

Judgment in Appeal No. 169 of 2013

In the Appellate Tribunal for Electricity at New Delhi
(Appellate Jurisdiction)

Appeal No. 169 of 2013

Dated: 1st July, 2014

Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Justice Surendra Kumar, Judicial Member

In the matter of:

GRIDCO Limited,
Janpath,
Bhubaneswar-751022
Odisha.

.....

Appellant/Respondent

Vs.

1. M/s. Bhushan Power & Steel Limited (BPSL),
A Company incorporated under the
Provisions of the Companies Act, 1956,
Having its Registered Office at 4th Floor,
Tolstoy House, Tolstoy Marg,
Connaught Place, New Delhi-110 001.

Respondent No.1/
Petitioner

2. Odisha Power Transmission Corporation
Limited (OPTCL), Janpath, Bhubaneswar,
Odisha -751022.

3. Central Electricity Regulatory Commission
Chanderlok Building, Janpath,
New Delhi-110 001.

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Respondents

Counsel for the Appellant(s) : Mr. Raj Kumar Mehta
Ms. Ishita Dasgupta

Counsel for the Respondent (s) : Mr. Rajiv Yadav for Respondent No.1
Mr. K.S. Dhingra for Respondent No.3.

JUDGMENT

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant appeal under Section 111 of the Electricity Act, 2003 is directed against the order dated 09.05.2013, in Petition No. 163/MP/2012 passed

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by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') by which the learned Central Commission rejected the objections raised by the appellant to the maintainability of the petition and decided to proceed with the adjudication of the matter on merits.

2. M/s. Bhushan Power & Steel Ltd. (BPSL), respondent no.1 herein, who was petitioner before the Central Commission, filed a petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulation 20 of the CERC (Open Access in Inter-State Transmission) Regulations, 2008 towards unpaid unscheduled interchange charges (U.I. charges) for the period ranging from 28.08.2005 to 31.12.2006.

3. In the said petition, Central Commission was requested to direct GRIDCO Limited, appellant herein, and Orrissa Power Transmission Corporation Limited (OPTCL), respondent no.2 herein, to release the payment of Rs. 5,75,76,584/- alongwith interest @ 18% per annum calculated from the due date of pending U.I. bills and uptill the actual payment thereof and pass such further order as the Central Commission deems fit. The learned Central Commission, vide impugned order dated 09.05.2013, after analyzing different aspects of the matter and citing sufficient reasons held that the present petition is neither barred by limitation nor does it suffer from delay or laches and further held that the Central Commission is the only forum having jurisdiction to adjudicate the issues raised in the petition. In the impugned order, the learned Central Commission found that there is a controversy regarding availability of data for working out and verifying the data needed for adjudication of the petitioner's claim and thought it proper to take assistance of the technical experts in the investigation of the petitioner's claim. It has been observed in the impugned order that Member Secretary, Eastern Regional Power Committee, who is responsible for the maintenance of the U.I. energy accounting at regional level is considered to be most appropriate authority for this purpose and directed the Member Secretary to investigate the petitioner's claim (Bhushan Power & Steel Limited) and submit a report to the Central Commission latest by 20.06.2013 for its consideration. It has further been provided in the impugned order that the Member Secretary shall investigate the

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U.I. Charges recoverable and payable by the petitioner Bhushan Power & Steel Limited for the entire period during which short-term inter-State open access was availed by it. The parties have been directed to render necessary assistance to the Member Secretary in the said investigation and the parties have further been directed to appear before the Member Secretary on 20.05.2013 along with the available data in their possession in support of their respective claims. It has been made clear by the Central Commission in the impugned order that the investigation by the Member Secretary conforms to the provisions of Regulation 35 of the 2004 Regulations on which heavy reliance has been placed by the GRIDCO and OPTCL (who were respondents before the Central Commission). While passing the impugned order, the learned Central Commission has taken the view that the assistance of Member Secretary and for that matter any other person or authority can be sought by the Central Commission without a provision analogous to Regulation 35 of the 2004 Regulations. The Central Commission by the impugned order listed the petition for hearing on merits on the next date. It is this order of the Central Commission which has been impugned and assailed before us by the GRIDCO Limited.

4. The appellant-GRIDCO, during the pendency of the aforesaid petition raised the objection to the maintainability of the petition saying that the petition is not maintainable since Section 79 (1) (f) of the Electricity Act, 2003 only applies to disputes between Generating Companies and Transmission Licensees and the present case is not between a Generating Company and Transmission Licensee. The CERC (Open Access in Inter-State Transmission) Regulations, 2008 came into the force only in 2008 and the said Regulations, therefore, have no application to the dispute raised by the respondent no.1 M/s. Bhushan Power & Steel Limited in the present petition. In view of Regulation 18 of CERC (Open Access in Inter-State Transmission) Regulation, 2004, which was in force at the relevant time, dispute with regard to segregation of the U.I. charges between the embedded entities in the State falls within the jurisdiction of the State Commission, namely, Orissa Electricity Regulatory Commission. Since the GRIDCO has already settled the composite bill in respect of Regional U.I. Pool Account with regard to the inter-State transactions in terms of Regulation 18 (ii) on weekly basis as that time

