

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 157 of 2007

Dated: March 27, 2008

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member**

Powergrid Corporation of India Limited,
B-9, Qutab Industrial Area,
Katwaria Sarai,
New Delhi – 110 016.

... Appellant

Versus

- (1) Central Electricity Regulatory Commission,
6th Floor, Core-3, SCOPE Complex,
Lodhi Road, New Delhi – 110 003.
- (2) Karnataka Power Transmission Corporation Ltd.,
Cauvery Bhawan, Bangalore – 560 009.
- (3) Transmission Corporation of Andhra Pradesh Ltd.
Vidyut Soudha,
Hyderabad – 500 049.
- (4) Kerala State Electricity Board,
Vidyuthi Bhavanam,
Pattom, Thiruvananthapuram – 695 004.
- (5) Tamil Nadu Electricity Board,
800-Anna Sarai, Chennai – 600 002.
- (6) Electricity Department,
Govt. of Pondicherry,
Pondicherry – 605 001.

(7) Electricity Department,
Government of Goa,
Vidyut Bhawan,
Panaji, Goa – 403 001.

... Respondents

For the Appellant : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshadri, Mr. Rohit Shukla &
Mr. Ramnesh Jerath

For the respondent(s) : Mr. T. Rout, Jt. Chief (L) &
Mr. B. Sreekumar (Asstt. Chief (L)
(Reps.) for CERC)
Mr. P.R. Kovilan for Resp.5-TNEB

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

This appeal is preferred by the Power Grid Corporation of India Ltd. (for short Corporation) against the order of the Central Electricity Regulatory Commission (for short CERC) dated February 6, 2007. The facts giving rise to the appeal are as follows.

2. The appellant filed a petition, being petition No.157 of 2005, before the CERC for approval of incentive-based tariff on the availability of transmission system for the year 2004-05 for the southern region, treating the shut down of the transmission lines for construction or maintenance of

another line of its system as deemed availability. The Commission, however, by the impugned order, on the construction of para 5 of appendix III of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2004 (for short 'Tariff Regulations'), held that the provisions of para 5 of appendix III are attracted only when there is an outage of the transmission system due to the maintenance and construction by other agency/agencies and not by the transmission licensee itself. The appellant has challenged this view on the ground that para 5 of appendix III to the Tariff Regulations, operates on the principle that the shut down of a line for construction or maintenance of another line by a transmission licensee should be considered as a deemed availability of transmission elements for the purpose of admissibility of incentives. It was submitted that the CERC has failed to appreciate that there cannot be any justification for penalizing the transmission utility for the outages for the construction or maintenance of its transmission system, or for construction or maintenance of another line. He also

submitted that purposive interpretation must be given to para 5 of the appendix III of the Tariff Regulations.

3. We have considered the submission of the learned counsel for the appellant. In order to determine the question as to whether the outage of a line for maintenance or construction of another line can be taken as deemed availability of transmission elements for the purpose of grant of incentive, it is necessary to look at para 5 of appendix III to the Tariff Regulations. Para 5 reads as follows :-

“The transmission elements under outage due to following reasons not attributable to the transmission licensee shall be deemed to be available:

- (i) Shut down of transmission elements availed by other agency/ agencies for maintenance or construction of their transmission system.*
- (ii) Manual tripping of line due to over voltage and manual tripping of switched bus reactor as per the directions of RLDC.”*

4. The learned counsel for the appellant submitted that the word ‘agency/ agencies’ should be broadly interpreted as meaning ‘work’ or ‘lines’ in the system and the word must not be literally construed as meaning an entity other than the transmission licensee.

5. The learned counsel for the appellant referred to the decisions of the Supreme Court in *Commissioner of Income-tax, Central Calcutta, Vs. National Taj Traders, AIR 1980 SC 485* and *Food Corporation of India, Hyderabad & Others. Vs. A. Prahalada Rao & Another, (2001) 1 SCC 165* and decision of House of Lords in *Powdril and another Vs. Watson and another, [1995] 2 ALL ER 65* to urge that purposive interpretation shall be given to para 5 of Appendix III to the Tariff Regulations.

6. To accept the argument of the learned counsel would be doing violence to the language used in para 5 of Appendix III to the Tariff Regulations. It is not possible to construe the term 'agency' as meaning 'lines' or 'work'. In case the Commission wanted that the shut down of transmission elements of the transmission licensee availed by it for the purpose of maintenance and construction of its transmission system should be deemed to be available, nothing prevented the Commission from specifically providing for it in the Regulation but designedly the

Regulation uses the words 'other agency/ agencies' indicating thereby that only when the transmission elements of the transmission licensee are shut down for maintenance or construction of the transmission system of other agency/agencies, they should be deemed to be available. Therefore, we agree with the CERC that the language of the Statute being plain, the intention of the framers of the Statute is to be gathered from the language of the Statute itself and it is not permissible to add words or to fill-in a gap or lacunae or to do violence to the meaning of the words used in the Statute.

7. In *Ashwini Kumar Ghoshe Vs. Arabinda Bose*, AIR 1952 SC 369, it was held by Patanjali Shastri, J, that it is not a sound principle of construction to brush aside words in a Statute as being inappropriate. When the words of a Statute are clear, plain or unambiguous, the courts are bound to give effect to that meaning irrespective of consequences.
8. The word 'agency' is not capable of conveying a meaning as suggested by the learned counsel for the appellant. Agency

is an instrumentality which is authorized to carry on a business or affairs of another person. Therefore, it is only when the shut down of transmission elements of the transmission licensee is on account of maintenance or construction of transmission system of the other agency, the plea of deemed availability of transmission elements of the transmission licensee can be accepted as per para 5 of appendix III to the Tariff Regulations.

9. The decisions cited by the learned counsel for the appellant are of no avail to the appellant, since the word 'agency' used in para 5 is not capable of a meaning propounded by the appellant. The Supreme Court in *CIT vs Sodra Devi*, *AIR 1957 SC 832*, expressed the view that purposive interpretation/ Heydon's Rule is applicable only when the words in question are ambiguous and are reasonably capable of more than one meaning.
10. More over rule laid down in Heydon's case, [(1584) 3Co.Rep.7a:76ER637], which is known as 'purposive construction' or 'mischief rule' lays down that to construe a

statute, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise to and to the later Act that provides the remedy and the true reason of the remedy. It is not pointed out by the learned counsel for the appellant as to what was the position before the making of para 5 and what was the mischief or defect for which the earlier Rule or Regulation did not provide.

11. In *Anderton vs. Ryan*, (1985) 2 ALL ER 355 (HL), Lord Roskill while explaining the rule, held that statutes should be given purposive construction, that is to say that court should identify the 'mischief' which existed before passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified.
12. It is important to note that purposive construction can be placed on a statute or regulation which is capable of being construed in different ways. But in doing so, the court is required to identify the mischief which existed before

coming into force of the Statute and by an interpretation of the statute exclude the mischief so identified.

13. The learned counsel for the appellant has not pointed out the mischief which existed before the making of Regulation 5 of Appendix III of the Tariff Regulation, a pre-requisite for applying Heydon's rule. In case, the construction placed by the learned counsel for the appellant is accepted, we will be virtually substituting the words 'other agency/agencies' used in para 5 by words like 'other lines' or 'other set of work', which the words do not convey at all.
14. In the circumstances, the appeal fails and is hereby dismissed.

(Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member

Dated: March 27, 2008

Reportable / Non-Reportable