

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO.10 OF 2016  
AND  
I.A. NO.15 OF 2016**

**Dated : 17<sup>th</sup> November, 2016**

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

**In the matter of:-**

**THE CHAIRMAN, )  
HIMACHAL PRADESH STATE )  
ELECTRICITY BOARD LIMITED, )  
Vidyut Bhawan, Kumar House )  
Complex Building II, )  
Shimla-171 002. ) ... Appellant**

**AND**

**1. CENTRAL ELECTRICITY )  
REGULATORY COMMISSION, )  
Through its Secretary, 3<sup>rd</sup> and )  
4<sup>th</sup> Floor, Chanderlok Building, )  
36, Janpath, )  
New Delhi-110 001. )**

**2. NORTHERN REGIONAL LOAD )  
DESPATCH CENTRE )  
Through its General Manager )  
(NRLDC), 18-A, Katwaria Sarai, )  
New Delhi-110016. ) ... Respondents**

Counsel for the Appellant(s) : Mr. Anand K. Ganesan  
Mr. Swapna Seshadri  
Mr. Sandeep Rajpurohit  
Ms. Neha Garg

Counsel for the Respondent(s) : Mr. K.S. Dhingra for **R.1**  
  
Mr. Abiha Zaidi  
Mr. Rajiv Parwal  
Mr. Jayantika Singh  
Mr. Ashok Rajan for **R.2**

## **J U D G M E N T**

**PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON:**

1. The Appellant has challenged Order dated 09/10/2015 passed by the Central Electricity Regulatory Commission (“**the Central Commission**”) in Petition No.6/SM/2014 whereby the Central Commission has imposed a penalty of Rs.1 lakh on the Appellant and certain others under Section 142 of the Electricity Act, 2003 (“**the said Act**”) for non-compliance of provisions of Regulations 5.2 (n) and 5.4.2 (e) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010.

2. The Appellant, Himachal Pradesh State Electricity Board Ltd., is a company incorporated under the provisions of the Companies Act. The Appellant is an unbundled entity of the erstwhile Himachal Pradesh State Electricity Board which was constituted under Section 5 of the Electricity (Supply) Act, 1948. The Appellant is the distribution licensee for the State of Himachal Pradesh.

3. The Central Commission has framed the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations 2010 (“**Grid Code**”) dealing with the terms and conditions for operation of the National Grid. Respondent No.2 is National Regional Load Despatch Centre (“**NRLDC**”).

4. NRLDC filed Petition No.221/MP/2012 before the Central Commission praying for directions to the State Utilities in Northern region to carry out testing of all the existing UFR and install UFR and df/dt relays at the designated sub-stations so as to provide adequate relief in terms of Regulation 5.2 (n) of

the Grid Code. NRLDC's case was based on the incident of Grid disturbance that took place on 30/07/2012 and 31/07/2012. On 20/11/2012 the Central Commission heard the representative of NRLDC. The Central Commission recorded the statements of representatives of the Respondents. The representative of the Appellant was present. He stated that the Under Frequency Relays ("**UFR**") and df/dt relays are functional. This statement was recorded. The Central Commission directed the Respondents to file their replies on affidavit latest by 07/12/2012. The petition was directed to be listed for hearing on 20/12/2012.

5. The petition was finally heard on 23/12/2013. After noting the submissions of the parties, the Central Commission *inter alia* directed notices to be issued to the heads of SLDCs and MD/CMD of the STUs of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu and Kashmir and head of Electricity Department of UT Chandigarh to explain why action should not be initiated

under Section 142 of the said Act for non-compliance of the Grid Code.

6. Pursuant to the above, the Central Commission registered an independent proceeding being 06/SM/2014 on 25/04/2014 and issued notices to various parties under Section 142 of the said Act. After considering the submissions of NRLDC, Northern Regional Power Committee (“**NRPC**”) and the Respondents, the Central Commission by the impugned order dated 09/10/2015 imposed a penalty of Rs.1 lakh on each of the heads of the STUs and SLDCs of Uttar Pradesh, Rajasthan, Delhi, Haryana, Punjab, Himachal Pradesh, Uttarakhand and head of Electricity Department of UT Chandigarh under Section 142 of the said Act for non-compliance of provisions of Regulations 5.2 (n) and 5.4.2 (e) of the Grid Code. The said order is challenged in this appeal.