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Regulation 18 of the CERC (Open Access in Inter-State Transmission) Regulation, 2004 was in force. The dispute in the present case relates to segregation of the UI charges between the embedded entities in the State and falls within the jurisdiction of the State Commission, namely, Orrissa Electricity Regulatory Commission. The petition is also not maintainable in view of Regulation 35 of the CERC (Open Access in Inter-State Transmission) Regulation, 2004 which provides that all complaints regarding any matter related to open access in Inter-State Transmission shall be directed to the Member Secretary, Regional Electricity Board or Regional Power Committee of the region, as the case may be in the first instance and only if the Member Secretary, Regional Electricity Board or Regional Power Committee, as the case may be, is unable to resolve, the matter shall be referred to the Commission for decision. The other objection raised to the maintainability of the petition was that the petition is barred by limitation and / or suffers from gross delay and latches inasmuch as the claim of M/s. Bhushan Power & Steel Limited pertained to the period 2005-06 whereas the petition was filed in the year 2012.

The respondent no.2 OPTCL and one SLDC, who was a respondent before the Central Commission but has not been impleaded in the instant appeal before us, in addition to the preliminary objections raised by the GRIDCO also urged that 'Special Energy Meters' of 0.2 accuracy class required for U.I. Accounting were not installed and M/s. Bhushan Power & Steel Limited executed an agreement for short term open access on 05.07.2006, so the claim for the period prior to 05.07.2006 is not maintainable.

5. We have heard at length Shri Raj Kumar Mehta, learned counsel for the appellant, Shri Sanjay Sen, learned Senior Advocate, Shri Rajiv Yadav, Advocate for the respondent no.1 and Shri K.S. Dhingra, learned counsel for the respondent no.2 and have meticulously perused the record and respective written submissions filed by the rival parties.

6. The following issues arise for our consideration.

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- A. Whether the Central Commission has jurisdiction to entertain a petition under Section 79 (1) (f) of the Electricity Act, 2003 in a case in which the dispute is not between a 'Generating Company' and a 'Transmission Licensee'?
- B. Whether the CERC (Open Access in Intra-State Transmission) Regulations 2008, which came into force only in 2008 have any application to the dispute raised by respondent no.1/petitioner M/s. Bhushan Power & Steel Limited?
- C. Whether in view of Regulation 18 of the CERC (Open Access in Inter-State Transmission) Regulations, 2004 which was in force at the relevant time, the disputes with regard to segregation of U.I. Charges between the embedded entities of the State falls within the jurisdiction of the State Commission, namely, Orissa Electricity Regulatory Commission?
- D. Whether the petition before the Central Commission was maintainable in view of Regulation 35 of the CERC (Open Access in Inter-State Transmission) Regulations, 2004?
- E. Whether the Central Commission was justified in entertaining the petition even though the claim was barred by limitation and/ or suffers from gross delay or latches?
- F. Whether the claim of the respondent no.1 for the period prior to 05.07.2006 is not maintainable due to non-installation of the Special Energy Meters with 0.2 accuracy class required for U.I. Accounting?

ISSUE NO.A- REGARDING JURISDICTION OF THE CENTRAL COMMISSION

7. The main contentions raised on behalf of the appellant are as under:-

7.1. that the Central Commission erred in rejecting the appellant's objections to the maintainability of the petition and deciding to proceed with the adjudication of the matter on merits.

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7.2 that the learned Central Commission erred in holding that the petition filed by the respondent no.1 under Section 79 (1) (f) of the Electricity Act, 2003, gives power to the Central Commission to adjudicate upon the disputes between the Generating Company and Transmission Licensees.

7.3. that unless the word 'involving' in Section 79 (1) (f) is read as 'between' and the word 'or' in Section 79 (1) (f) is read as 'and', the provision contained in Section 79 (1) (f) would become vague /uncertain and lead to absurdity.

7.4. that in such a case, even a money dispute between a private party and a Generating Company relating to Inter-State Transmission of Energy pursuant to Open Access can also be brought within the fold of Section 79 (1) (f) of the Electricity Act, 2003.

7.5. that under Section 79 (1) (f) of the Electricity Act, 2003, the Central Commission can only adjudicate disputes directly 'connected with' regulation of Inter-State Transmission. The claim of the respondent no.1 is a purely money claim and as such would not fall under Section 79 (1) (f) of the Electricity Act, 2003 which only envisages disputes of a regulatory nature and not purely money claims.

