

**Appellate Tribunal for Electricity
Appellate Jurisdiction
Appeal No. 128 of 2005**

Present - **Hon'ble Mr Justice E. Padmanabhan – Judicial Member**
Hon'ble Mr H. L. Bajaj – Technical Member

BSEB **Appellant/s**
Versus
PGCIL & Others **Respondents**

For the Appellant : Mr. R.B. Sharma, Advocate
For the Respondents : Mr. M.G. Ramachandran, Ms Taruna Baghel,
Mr. N.N. Chaturvedi for PGCIL
Mr. Keshav Mohan, Advocate for Haryana State
Mr. Ramji Srinivasan, Advocate with
Ms. Mandakini Singh & Mr. Prashant Kumar Mishra,
Advocates for Resp. No.2(TNEB Resp. No.4 (KPTCL)
Mr. Sakesh Kumar, Advocate for MPSEB.

Dated 2nd August, 2006.

Order

1. We have heard Mr. R.B. Sharma, learned counsel appearing for the appellant for nearly two hours.
2. Mr. M.G. Ramachandran, Advocate appears for first Respondent. On behalf of Respondent No. 2 & 4 Mr. Ramji Srinivasan, Advocate appeared. On behalf of MPSEB Mr. Sakesh Kumar, Advocate appeared. For the State of Haryana Mr. Keshav Mohan, Advocate appeared. In the appeal the appellant has prayed for the following relief :-
“Modify or setting aside the order of the Hon'ble CERC dated 03-09-2003 in Petition No.15/2003 and order dated 19-04-2004 in Review Petition No. 82/2003 in Petition No.15/2003 and clarify that the charges for the Inter Regional transmission assets for the period 01-03-2004 amounting to Rs. 658,015,988=00 should not be levied against BSEB, as such assets are not being utilized by them.”

3. It is the contention of Mr. R.B. Sharma, the learned counsel appearing for appellant, that the demand for Rs. 658,015,988/- made by first Respondent for the period 1.4.2001 to 31.3.2004 is illegal and the CERC Regulations and clarifications proceed on an erroneous promises and basis. The Regulations are based on misconceptions.

4. Per contra it is contended by the counsel for Respondents that this appeal is not maintainable as this Appellate Tribunal has no jurisdiction to examine the validity of Regulations framed by CERC, as already held by a full Bench of this Appellate Tribunal.

5. The CERC Regulations 4.8 reads thus:-

“4.8. Principle of sharing of Transmission Charges of the Inter-regional assets including HVDC system by the beneficiaries.

The Transmission Charges of the Inter-regional assets including HVDC system shall be shared in the ratio of 50:50 by the two contiguous regions. These Transmission Charges shall be recovered from the beneficiaries by pooling 50% of the Transmission Charges for such Inter-regional assets with the Transmission Charges for transmission system of the respective regions for facilitating further recovery from the beneficiaries within the region”.

Only in respect of last four lines of the above Regulation, according to the learned counsel Mr. Sharma, the appellant has grievance.

6. The Regulations 4.8 is a statutory regulation framed by CERC. The validity of such regulation according to Mr. Sharma, is not being challenged before us but the appellant is challenging the basis of framing the said Regulation. However, the relief prayed for in the appeal reads otherwise and it is nothing but a challenge to the validity of CERC Regulations.

7. The full Bench of this Appellate Tribunal in its judgment dated 9.11.2005 made in Appeal Nos. 114 & 115 of 2005 Neyveli Lignite Corporation Ltd., Vs. CERC & others, following the pronouncement of the Supreme Court in West Bengal Electricity Regulatory Commission Versus CESC Ltd., held thus:

“Regulations framed under Sections 61 & 178 of The Electricity Act, 2003, are in the nature of subordinate legislation and we have no jurisdiction to

examine the validity of the Regulations in exercise of our appellate jurisdiction under Section 111 of the Act of 2003 Regulations being subordinate legislation, cannot be challenged before this Appellate Tribunal.”

8. Following the same we have no other alternative except to dismiss the appeal. Accordingly, the appeal is dismissed. However, if so advised, it is still open to the appellant to challenge the validity of impugned Regulation before the appropriate forum and seek consequential relief.

9. The parties shall bear their respective costs in this appeal.

Pronounced in open court.

(Mr. H. L. Bajaj)
Technical Member

(Mr. Justice E. Padmanabhan)
Judicial Member