7. We must mention here that Mr. Grover, Chief Engineer (Sys Op.) of the Appellant has filed affidavit to place on record

inward register of the Appellant for the month of May, 2014. It is stated in the affidavit that there is no entry of the receipt of show cause notice dated 25/04/2014 which is alleged to have been sent by the Central Commission on 02/5/2014. It is also stated in the affidavit that the Central Commission has not produced even the proof of dispatch of the said notice. It is further stated that even as per the claim of the Central Commission for drawing presumption in terms of Section 27 of the General Clauses Act read with Section 114 of the Evidence Act, it is required to be established that the notice was sent properly with the correct address of the addressee. In the affidavit filed by Mr. Trilochan Rout, Chief (Legal) of the Central Commission in reply to the affidavit filed by Mr. Grover, Chief Engineer, while reiterating the Central Commission's case, it is stated that Order dated 25/4/2014 was not sent to the Chief Engineer (SO&P) but was forwarded Shri S K B S Negi, Chairman and Managing Director of the Appellant. It is further stated that the Diary/Inward Register for the months of May, 2014 and October, 2015, copies of which have been placed on record by the Appellant under

Affidavit dated 27/09/2016, notes that the other communications meant for the Appellant, similarly sent, were received in the Office of Chief Engineer (SO&P).

8. We have heard Mr. Ganesan learned counsel appearing for the Appellant. We have gone through the grounds of the appeal memo and the written submission filed by him. Gist of the submissions is as under:

- (a) Notice of proceedings being 06/SM/2014 was never served on the Appellant. It was therefore not open to the Central Commission to impose penalty on the Appellant as there is complete breach of principles of natural justice.
- (b) An order imposing penalty cannot be passed unless there is mens rea/contumacious conduct.
- (c) As no notice was served on the Appellant, the Appellant could not meet the allegations made

against it. No opportunity of hearing was afforded to the Appellant.

- (d) The service of notice has to be established in a serious matter wherein penalty proceedings are initiated against a person. This is also a statutory requirement under Section 171 of the said Act.
- (e) It is mandatory to serve a show cause notice before imposing a penalty under Section 142 of the said Act. This has been laid down by this Tribunal in **judgment dated 19/4/2011 in BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission and other – Appeal No.183 of 2010.**
- (f) Section 27 of the General Clauses Act can only be applied when it is proved that the letter containing the document was despatched and served. Respondent No.1 has failed to furnish any proof of the show cause notice being sent



and served. In this connection the Appellant is relying on its inward register for the month of May, 2014 which reveals that there is no entry of the show cause notice dated 25/04/2014 which is alleged to have been sent by the Central Commission on 02/05/2014. Judgment of the Supreme Court in **M/s Ajeet Seeds Ltd. v. K Gopala Krishnaiah**<sup>1</sup> is therefore not applicable to this case.

- (g) In any case no case for imposition of penalty is made out on merits. The Appellant has duly complied with the relevant provisions of law and the agreed parameters in installing the df/dt relays. The following are relevant in this regard:

*“(i) That the targets of installation of UFRs and df/dt relays were fixed up by NRPC during 22<sup>nd</sup> OCC meeting held on dated 07/02/2008. Accordingly, the relays were installed by the*

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<sup>1</sup> (2014) 12 SCC 685

*Appellant as per the targets assigned which are as under:*

**A) UFRs**

<i>Frequency [Hz]</i>	48.8	48.6	48.2	<i>Total</i>
<i>Total load relief<sub>(MW)</sub></i>	20.0	20.0	75	115

**B) df/dt relays**

<i>Slope [Hz/Sec.]</i>	0.1	0.2	0.3	<i>Total</i>
<i>Total load relief<sub>(MW)</sub></i>	50.0	70.0	70.0	190