8. **Per Contra** Shri Rajiv Yadav, the learned counsel for the respondent no.1/petitioner has made the following contentions:-

8.1. that the GRIDCO's contention to the effect that the word 'involving' in Section 79 (1) (f) of the Electricity Act, 2003 must be read as 'between' because the word 'involving' will render the scope of Section 79 (1) (f) too wide is against the law and will lead to absurd results. This contention of the appellant is opposed to the ratio of PTC India Limited Vs. Central Electricity Regulatory Commission (2010) 4 SCC 603, (Constitution Bench of Five Judges) wherein the Hon'ble Supreme Court has, in para 17, observed that the Electricity Act, 2003 is enacted as an exhaustive code on all matters concerning electricity. It repeals the Electricity Act, 1910; the Electricity (Supply) Act, 1948 and the Electricity

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Regulatory Commissions Act, 1998. The Electricity Act, 2003 mandated the establishment of independent and transparent regulatory mechanism and has entrusted wide ranging responsibilities with the Regulatory Commission. This Act has distanced the Government from all forms of regulation, namely, licensing, tariff regulation, specifying Grid Code, facilitating competition through open access, etc. The Hon'ble Supreme Court has characterized the adjudicatory powers of Regulatory Commission as 'mandatory functions' under the Act, which have to be exercised even in the absence of any applicable regulation.

8.2. that the substitution of words as suggested by GRIDCO is opposed to the established tenets of statutory interpretation. It has been correctly observed in the impugned order that 'one of the fundamental principles of statutory interpretation is that a construction which requires addition or substitution of words has to be avoided'. This Appellate Tribunal in Uttar Haryana Bijli Vitran Nigam, Haryana Vs. NTPC Limited and Ors. 2011 ELR (APTEL) 0378 in para no. 19 thereof observed as follows:-

"19. It is a well-settled principle of law, as laid down by the Hon'ble Supreme Court, that the Court cannot read anything into the statutory provisions which is plain and unambiguous. We have to find out the legislative intent only from the language employed in the statutes. Surmises and conjectures cannot be resorted to for interpretation of statutes....."

8.3. that the Electricity Act, 2003 has been enacted by the parliament and hence State Commission or Central Commission or this Appellate Tribunal has no jurisdiction to substitute some words by the words prescribed in Section 79 (1) (f) of the Electricity Act, 2003. Section 79 (1) (f) of the Electricity Act, 2003 deals with the functions of the Central Commission. Section 86 (1) (f) of the Electricity Act, 2003 deals with the functions of the State Commission. The Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited Vs. Essar Power Ltd. (2008) 5 SCC 755 held (in para 60 thereof) that after 10.06.2003, there can be adjudication of dispute between licensees and generating companies can only be done by the State Commission or the Arbitrator or Arbitrators nominated by it. All disputes, and not merely those pertaining to matters referred to in Clauses (a) to (e) and (g) to (k) in Section 86 (1) of the Electricity Act, 2003 between the licensees and generating companies can only be resolved by the State Commission or an

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Arbitrator appointed by it. There is no restriction in Section 86 (1) (f) about the nature of the dispute.

9. On the issue of jurisdiction of the Central Commission to adjudicate, the dispute under Section 79 (1) (f) of the Electricity Act, 2003, Shri K.S. Dhingra, learned Counsel for the CERC -respondent no.3 has additionally submitted as under:-

9.1. that the Central Commission has the jurisdiction to adjudicate upon the disputes on fulfillment of the following conditions, namely, :-

- (a) that the dispute should involve generating companies or the transmission licensee, and
- (b) that the dispute should be in regard to the matters connected with clauses (a) to (d) of sub-Section (1), that is, Regulation of Tariff of the generating companies mentioned in clauses (a) and (b) or regulation of inter-State transmission of electricity under clause (c) or determination of tariff for inter-State transmission of electricity under clause 'D'.

9.2. that a perusal of clause (f) of sub-Section 1 of Section 86 of the Electricity Act, 2003 reveals that while conferring power of adjudication of disputes on the State Commission, the Parliament has used the word 'between' in contrast to the word 'involving' used in clause (f) of sub-Section (1) of Section 79 of the Electricity Act, 2003. Similarly clause (f) of sub-Section (1) of Section 86 uses the conjunctive word 'and' as against the disjunctive word 'or' used in clause (f) of sub-Section (1) of Section 79 of the Electricity Act, 2003. According to the appellant the word 'involving' appearing in Clause (f) is to read as 'between' and the word 'or' as 'and'.

9.3. that the fundamental principle of interpretation of statutes is that the words used in the statute have to be given their plain dictionary meaning as observed by Privy Council in *Pakala Narayanasami Vs. Emperor* AIR 1939 PC 47 that when the meaning of the words is plain, it is not the duty of Courts to busy themselves with supposed intentions.

