

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi**

Appeal Nos. 20 of 2007 & 77 of 2007 and IA No.99/07

Dated : 22nd August, 2007

**Coram: Hon'ble Mr. H. L. Bajaj, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member**

IN THE MATTERS OF :

1. **Universal Cables Limited**
P. O. Birla Vikas,
Satna (M.P.) – 485 005.

2. **M/s. Satna Cement Works**
P. O. Birla Vikas,
Satna (M.P.) – 485 005. ...Appellants

Versus

1. **Madhya Pradesh Electricity Regulatory Commission**
Urja Bhawan, Shivaji Nagar,
Bhopal (M.P.) – 462 016.

2. **M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd.**
Block No.7, Shakti Bhavan,
Rampur,
Jabalpur (M.P.) – 482 008. ...Respondents

For the appellants : Mr. Jayant Bhushan, Sr. Advocate
Mr. S. Ganesh, Sr. Advocate,
Mr. Narendera M. Sharma, Advocate
Mr. R. K. Sanghi, Advocate and
Mr. Manoj Kumar, Advocate

For the respondents : Mr. M. L. Jaiswal, Sr. Advocate
Mr. Sakesh Kumar, Advocate
Mr. Siddhartha S. Chauhan,
Advocate
Mr. R. N. Mishra, Advisor,
Mr. P. U. Setu, Addl. SE

J U D G M E N T

Ms. Justice Manju Goel

Appeal No. 20 of 2007 impugns the order dated October 18, 2006 of Madhya Pradesh Electricity Regulatory Commission in the matter of M/s. Universal Cables Ltd. Vs. M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. Against the same order, the appellant Universal Cables Ltd. filed a review petition. The review petition was dismissed vide an order dated April 03, 2007. The appeal 77 of 2007 challenges the order dismissing the review petition dated April 03, 2007. On filing of the appeal 77 of 2007, the appeal No. 20 of 2007, which had been adjourned sine die, was also revived. We have also heard the arguments on both the appeals.

2. The facts leading to the filing of the two appeals are as under: The appellant No.2, M/s. Satna Cement Works, established the captive power plant of aggregate capacity of 46.5 MW. Satna Cement Works has been consuming more than 51% of the power

generated by this captive power plant. The appellant No.1, Universal Cables Ltd., is located adjacent to Satna Cement Works and the two appellants share a common boundary. The appellant No.1 is engaged in manufacturing sophisticated 220 kV power cables in India in technical collaboration with M/s. Furukawa of Japan. The appellant No.1 needs un-interrupted and regular supply of quality power. The appellant No.1 has not been satisfied with the supply made by the respondent No.2 namely M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. which is the distribution licensee of the area. The appellant filed a petition before the Commission, being Petition No. 5 of 2007, seeking availability of the un-interrupted supply of power which was being denied because the dedicated feeder laid at the cost of the appellant was being used to feed other consumers. The appellant No.1 also wanted surplus power of the CPP from Satna Cement Works and for this purpose wanted to avail open access by laying down the dedicated line and all other installations to be constructed based on the approval of the Electrical Inspector and with no inter connection at any point either at the grid or other captive plant of Satna Cement Works and Satna Cement Works was also agreeable to supply power to the appellant No.1. The appellant filed the petition before the Madhya Pradesh Electricity Regulatory Commission (herein referred to as the Commission) for allowing power supply from the captive power plant of Satna Cement Works to Universal Cables Ltd., being

Petition No. 94 of 2006. It is on this petition that the order dated October 18, 2006 was passed which is impugned in appeal No.20 of 2007. The Commission observed that in a similar case the Maharashtra Electricity Regulatory Commission had permitted supply of surplus available with a CPP through a dedicated line without any distribution license and that the High Court of Bombay in Writ Petition No. 882 of 2005, set aside the order of Maharashtra Electricity Regulatory Commission and declared that the CPP could not sell its power to a third party consumer unless it obtains a license from the Maharashtra Electricity Regulatory Commission. The Commission also observed that an SLP from the judgment of Bombay High Court has been dismissed by the Supreme Court. The Commission disposed of the Petition No. 94 of 2006 by directing that the appellant No.1 could seek open access to source their supply from a generating station other than a licensee of the area and closed the matter. The review petition, as mentioned earlier was dismissed by an order dated April 03, 2007. It is reiterated in this impugned order that every captive generating plant has a right of open access for the purpose of carrying electricity from its CPP to the “destination of its use” as provided by Section 9(2) of The Electricity Act but that this provision does not entitle the Satna Cement Works to supply its excess power to the appellant No.1 without a license for this purpose. It is also observed that although the two appellants were willing to hand over

the proposed dedicated line to the second respondent but that would not amount to fulfilling the requirement of law.