- (ii) *That the above frequency stages were further revised in respect of UFR relays by NRPC vide letter dated 31/07/2013 and accordingly, the revised targets for installation of UFRs was achieved on dated 27/02/2014 as under:*

<i>Frequency stage [Hz]</i>	49.2	49.0	48.8	48.6
<i>Load relief [MW]</i>	77	77	78	78

- (iii) *That even the healthiness/ operational status of above relays stand supplemented in NRLDC rejoinder dated 25/03/2013 wherein NRLDC has categorically mentioned the load relief achieved to the tune of 25 MW on dated 23/08/2012 based upon NRLDC SCADA Data against the expected load relief of 20 MW in respect of HP.*

- (iv) *That the Central Commission is relying upon the PMUs (Phasor Measurement Units) Data wherein in NR the rate of change of frequency has been mentioned as above 0.1 Hz/sec. for around 500 to 600ms.*
- (v) *That in the table mentioned under item-13(k) of the impugned order dated 09/10/2015, it has been shown that on dated 12/03/2014 at 19.21 hrs, the impact remained on df/dt at Stage 0.1 Hz./sec.for 800ms and no relief from Himachal Pradesh was envisaged.*
- (vi) *That in the impugned order it has been emphasized that none of the relays operated in WR as well as NR on dated 12/03/2014 except Delhi and UP to very limited extent. The above behaviour of df/dt relays non-operational in almost all the Regions clearly reveals that the intensity of persistence of slope as well as the timings which were observed for its persistence was too low to operate df/dt relays. Also, the impact of rate of change of frequency might have been observed so much less in Himachal Pradesh that the relays could not sense such impact and did not operate. This kind of behaviour in mass also indicates that there might be some deficiency in programming in*

*df/dt relays and did not comply with the parameters fixed for the operation of the relays under such condition”.*

- (h) In the circumstances the impugned order is liable to be set aside.

9. Mr. Dhingra learned counsel appearing for the Central Commission, on the other hand, strongly opposed the Appellant's submissions. Counsel took us through the synopsis of dates and events filed by him and submitted that the Appellant was very well aware of the proceedings initiated by NRLDC. The Central Commission forwarded RoPs of every hearing to the Appellant by Speed Post/Registered Post. The Appellant's representative was present at the preliminary hearing on 20/11/2012. His presence and submissions were noted by the Central Commission. But thereafter the Appellant did not participate in the proceedings despite notice. The Appellant did not file any reply. The Appellant did not furnish required data. Counsel submitted that the Central Commission directed that notice under Section 142 of the said

Act be issued to the Appellant vide its final order dated 23/12/2013 in Petition No.221/MP/2012. The copy of this order was sent to Appellant through Registered post/Speed post. It was served on the Appellant. This is not denied by the Appellant. The said order is annexed to the petition. This order called upon the Appellant to explain why action under Section 142 of the said Act should not be taken against it. The Appellant did not send any reply. The Central Commission carried forward the said proceedings in its file in Suo Motu Petition No.06/SM/2014. In continuation of notice dated 23/12/2013 another notice was issued to the Appellant on 25/04/2014 under Section 142 of the said Act. The said notice stated that the matter shall be heard on 22/05/2014. Counsel submitted that the Appellant received the said order, because it was not received back by the Central Commission undelivered. Therefore, presumption under Section 27 of the General Clauses Act will arise. In this connection counsel relied on judgment of the Supreme Court in **M/s Ajeet Seeds Ltd.** Counsel submitted that the inward register produced by the Central Commission has no probative value. Counsel

submitted that despite receipt of several orders of the Central Commission the Appellant failed to appear before the Central Commission. The Appellant did not send its response. The conduct of the Appellant disentitles it from getting any relief from this Tribunal. The appeal may therefore be dismissed.

10. Respondent No.2 (NRLDC) has filed its reply. We have heard Mr. Abiha Zaidi, counsel appearing for Respondent No.2. Submissions of Respondent No.2 are restricted to the merits of the case. Respondent No.2 has supported the impugned order.