9.4. that the rule of literal interpretation has been explained by the Hon'ble Supreme Court in *Nelson Motis Vs. Union of India*, AIR 1992 SC 1981, observing

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that it is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. In *Ombalika Das Vs. Hulisa Shaw* (2002) 4 SCC 539, the Hon'ble Supreme Court unequivocally declared that resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the language employed by the legislature is doubtful or susceptible of meanings more than one. However, when the language is plain and explicit and does not admit of any doubtful interpretation, the Supreme Court cannot, by reference to an assumed legislative intent, expand the meaning of an expression employed by the legislature. The same view was held in *Keshavji Ravji & Co. Vs. CIT* (1990) 2 SCC 231 and also in *Commissioner of Income Tax Vs. Tara Agencies* (2007) 6 SCC 429.

9.5. that as per P. Ramanatha Aiyar's *Advanced Law Lexicon* (Third Edition), the word 'involve' is also used, according to the context, as synonymous with word 'affected'. In the context of clause (f) of sub-Section (1) of Section 79, the word 'involving' can be said to have been used synonymously with the word 'affecting' because the regulatory functions discharged under these clauses directly relate to generating companies and the transmission licensees. The jurisdiction conferred upon the Central Commission, by virtue of Section 79 of the Electricity Act, 2003, to adjudicate upon the specific nature of disputes, cannot be whittled down, irrespective of the consequences.

9.6. that the adjudication of money disputes is incidental to power of adjudication of disputes arising out of regulatory power by the Central Commission under Section 79 (1) clauses (a) to (d). In *Kharg Ram Panchayat Samiti Vs. State of West Bengal* reported in [(1987) 3 SCC 82] it was held that power to do a thing necessarily carries with it the power to regulate the manner in which the thing may be done.

9.7. The appellant's contention seeking substitution of word 'involving' with 'between' and the word 'or' with 'and' is against the basic tenets of interpretation of statutes as this Tribunal is not competent to add, delete or substitute any of the words given in the statute like Electricity Act, 2003 or the State Regulations or the Central Regulations.

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10. The learned Central Commission's findings on this issue in the impugned order are as under:-

10.1. that as per observation of the Hon'ble Supreme Court in Ramesh Mehta Vs. Sanwal Chand (2004) 5 SCC 409, in "suitable cases", the Court may add or omit or substitute words to make a statute workable. In the case in hand, the Central Commission found no reason to hold that without substituting the word 'involving' with the word 'between' and word 'or' with word 'and', clause (f) of sub-Section (1) of Section 79 of Electricity Act, 2003 becomes unworkable or leads to any uncertainty or absurdity. Therefore, the expression 'disputes' involving 'Generating Company' or 'Transmission Licensee' in clause (f) means the disputes which entangle or include Generating Companies or Transmission Licensees. The Central Commission has further observed that this interpretation is logical and stands to reason when seen in the light of the fact that the entities associated with clauses (a) to (d) of sub-Section (1) of Section 79 of the Electricity Act, 2003 are either Generating Companies or the Transmission Licensees and there is absolutely no warrant to substitute the word 'involving' with word 'between' and such interpretation shall be totally out of place and defeat the purpose and object of the power or function of adjudication conferred on the Central Commission.

10.2. When a Generating Company or Transmission Licensee feels aggrieved in connection with any matter listed in clauses (a) to (d) of sub Section 1 of Section 79 of the Electricity Act, 2003, such Generating Company or Transmission Licensee has to approach the Central Commission for adjudication of dispute under Section 79 (1) (f) of the Electricity Act, 2003. Since the respondent no.1/petitioner is a Generating Company as defined under sub-Section (28) of Section 2 of Electricity Act, 2003 and, therefore, is competent to approach the Central Commission for adjudication of the said claim.

11. After carefully considering and pondering over the rival contentions of the parties, we are of the view that the Central Commission or State Commission or this Appellate Tribunal has no power or jurisdiction to add or delete or substitute any word in any provisions of the Electricity Act, 2003 or any State or Central

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Regulations, being in the nature of subordinate legislations. This Tribunal is empowered and competent to interpret any provision as it thinks proper but it cannot add, delete or substitute any word in any of the provisions of the Act or Regulations. This Tribunal is expected and required by law to interpret the provision or any Section of law as is provided therein. Section 79 (1) (f) of the Electricity Act, 2003 empowers the Central Commission to adjudicate upon disputes involving generating companies or transmission licensees in regard to matters connected with Clauses (a) to (d) of this Section and refer to any dispute for arbitration. The respondent no.1/petitioner filed the present petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulation 20 of the CERC(Open Access in Inter State Transmission) Regulations, 2008 towards unpaid unscheduled inter-change charges (U.I. charges) for the period ranging from 28.08.2005 to 31.12.2006. Even at the beginning of the hearing of the petition, the appellant GRIDCO objected to the maintainability of the petition saying that the petition is not maintainable as Section 79 (1) (f) of the Electricity Act, 2003 only applies to disputes between generating companies and transmission licensees and the present case is not between generating company and a transmission licensee. The objection of the appellant GRIDCO is against the very spirit of the provisions of Section 79 (1) (f) of the Electricity Act, 2003, which provision empowers the Central Commission to adjudicate on disputes involving generating companies or transmission licensees, meaning thereby that there may be dispute between generating companies inter se or between generating company and transmission licensee or between the transmission licensees themselves and in all such matters, the Central Commission shall have powers to adjudicate such kind of disputes. We are bound to give effect to the provisions as provided in Section 79 (1) (f) of the Electricity Act, 2003 and we cannot distract or deviate from the language employed in the said provision.

