

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

DFR No. 1929 of 2019

Dated: 3rd March, 2020

**Present: Hon`ble Mrs. Justice Manjula Chellur, Chairperson
Hon`ble Mr. S.D. Dubey, Technical Member(Electricity)**

In the matter of:

**Jaipur Vidyut Vitran Nigam Limited
The Chairman and Managing Director
Vidyut Bhawan, Jyoti Nagar
Jaipur – 302005**

.... Appellant(s)

Versus

**1 Rajasthan Electricity Regulatory Commission
Vidyut Viniyamak Bhawan,
Sahakar Marg, Near State Motor Garage,
Jaipur, Rajasthan 302001**

**2 M/s Sunbeam Auto Pvt. Ltd.
SPI-D, RIICO 1A, Tapukada
Alwar, Bhiwadi - 301707**

..... Respondent(s)

Counsel for the Appellant(s) : Mr. Ajatshatru S. Mina

Counsel for the Respondent(s) : Mr. S. Vallinayagam for R.2

ORDER

1. The instant Appeal came to be filed by Jaipur Vidyut Vitran Nigam Limited aggrieved by impugned order dated 28.02.2019. At the DFR stage itself, Respondent No.2 raised an objection contending that the appeal is not maintainable.

2. The facts, which led to filing of this appeal, in brief, are as under:

Admittedly, the 2nd Respondent is the HT consumer of electricity having Contract Demand of 3500 KVA with the Appellant. It entered into an agreement on 10.10.2011 with the Appellant-Discom for supply of power in terms of above Contract of Demand.

3. Apparently, consumer company made an application for energy drawl from open access through IEX and it was considered as short term open access (STOA) consumer. Admittedly, in terms of Regulation 26(vii) of the RERC (Terms and conditions for Open access) Regulations 2016 (for short "**Regulations of 2016**"), every short term open access consumer shall provide the injection/drawl schedule (block-wise maximum power) for inter-State transactions every day to SLDC, RDPPC and the Distribution Licensee before 10:00 am of the day

preceding the day of drawl/injection as per the open access capacity sanctioned.

4. The dispute pertains to 30.11.2016. The 2nd Respondent made a bid of 2.4 MW round the clock for the drawl to be made on 30.11.2016. Apparently, there was a real time transmission curtailment from 17:00 hrs to 24:00 hrs, therefore, instead of 2058 KW only 1907 KW was approved by IEX for the above said time blocks. Therefore, the Appellant in the billing month of December 2016 levied charges amounting to Rs.6,15,377/- as per Code No. 104. This was the penalty levied for excess capacity utilisation.

5. Aggrieved by the said levy, the 2nd Respondent-Consumer approached SLDC contending that there was no formal curtailment message to regulate the load was received by 2nd Respondent for the delivery date of 30.11.2016, therefore there was no mistake on the part of it and requested that total admissible drawl should not be reduced and no penalty shall be levied by the Jaipur Discoms. However, the Appellant Discom contends that the 2nd Respondent, in fact, has concealed the receipt of e-mail pertaining to real time transmission curtailment.

6. On the said representation of the Appellant, SLDC by Order dated 11.10.2017 opined that there was no mistake on the part of the 2nd Respondent-consumer since it had no information about real time transmission curtailment and further opined that the total admissible drawl should not be reduced.

7. Apparently, the Appellant did not challenge this order dated 11.10.2017 passed by SLDC. On the other hand, it approached State Power Committee under Regulation 30(2) of Regulations of 2016 seeking reversal of the finding dated 11.10.2017.

8. It is not in dispute that 2nd Respondent-consumer sought for compliance of the Order dated 11.10.2017 and also sought for refund of the amount recovered by the Appellant from it. When amount was not refunded by the Appellant, it approached Respondent-Rajasthan Electricity Regulatory Commission/RERC for compliance of order dated 11.10.2017 under Section 142 of the Electricity Act, 2003 (for short "**the Act**"). By virtue of Order dated 28.02.2019, the RERC directed the Appellant to refund the amount collected by it from the 2nd Respondent-consumer.

9. The present appeal is filed against the Order dated 28.02.2019, which in fact was for compliance of Order dated 11.10.2017.

10. According to the 2nd Respondent-consumer in the absence of challenge to the order dated 11.10.2017 now it is not open to the Appellant to challenge the impugned order, and it is nothing but going beyond the original order dated 11.10.2017, which remains unaltered till date. Therefore, the 2nd Respondent contends that the Appellant cannot challenge the order of SE (SOLD) in an appeal filed against the order directing compliance of the order dated 11.10.2017.

11. As against this, learned counsel for the Appellant contends that though it did not approach Respondent-RERC challenging the order dated 11.10.2017, it had approached the State Power Committee, as stated above, seeking reversal of the findings given by SLDC in the order dated 11.10.2017. They have placed on record the Regulations of 2016, as mentioned above. The very title of these regulations indicates that it pertains to terms and conditions for open access regulations of 2016.

12. The controversy seems to be “*whether there was real time transmission curtailment intimation in terms of procedure to the 2nd Respondent-Consumer?*”

13. The terms and conditions of open access regulations may not apply to the dispute in question. What one has to see is whether the 2nd Respondent-consumer is justified in saying that it had no message of real time transmission curtailment pertaining to 30.11.2016.

14. To decide the controversy in issue one has to see the provisions of Electricity Act, 2003. Section 32 of the Act refers to functions of State Load Despatch Centre, which reads as under:

"Section 32. (Functions of State Load Despatch Centres): --- (1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.

(2) The State Load Despatch Centre shall –

(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;

(b) monitor grid operations;

(c) keep accounts of the quantity of electricity transmitted through the State grid;

(d) exercise supervision and control over the intra-State transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.

(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.”

15. Section 33 refers to compliance of directions, which reads as under:

“Section 33. (Compliance of directions): --- *(1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.*

(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the State Load Despatch Centre under sub-section (1).

(3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.

(4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation

to any direction given under sub-section (1), it shall be referred to the State Commission for decision:

Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.

(5) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (1), he shall be liable to a penalty not exceeding rupees five lacs."

16. Reading of the above provisions of the Act especially sub-section (4) of Section 33 clearly indicate that if there is any dispute pertaining to safety, security and integrated operation of the state grid or in relation to any direction given under sub-section (1) by the State Load Despatch Centre, such dispute has to be referred to the State Commission for decision. Therefore, primarily the Appellant seems to have approached the wrong forum i.e., the State Power Committee instead of approaching State Commission for redressal of dispute between the parties.

17. In the absence of the Appellant approaching the right forum whether the present appeal could be entertained?

18. Apparently, the present order dated 28.02.2019, which is impugned, was passed under Section 142 of the Act when 2nd

Respondent-consumer approached for implementation of order dated 11.10.2017 passed by the concerned authority. The Appellant seems to have reversed/adjusted the payment/penalty amount already received by it from 2nd Respondent-consumer alleging violation of message pertaining to real time transmission curtailment for the date 30.11.2016.

19. In the above circumstances, we are of the opinion that the present appeal is not maintainable. Therefore, the Appeal under DFR is dismissed. However, we reserve liberty to the Appellant to approach proper forum in accordance with the provisions of the Electricity Act if they intend to do so.

20. No order as to costs.

21. Pronounced in the Open Court on this the 3rd day of March, 2020.

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

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REPORTABLE / NON-REPORTABLE