11. It is necessary to recap the events to effectively deal with the rival contentions. We shall therefore refer to various stages of the proceedings and the orders passed thereon. We must note at this stage that Mr. Dhingra learned counsel for the Central Commission has furnished the factual data to us. There is no reply filed by the Appellant denying the same except the contention that the Central Commission's order

dated 25/04/2014 was not served on the Appellant. This is strongly denied by the Appellant. We shall deal with this contentious issue as we proceed with narration of facts.

12. NRLDC filed Petition No.125/MP/2012 seeking directions to the Respondents therein for ensuring safety and security of the Grid, and to obviate possibility of Grid disturbance. On 10/07/2012 NRLDC disposed of the petition directing the Respondents therein to keep UFR in service at all times. Following is the relevant extract of the said order:

*“24. We direct that it shall be the personal liability of the officers in overall charge of the State Transmission Utilities/State Load Despatch Centres to ensure compliance of the directions in Para 22 and 23 above and non-compliance of the directions in any form will be viewed seriously and appropriate actions under provisions of the Act shall be taken.”*

13. On 30/07/2012 at about 2.30 hrs Northern Regional Grid failed. Northern, Eastern and North-Eastern (NEW) Grid failed at about 13.00 hrs on 31/07/2012 affecting total load of

36,000 MW and 48,000 MW respectively. An Enquiry Committee was set up by the Ministry of Power under Chairmanship of Chairman, CEA to investigate into the reasons for Grid disturbances. The Enquiry Committee in its report concluded that the relief obtained through UFRs and df/dt relay load shedding scheme in Northern region was inadequate.

14. The Enquiry Committee recommended to the Central Commission that it should explore ways and means for implementation of various regulations issued under the said Act. The Report indicated that Power Grid had reported the status of UFR and df/dt relays at 175 sub-stations in the States of Northern Region which showed that against three sub-stations in the State of Himachal Pradesh none had the operative relays.

15. In the above circumstances NRLDC filed a petition being Petition No.221/MP/2012 before the Central Commission.



The Appellant was impleaded as Respondent No.6 therein. Preliminary hearing of the petition was held on 20/11/2012 after notice to the Respondents therein. The representative of the Appellant was present. He stated that UFRs and df/dt relays were functional in the State of Himachal Pradesh. This statement was recorded by the Central Commission. The Central Commission directed the Respondents therein to file their replies on affidavit latest by 07/12/2012. The petition was directed to be listed for hearing on 20/12/2012. The direction of the Central Commission was communicated to the parties through Record of Proceedings (RoP) of that date sent by Speed/Registered Post as under:

*“4. The Commission directed to respondents to file their replies on affidavit, latest by 7.12.2012, with advance copy to the petitioner, who may file its rejoinders, if any, on or before 14.12.2012.”*

*5. The petition shall be listed for hearing on 20.12.2012 for further directions.”*

There can be no dispute about this fact because the Appellant has annexed a copy of RoP at Annexure 'C' to the appeal memo. There is no allegation that the same was not received by the Appellant. It is important to note that despite the clear direction issued by the Central Commission no reply was filed by the Appellant.

16. On the next date of hearing i.e. on 20/12/2012 none appeared on behalf of the Appellant. The Central Commission took serious note of the absence of the Appellant and passed a stringent order. Following is the relevant extract of the said order.

*“3. The commission took a very serious view of the non submission of responses by some of the constituents of the Northern Region. The Commission observed that grid security is a very serious issue and all those responsible for non-compliance of the provisions of the Grid Code shall be held accountable. The Commission further observed that despite clear and repeated directions, the responses from the UFR and df/dt relays have been extremely poor as is evident from the report of the enquiry committee and well the audit by POWERGRID. The Commission directed*

*the staff to process the cases for issue of show cause notices to the constituents who have not responded to the notice in the petition. The commission also directed the petitioner to submit its responses to the replies received in a week's time including the extent of compliance of the provisions of the Grid Code by each of the constituents."*

Copies of RoP dated 20/12/2012 were sent to the parties by Speed/Registered Post. There was however no response from the Appellant. There is no allegation that RoP dated 20/12/2012 was not received by the Appellant.