12. We agree to the view adopted by the Central Commission while deciding this issue and there is no reason to deviate or differ from the said view or finding of the Central Commission recorded in the impugned order. This issue no. A is accordingly decided against the appellant approving the Central Commission's view that the Central Commission is competent and empowered to entertain and

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adjudicate upon the disputes raised in the petition filed by the respondent no.1./petitioner.

13. ISSUE NOS. B & C

Since both these issues are inter-connected or inter-woven and relate to the applicability of Regulation 18 of CERC (Open Access in Inter-State Transmission) Regulations, 2004 to the matter in hand, we are taking and deciding them together.

14. Learned counsel for the appellant has made following contentions on these issues.

14.1. that CERC (Open Access in Inter-State Transmission) Regulations, 2008, which came into force in 2008, have no application to the dispute raised in the present petition.

14.2. that GRIDCO has already settled the composite bill in respect of Regional U.I. Pool Account with regard to the Inter-State transactions in terms of Regulation 18 (ii) of CERC (Open Access in Inter-State Transmission) Regulations, 2004 on weekly basis and the dispute in the present case relates to segregation of the U.I. charges between the embedded entities in the State

14.3. that the dispute with regard to segregation of the U.I. charges between the embedded entities in the State falls within the jurisdiction of the State Commission viz-Orissa Electricity Regulatory Commission.

15. Per contra the counter submissions raised on behalf of respondent nos. 1 and 3 are as under:-

15.1. that the present dispute pertains to non-payment of U.I. charges legitimately due to M/s. Bhushan Power & Steel Ltd/respondent no.1 in terms of the CERC (Open Access in Inter-State Transmission) Regulations, 2004 which Regulations were notified by the CERC in discharge of its functions 'to regulate

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Inter-State transmission of electricity'. U.I. mechanism was evolved by the CERC as a means to regulate Inter-State Transmission of electricity.

15.2. that the present petition has been filed under Section 79 (1) (f) of the Electricity Act, 2003 which empowers CERC to adjudicate *inter alia* disputes involving generating companies or distribution licensees and in regard to matters connected with Regulation of Inter-State Transmission of electricity since the present dispute involves a generating company and pertains to non-payment of U.I. charges, which are connected with Regulation of Inter-State Transmission, the present petition has rightly been filed before the CERC. Non-payment of U.I. charges has a direct bearing on Inter- State Transmission of electricity through open access- a domain exclusively reserved by the Electricity Act, 2003 for CERC. It is not in dispute that U.I. charges claimed by respondent no.1/petitioner pertains to a period 28.08.2005 to 31.12.2006, during which respondent no.1/petitioner was engaged in supply of electricity through Inter-State Open Access.

15.3. that there is nothing in Regulation 18 of CERC (Open Access in Inter-State Transmission) Regulations, 2004 (cited by the appellant GRIDCO) as would confer jurisdiction on the State Commission to the exclusion of Central Commission. All that Regulation 18 (ii) provides for is that in case of embedded customers, the settlement of U.I. claims shall be done at the State level.

15.4. that the dispute arose as a consequence of transactions in Inter-State transmission of electricity after availing of short term open access under the Open Access Regulations of respondent no.1. Regulation 3 of Open Access Regulations defines the extent of applicability of those regulations as under:-

“3. These regulations shall apply for access to Inter-State Transmission System”.

15.5. that on this issue, the Central Commission, in the impugned order in para 24 thereof, has observed that the dispute in case on hand relates to recovery of the U.I. charges for the transactions undertaken in terms of the 2004 Regulations, which were framed by this Commission in discharge of its function under clause (c) of sub-Section (1) of Section 79 of the Electricity Act, 2003. The dispute is

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thus connected with regulation of inter-State transmission of electricity which function is assigned to the Central Commission.

15.6. that U.I. charges have been specified by the Central Commission as a part of Availability Based Tariff (ABT). By virtue of Section 79 (1) (a) and (b) of the Electricity Act, 2003, the Central Commission has the power and jurisdiction to regulate tariff and the said dispute falls within the jurisdiction of the Central Commission.

15.7. that the appellant's contention, to the effect that dispute relating to recovery of U.I. charges raised by respondent no.1/petitioner, an intra-State embedded utility, falls within the jurisdiction of the State Commission only, is against law. The appellant has contended that since in accordance with Regulation 18 of CERC (Open Access in Inter -State Transmission) Regulations, 2004, segregation of the U.I. charges payable to the embedded State entities has to be done by the nodal agency in the State of Orissa, the dispute arising out of non-payment of such dues is within jurisdiction of the State Commission.