3. The appellants refer to the National Electricity Policy 2005 which inter alia says that the captive generating plants should be permitted to sell electricity to licensees and consumers when they are allowed open access by SERCs under Section 42 of the Act [Para (5.7)(c)] and further that such consumers should have been allowed open access under Section 42 who may enter into agreement with any person for supply of electricity on such terms and conditions, including tariff, as may be agreed upon by them and that while making Regulations for open access in distribution, the SERCs will also determine charges and cross subsidy charges as required under Section 42 of the Act. According to the appellants, Section 9(2) should be interpreted in such a way that “destination of its use” can include other person or consumers to whom supply can be made through open access. It is also contended by the appellants that there is no requirement of a license being obtained for this purpose. It also contends that the judgment of High Court of Bombay was not applicable to the petition made by the appellants. The appellant also reiterates that it cannot avail of supply either through the grid or through the existing system of State distribution licensee, i.e. respondent No.2, as it needs to ensure un-interrupted quality supply of power to efficiently and economically run its

manufacturing operations. As per the appellants there is nothing in the Act that prohibits or forbids supply of power from Satna Cement Works to the appellant No.1.

4. The respondent No.2 is contesting these appeals. On behalf of respondent No.2 it is contended that Section 9 of The Electricity (Supply) Act 2003 contemplates right to open access for the purpose of carrying electricity from a CPP to the destination of its use while surplus generation can be sold to the distribution licensee as per Regulations, that the appellant No.1 is required to seek open access to source power from appellant No.2, that open access is allowed if the power supply of a generating company or any licensee other than a distribution licensee flows through grid of the distribution licensee, that seeking “open access” for supplying power through a dedicated feeder without connectivity with the grid of respondent No.2 does not qualify within the frame work of MPERC (Terms and Conditions for inter State open access in MP) Regulations 2005, that when the entire proposed line will lie in the premises of the two appellants its control would continue to be with the two appellants and thus will be an isolated line and respondent No.2 will have no mechanism to monitor the flow of electricity from the 132 kV HT consumer to the 33 kV consumer and that same cannot be permitted due to tariff difference and possibility of suppression of maximum demand on account paralleling.

5. The controversy has become simple by the amendment in Section 9 of The Electricity Act 2003 caused by The Electricity (amendment) Act 2007 dated 28.05.2007 which came into force on 15.06.2007. Section 9, which deals with captive generation, now has the following proviso:

“PROVIDED FURTHER that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under sub-section (2) of section 42.”

6. Therefore the consumer can now obtain electricity from a CPP and the CPP does not require a license for supply of electricity generated by it to another consumer. Such supply only has to be regulated by Regulations under sub-section 2 of Section 42. The basic ground for denying permission to the appellant No.2 to supply electricity to appellant No.1 from its CPP was the absence of such license. The basic objection of the Commission to grant of permission for supplying electricity from the CPP of appellant No.2 to appellant No.1 has therefore come to an end.

7. We now have to see whether there is any other bar for the appellants to get their need fulfilled. Section 42 deals with open access. Section 42 has also undergone a simultaneous amendment

and as per this amendment, open access can be allowed subject to payment of surcharge. The appellants are willing to pay the surcharge. The appellants are also willing to pay all other charges which they may be required to pay under the Regulations that may be framed for the purpose.

8. The respondent No.2 had a strong objection to the proposal of the appellants on the ground that the appellant No.2, under the garb of supplying power from its own CPP may supply the power received by it from the respondent No.2 to the appellant No.1 and thereby make profit. The appellants have stated in so many words that on the construction of the dedicated feeder line the same would be handed over to the respondent No.2. This obviously means that respondent No.2 will have its control over the line. The respondent No.2 can make its own switching and metering arrangements as may be necessary for checking the supply of electricity to the two appellants by it as well as consumption and supply of electricity by the appellant No.2.

9. It is true that the supply of electricity from the CPP of appellant No.2 to the appellant No.1 will not be made through the existing grid or the lines of the respondent No.2. Therefore open access, as it is generally understood, will not be required through the grid or a distribution line. Nonetheless, since the dedicated

feeder line will be operated, maintained and will eventually belong to respondent No.2, the respondent No.2 can also impose such charges as may be imposed for open access through its lines.

10. We, therefore, set aside the impugned orders and dispose of the two appeals holding that appellant No.2 is entitled to supply electricity from its CPP to the appellant No.1 subject to the payment of charges as imposed by Regulations framed under Section 42, of The Electricity Act, 2003, including the charges mentioned above, and subject to such control of the respondent No.2 as may be necessary to avoid any loss to the respondent No.2 by possible re-sale of electricity supplied by it.

Pronounced in open court on this 22nd day of August, 2007.

**(Mrs. Justice Manju Goel)
Judicial Member**

**(Mr. H. L. Bajaj)
Technical Member**

The End