17. On the adjourned date i.e. 15/01/2013 again the Appellant was not represented. The Central Commission heard the parties who were present and directed the Respondents to revive all defective relays and keep them in healthy condition. The Commission directed the Respondents to submit data within two weeks on affidavit. The petition was adjourned for further hearing to 14/02/2013. Following is the relevant extract of the directions:

*"12. The commission took serious view of the state of these relays which are*

*essential for safety of the grid in the event of any untoward incident. The Commission directed all respondents to keep all UFR and df/dt relays in healthy conditions so that adequate relief to the grid is always available. The respondents were also directed to revive all defective relays expeditiously.”*

Though the copy of the RoP was sent to the Appellant through Speed/Registered Post, the Appellant failed to furnish the data called for by the Central Commission.

18. On 14/02/2013 after hearing the parties present, the Central Commission adjourned the hearing of the petition to 09/04/2013. The copy of the RoP was sent to the Appellant through Speed/Registered Post. The Appellant neither filed any response nor furnished any data.

19. On 09/04/2013, which was the date fixed for hearing none appeared for the Appellant. Hence, the Central Commission recorded in RoP of that date that no response was received from the Appellant. The Central Commission after

hearing those present reserved its order. The copy of this RoP was also sent to the Appellant through Speed/Registered Post.

20. The Central Commission passed the final order on 23/12/2013 in Petition No.221/MP/2012. The Central Commission was satisfied that the provisions of the Grid Code were not complied with by the Northern Regional constituents.

The relevant portion of the said order runs as under:

*“29. We are constrained to remark that we are thoroughly dissatisfied with the defense mechanism in terms of UFR and  $df/dt$ . Hard reality which stares us on the face is that these have not been provided and maintained as per Regulation 5.2 (n) and 5.4.2 (e) of the Grid Code by NR Constituents. Accordingly, we hereby direct as follows:*

- (a) *Issue notices to the heads of SLDCs and MD/CMD of the STU of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu and Kashmir and head of Electricity Department, UT of Chandigarh and to explain why action should not be initiated under Section 142 of the Electricity Act, 2003 for non-compliance of the Grid Code”.*

The copy of the order was sent to the Appellant through speed/registered post. The Appellant has annexed a copy of the said order at Annexure-D to the appeal memo. It is not the case of the Appellant that the Appellant did not receive this order.

21. Order dated 23/12/2013 which was received by the Appellant is very crucial to this case. It is clear from the quoted portion of the order that the Central Commission had called upon the Appellant to explain why action should not be initiated under Section 142 of the said Act for non-compliance of the Grid Code. Like all other orders of the Central Commission, the Appellant ignored this order. The Appellant did not show cause though called upon to do so. The Appellant did not inquire as to what happened to the proceedings. The Appellant consistently showed scant regard to all the orders of the Central Commission served on it. The Appellant did not send any response though repeatedly called

upon to do so. The Appellant did not submit any data though directed to submit the same.

22. It is the case of the Central Commission that thereafter the proceedings initiated vide order dated 23/12/2013 were carried forward on the Central Commission's file in Suo Motu Petition No.6/SM/2014 and in continuation of the show cause notice issued under Order dated 23/12/2013, another notice was issued on 25/4/2014 under Order dated 25/4/2014. This notice made reference to the earlier order dated 23/12/2013 obviously because it contained the reasons for the Central Commission's conclusions that the State Utilities which included the Appellant had not complied with the provisions of the Grid Code. The said Order which is admittedly served on the Appellant gives a complete idea as to why the Central Commission was dissatisfied with the State Utilities. This notice stated that matter will be listed for hearing on 22/5/2014. Relevant portion of the said order reads as under:

*“2. Northern Regional Load Despatch Centre filed Petition No.221/MP/2013 seeking directions to State Utilities to comply with the Regulation 5.2(n) of the Grid Code. After hearing the parties, the Commission came to the conclusion that the State utilities have not complied with the provisions of the Grid Code. Accordingly, the Commission vide order dated 23.12.2013 in Petition No.221/MP/2012 directed to issue notices under Section 142 of the Act to the heads of SLDCs and MD/CMD of the STU of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu and Kashmir and head of Electricity Department, UT of Chandigarh for non-compliance of the Grid Code. The relevant portion of order dated 23.12.2013 in Petition No.221/MP/2012 is extracted as under:*

.....