15.8. that in accordance with Regulation 21 of the CERC Regulations, 2004 for any mismatch between the scheduled and actual drawal at drawal point(s) and scheduled and the actual injection at injections point(s) is met from the grid and is to be governed by the Unscheduled Interchange (U.I.) mechanism applicable to the inter-State transactions. This Regulation 21 further provides that a separate bill for the U.I. charges would be issued to the direct customers and incase of embedded customers, a composite U.I. bill for the State as a whole is to be issued, the segregation for which for the embedded states entities is done at the State level.

15.9. that it is an undisputed fact that respondent no.1/petitioner's claim for recovery of the U.I. charges is the consequence of Inter-State transmission transactions conducted under the Open Access Regulations.

15.10. that Regulation 21 of the Open Access 2004 Regulations specifically provided that in case of any mismatch between the scheduled and the actual injection at the injection point(s) was to be governed by U.I. mechanism applicable to the inter-State transactions. Therefore, the U.I. charges and

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recovery thereof is an integral part of the inter-State transactions conducted under the Open Access Regulations.

15.11. that the appellant had collected the U.I. charges through a composite bill for the entities embedded with the State of Odisha in accordance with clause (2) of Regulation 21 of the Open Access 2004 Regulations and was required to disburse the same to the embedded entities in accordance with their entitlement. Respondent no.1/petitioner has alleged that it has not been paid the U.I. charges for over-generation in accordance with Regulation 21, though the U.I. charges, leviable for under-generation, had already been collected. Therefore, BPSL has in fact sought enforcement of Regulation 21 of the Open Access 2004 Regulations. As observed by the Central Commission in the impugned order, BPSL had sought "enforcement of regulations framed by this Commission." For this reason also, the dispute falls within the jurisdiction of the Central Commission.

15.12. that the State Commission in its order dated 27.02.2004 while granting permission for inter-State sale of power took note of BPSL's "no objection to accept U.I. pricing mechanism applicable to all inter-state transactions for open access customers." The appellant was party before the State Commission but did not raise any objection and as such it becomes bound by these observations.

15.13. that the Short Term Open Access Commercial Agreement was signed between the appellant and BPSL on 05.07.2006. The agreement provided that the U.I. charges would be applicable to sale of electricity by BPSL as extracted below:-

"2. ABT will be applicable to BPSL for above short-term transactions and will be guided by CERC Open Access Regulations, 2004 with its amendments issued from time to time. For smooth operation of transactions, however, as embedded customer, following commercial/operational stipulations are agreed.

3.(a) BPSL will endeavour to inject as per daily schedules as advised by SLDC.

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(b) *Any mismatch between the schedule and actual injection accepted by SLDC shall be governed by U.I. pricing mechanism. Such U.I. bills shall be prepared by SLDC on weekly basis. In case of under/over injection the U.I. payable/receivable will be settled after taking care of STU losses and wheeling charges.*

(c) *In the event of zero scheduling by BPSL/ERLDC, no U.I. mechanism shall be operative.....*

(d) *When the frequency falls below 49.4 Hz, BPSL shall endeavour to maximize its injection at least up to the level, which can be sustained, without waiting for the instructions of SLDC. Under ABT regime such injection shall be covered under U.I. mechanism.*

(e) *In the event of mismatch between the schedule and actual injection, the matter will be governed by U.I. regulation applicable.....”.*

15.14. that even in view of the agreement between the appellant and BPSL, the parties were bound by the applicable U.I. mechanism for commercial settlement of any mismatch between the schedule and actual injection by BPSL.

15.15. that, therefore, BPSL's claim seeking recovery of the U.I. charges falls within the scope of inter-State transmission of electricity under clause (d) of sub-Section (1) of Section 79 of the Electricity Act, 2003 and the Central Commission has the jurisdiction to adjudicate upon the dispute raised by BPSL.

16. Findings of the Central Commission on these issues (Issue nos. B & C) are as under:-

16.1. that the dispute in the case in hand relates to recovery of the UI charges for the transactions undertaken in terms of the 2004 Regulations, which were framed by Central Commission in discharge of its function under Section 79 (1) (c) of the Electricity Act, 2003 and the present dispute is thus connected with regulation of Inter-State Transmission of Electricity which function is assigned to the Central Commission.

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16.2. that the Central Commission did not find any merit in the GRIDCO's contention that adjudication of the dispute falls within the jurisdiction of the State Commission for the fact that it involves payment of UI charges to the petitioner which is an embedded Intra-State entity as Regulation 21 of 2004 Regulations provides for the methodology for recovery and disbursement of the UI charges payable/recoverable in the course of availing Inter-State Open Access. A separate bill for U.I. charges is issued to the direct customers and in case of the embedded customers, a composite UI bill for the State as a whole is issued, the segregation, for which, for the embedded State entities, is at the State level. Since the departmental authorities found that GRIDCO had received the U.I. charges for over generation for the State as a whole. However, segregation of the U.I. charges payable to and receivable by the embedded Intra-State entities was to be done by the concerned State Agency in terms of clause (11) of Regulation 21 of 2004 Regulations. Since the concerned State Agency has failed to act in accordance with this Regulation, the respondent no.1 / petitioner had to seek enforcement of Regulations framed by the Central Commission. The examination of the respondent no.1/ petitioner's claim is, therefore, within the exclusive jurisdiction of the Central Commission and not the State Commission.

