEB/CSPDCL and it has entered into an agreement with CSPDCL on 26/10/2009 for supply of power during the exigencies of tripping of captive unit of NSPCL and the Appellant in paying Rs.7.7 crores per month towards contract demand charges to ensure power security.

Further the electricity which flows to the Appellant's facilities on the line from the sub-station of CSEB/CSPDCL is entirely such electricity as per the contract which the Appellant has with CSEB/CSPDCL and not any part of the power supplied by NSPCL to the Appellant and is settled directly by the Appellant with CSEB/CSPDCL as per their mutual agreement as a consumer of CSPDCL. These points were specifically raised by the Appellant. We have already quoted the relevant paragraph hereinabove. It is also contended that CERC has relied upon a wrong flow-chart. We have also examined the block schematic of connectivity of NSPCL and BSP in paragraph 17 of the impugned order. We find that a connectivity of CSPTCL Bhilai 400/220 KV sub-station Khedamara with NSPCL Bhilai 2x500 MW has been shown which does not exist.

18. We feel that inasmuch as an important point which has been referred to by us in paragraph 14 hereinabove, has missed the attention of the CERC, it is necessary to remand the matter to the CERC. In the circumstances, the impugned order is set

aside. The matter is remitted to the CERC. The CERC is directed to consider the above mentioned submission of the Appellant and pass appropriate order after hearing all the parties. The CERC is directed to dispose of the matter as early as possible and, at any rate, within a period of six months from the date of receipt of this order.

19. The appeal is disposed of accordingly.

20. Pronounced in the Open Court on this 22nd day of April, 2015.

(Rakesh Nath)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~