*3. In view of the above, the respondents i.e. heads of SLDCs and MD/CMD of the STU of Punjab, Haryana, Rajasthan, Delhi, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu and Kashmir and head of Electricity Department, UT of Chandigarh are directed to show cause, latest by 15.5.2014, as to why action under Section 142 of the Electricity Act, 2003 should not be taken on them for non-compliance with the provisions of the Act and the Grid Code.*

*4. Matter shall be listed for hearing on 22.5.2014.*



5. *Officer-in-charge of NRLDC or its representative shall assist the Commission in the proceedings.”*

23. It is the case of the Appellant that order dated 25/04/2014 was sent to Shri S.K.B.S. Negi, Chairman and Managing Director of the Appellant by speed/registered post vide No.ED183662254 dated 02/05/2014. It is pertinent to note that it was posted on the Central Commission’s website as per the established practice. The Appellant did not show cause. The Appellant did not attend the hearing. After analysing the evidence on record, the Central Commission concluded that the provisions of the Grid Code were not complied with by the State Utilities and imposed penalty on them.

24. The grievance of the Appellant is that the Appellant was not served with show cause notice and, therefore, there is breach of principles of natural justice. Reliance is placed on this Tribunal’s judgment in **BSES Rajdhani Power Limited**. There is no dispute about the proposition that a show cause

notice is the foundation on which charge has to be built up and therefore, show cause notice should contain specific allegations. Particularly in proceedings where penalty is sought to be imposed on a person, show cause notice stating the allegations must be served on him. If such notice is not served, it would amount to not giving the person concerned an opportunity to meet those allegations leading to breach of principles of natural justice. We are in respectful agreement with the view taken by this Tribunal in **BSES Rajdhani Power Limited**. But, the question is whether in this case, there is breach of principles of natural justice. This question must be answered in the negative.

25. We have detailed all the facts. The Appellant had notice of the proceedings. The Appellant's representative participated in the preliminary hearing. His statement was recorded. Thereafter, the matter was adjourned several times. Every time, RoP was sent to the Appellant. This is not denied by the Appellant. The Appellant did not appear before the Central Commission. The Appellant did not show cause. The

Appellant did not furnish the required data which it was called upon to furnish through various orders of which the Appellant had knowledge because RoPs of those orders were served on the Appellant. RoP of Order dated 23/12/2013 was admittedly served on the Appellant. Now let us revisit this order. This order gives complete idea about the allegations made by NRLDC against all the State Utilities. It sets out details of the report of the Enquiry Committee. It discusses remedial measures suggested by the Power Grid. It discusses submissions of the Respondents. It analyses the technical aspects and comes to a conclusion that UFR and df/dt relays have not been provided and maintained as per Regulation 5.2 (n) and 5.4.2 (e) of the Grid Code by NR Constituents and States. In the circumstances, this Order directs issuance of notice to the State Utilities to explain why action should not be initiated under Section 142 of the said Act. Though this order was served on the Appellant, the Appellant gave it the same treatment as it gave to other orders of the Central Commission. The Appellant ignored it.

26. We have already noted that on 25/04/2014, the Central Commission passed another order and in continuation of order dated 23/12/2013 issued another notice vide order dated 25/04/2014. We say it was in continuation of order dated 23/12/2013, because order dated 23/12/2013 which is the basic order is quoted therein. It was argued before us that show cause notice was not served on the Appellant. It was stated before us that order dated 25/04/2014 was not served on the Appellant, but there is no clear statement to that effect in the appeal memo. The averment made in the appeal memo is that no notice pursuant to the independent proceedings viz. *Suo Motu* Petition No.06/SM/2014 registered by the Central Commission on 25/04/2014 was served on the Appellant.