17. The appellant's contention on these issues is that the CERC (Open Access in Inter State Transmission) Regulations, 2008 do not apply to the dispute raised in the present petition because the appellant GRIDCO Limited which is a wholly owned Company of the Government of Odisha and is carrying on the function of bulk supply of electricity to four distribution companies in the State of Odisha w.e.f. 01.04.2005, after the transfer of transmission business to Orissa Power Transmission Corporation Limited (OPTCL), vide notification dated 10.06.2005 of the Government of Odisha.

17.1. that GRIDCO has already settled the composite bill in respect of Regional U.I. Pool Account with regard to the inter-State Transactions in terms of Regulation 18 (ii) of CERC (Open Access in Inter State Transmission) Regulations, 2004 on weekly basis and since the dispute in the present case relates to segregation of U.I. Charges between the embedded entities in the State which

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falls within the jurisdiction of the State Commission viz. Orissa Electricity Regulation Commission.

17.2. Contrary to the appellant's contention, it has been argued on behalf of the respondent no.1 /petitioner that the present dispute pertains to non-payment of U.I. Charges legitimately due to the respondent no.1/petitioner in terms of the CERC (Open Access in Inter-State Transmission) Regulations, 2004, which Regulations were notified by the CERC in discharge of its functions to regulate inter-State transmission of electricity and U.I. mechanism was evolved by the CERC as a means to regulate Inter-State transmission of electricity. It is further clarified that the respondent no.1/petitioner M/s. Bhushan Power and Steel Limited (BPSL) filed the impugned petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulation 20 of the CERC (Open Access in Inter State Transmission) Regulations, 2008 towards unpaid, unscheduled inter-change charges (U.I. Charges) for the period ranging from 28.05.2005 to 31.12.2006. Thus, the impugned petition was for recovery of the outstanding dues along with interest. According to the respondent no.1/petitioner the bills for over injection of power had already been accounted for in the UI Pool Account of the State, whereby the appellant GRIDCO had received payments from Eastern Regional Load Dispatch Centre (ERLDC). The petitioner is alleged to have been deprived of its share of the U.I. Charges and continued retention of the U.I. charges received by GRIDCO from ERLDC amounts to its unjust enrichment at its expense.

17.3. As we have already noted above that at the initial stage, the appellant GRIDCO raised preliminary objections as to the maintainability of the petition before the Central Commission saying that the said petition is not maintainable because Section 79 (1) (f) of the Electricity Act, 2003 applies only to the disputes between Generating Company and Transmission Licensee. The next objection as to the maintainability of the petition raised by the appellant before the Central Commission was that since the claim of the respondent no.1/petitioner involves allocation of the U.I. charges to the respondent no.1/petitioner which is an embedded entity in the State and, therefore, the dispute falls within the jurisdiction of State Commission and for that reason the Central Commission does

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not have any jurisdiction. The third objection raised on behalf of the appellant before the Central Commission was that in terms of Regulation 35 of 2004 Regulations, the respondent no.1/petitioner had to first approach the Member Secretary, Eastern Regional Electricity Board or Easter Regional Power Committee as the case may be and in case the Member Secretary was unable to resolve the dispute, then only the Central Commission ought to have been approached by filing the petition. Since the respondent no.1 had not approached the Member Secretary and directly approached the Central Commission by filing the impugned petition, the impugned petition is not maintainable. The last objection raised by the appellant before the Central Commission was that the instant petition was time barred because the claim of the respondent no.1/petitioner pertained to the period 2005-06 and the petition was filed in February, 2012 with a delay of nearly six years. We have given the details of the aforesaid objections raised on behalf of the appellant before the Central Commission just to point out that no dispute was raised by the appellant as to which Regulations, namely, CERC (Open Access in Inter State Transmission) Regulations, 2004 or CERC (Open Access in Inter-State Transmission) Regulations, 2008 would apply. The Central Commission, by the impugned order, after discussing the objections of the appellant, on merits passed the impugned order and rejected the said objections and listed the matter for hearing on merits which order has been challenged before us by filing the instant appeal. The main point, raised by the appellant before the Central Commission, was about the jurisdiction and the Central Commission by the impugned order recorded a finding and came to the conclusion that since the present dispute pertains to non-payment of U.I. charges due to the respondent no.1/petitioner in terms of CERC (Open Access in Inter State Transmission) Regulations, 2004, the said petition is entertainable and the Central Commission has jurisdiction to decide the dispute raised in the said petition.