27. The Appellant in our opinion is trying to feign ignorance of the proceedings initiated by NRLDC, though it is absolutely clear that the Appellant had notice of the said proceedings and all its stages. All other State Utilities filed their replies. The Appellant did not. Though the Appellant's case is that order dated 25/04/2014 was not served on it, it is the case of the

Central Commission that it was served on the Appellant. We shall come to that aspect soon. But even if it is accepted that order dated 25/04/2014 was not served on the Appellant, admittedly, Order dated 23/12/2013 which also called upon the Appellant to show cause was served on the Appellant. Thus, in our opinion, requirement of serving notice containing the allegations levelled against the Appellant was met. We cannot adopt an approach which leads to absurdity and encourages persons to get over situations created by their conduct by ingenious means. The Appellant did not respond to a single RoP, did not attend the hearing and did not submit data though called upon to submit. The Appellant did not show cause when the order setting out all the facts and allegations and calling upon the Appellant to show cause was served on it. It is impossible to accept the plea of the Appellant that notice was not served on it. Pertinently all the orders of the Central Commission are uploaded on its website.

28. We shall now come to the aspect of receipt of Order dated 25/04/2014. The Appellant has produced inward register to

show that the said notice was not received by the Appellant. We find substance in the contention of the counsel for the Central Commission that the inward register will not necessarily prove that the notice was not received, because in a given case the inward register may not be maintained accurately. The evidence of dispatch of the order dated 25/04/2014 on 02/05/2014 by the Central Commission through speed/registered post was placed before this Tribunal during the hearing of this appeal. The order dated 25/04/2014 was sent to Shri S.K.B.S. Negi, Chairman and Managing Director of the Appellant. The said notice was not returned by the postal authorities as undelivered. In such circumstances, reliance placed on Section 27 of the General Clauses Act by the counsel for the Central Commission is apt. Section 27 would give rise to a presumption that service of notice has been effected. Section 114 of the Evidence Act would also enable this Tribunal to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. It is significant to note that all other orders served on the same

address have been received by the Appellant. Both sides have relied upon judgments of the Supreme Court on this point. It is not necessary for us to refer to them because there is no dispute about the above principles. It was urged by counsel for the Appellant that it was necessary for the Central Commission to lead evidence in support of service of the notice. On the other hand, it was urged by the counsel for the Central Commission that after the Central Commission produced evidence of dispatch of the order, the Appellant should have adduced evidence to prove to the contrary.

29. We are satisfied that dispatch of order is proved by the Central Commission. The order has not come back from the postal department undelivered. Admittedly, all other RoPs sent to the same address by the same mode have been served on the Appellant. We are therefore of the opinion that the Appellant's case made out before this Tribunal that order dated 25/04/2014 was not served on it does not stand to reason. Having said this, we wish to reiterate that even if order dated 25/04/2014 is presumed to have not been served

on the Appellant, order dated 23/12/2013 calling upon the Appellant to show cause why action under Section 142 of the said Act should not be taken against it was admittedly served on it. The requirement of service of notice is therefore fully complied with. The basic challenge to the impugned order is non-service of notice. Since we have come to a conclusion that the Appellant was aware of the proceedings and that orders calling upon it to show cause detailing allegations made against it were served on it and despite service, the Appellant chose not to show cause, the appeal will have to be dismissed as there is no breach of principles of natural justice. Besides, conduct of the Appellant disentitles it from getting any relief from this Tribunal.

30. The appeal is dismissed.

31. In view of the dismissal of the appeal, IA No.15 of 2016 does not survive and is dismissed as such.



32. Pronounced in the Open Court on this **17<sup>th</sup> day of November, 2016.**

**I.J. Kapoor**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

✓ **~~REPORTABLE/NON-REPORTABLE~~**