17.4. The next contention raised by the appellant before the Central Commission was that the adjudication of the present dispute falls within the jurisdiction of the State Commission for the fact that it involves payment of the U.I. Charges to the petitioner, which is an embedded intra-State entity, which was not accepted by the Central Commission finding no merits in the contention while passing the

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impugned order. The Central Commission in the impugned order clearly mentioned that Regulation 21 of 2004 Regulations provides for the methodology for recovery and disbursement of the U.I. charges payable/recoverable in the course of availing inter-State Open Access. Since the GRIDCO had received the U.I. charges for over-generation for the State as a whole, the segregation of U.I. charges payable to and received by the embedded intra-State entities was to be done by the State Commission in terms of clause 2 of Regulation 21 of 2004 Regulations. The respondent no. 1/petitioner sought enforcement of Regulations framed by the Central Commission. On these reasons, the learned Central Commission on examination of the petitioner's claim concluded that the said claim of the petitioner or the present dispute is within the exclusive jurisdiction of the Central Commission and not the State Commission. The learned Central Commission, in para no.26 of the impugned order, itself clearly mentioned that "it is pointed out that the State Commission is aware of the facts that the U.I. Charges were payable in accordance with the U.I. pricing mechanism applicable to inter-State transactions for open access customer and that the 2004 Regulations would govern the inter-State open access. These facts have been taken note of by the State Commission in its order dated 27.02.2004 while permitting the petitioner to use the intra-State Transmission network then belonging to GRIDCO".

17.5. Thus, we note that the Central Commission in the impugned order has clearly mentioned the facts of the present dispute and found that the present dispute falls within the jurisdiction of the Central Commission and not the State Commission as provided in CERC (Open Access in Inter-State Transmission) Regulations, 2004 and we agree to the findings recorded on these issues in the impugned order. We find force in the submissions raised on behalf of the respondent no.1/petitioner and respondent no.3 on these issues. We do not find any force in the aforementioned contentions of the appellant on these issues. Thus, issue nos. B & C are decided against the appellant.

18. **Issue No. D- Maintainability of Petition before the Central Commission under Regulation 35 of CERC (Open Access in Inter State Transmission) Regulations, 2004**

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This issue is whether the present petition before the Central Commission was maintainable in view of Regulation 35 of the CERC (Open Access in Inter State Transmission) Regulations, 2004. On this issue, the following contentions have been made on behalf of the appellant.

18.1. that Regulation 35 provides that in case of a dispute, Member Secretary, EREB will be approached in the first instance. It is only if the Member Secretary EREB/ERPC, as the case may be, is unable to resolve the dispute, then the matter can be reported to the Central Commission for a decision. The respondent no.1/petitioner could not by-pass the said Regulation 35.

18.2. that respondent no.1 filed the instant petition before the Central Commission without first approaching the Member Secretary, Eastern Regional Electricity Board (EREB) or Eastern Regional Power Committee (ERPC). The Central Commission has taken the erroneous view that Member Secretary does not have any power to adjudicate the dispute and the present petition, without first approaching the Member Secretary ERPC, is maintainable.

19. The Central Commission, on this issue in the impugned order, after consideration has observed as under:-

19.1. that as per Regulation 35 of 2004 Regulations, all complaints regarding unfair practices, delays, discrimination, lack of information, supply of wrong information or any other matter related to open access in Inter-State Transmission are to be directed to the Member Secretary of the Region, who shall investigate and endeavour to resolve the grievance and if the Member Secretary is unable to resolve, the matter shall be reported to the Central Commission for a decision. Thus the Regulation 35 clearly suggests that role assigned to the Member Secretary is of investigation of the dispute and thereafter of making efforts to resolve the same. The Member Secretary is expected to render assistance to the Central Commission in resolution of the disputes and he was not assigned any authority of adjudication of disputes. In fact such power of adjudication could not be delegated to Member Secretary in the light of specific prohibition under

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Section 97 of the Electricity Act, 2003. According to Section 97 of the Electricity Act, 2003, the Central Commission cannot delegate its power to adjudicate dispute under Section 79 and the powers to make Regulations under Section 178 of the Electricity Act, 2003. The Central Commission has plenary power of adjudication under the Electricity Act and, therefore, filing of the present petition before the Central Commission, without first approaching the Member Secretary, does not oust the jurisdiction of the Central Commission to adjudicate the dispute raised. The Central Commission can take assistance from any Authority including Member Secretary for adjudication of disputes brought before it, with a view to doing substantive justice to the parties, with or without a provision made in Regulation 35 of the 2004 Regulations.

20. **Per contra** the learned counsel for the respondent no.1/petitioner and respondent no.3 have submitted that a bare reading of Regulation 35 of Central Open Access Regulations 2004 read with its proviso suggests the following:-

All complaints in connection with the open access were to be made to the Member-Secretary, Regional Power Committee.

The Member-Secretary was required to investigate the complaints and make efforts to resolve the dispute.

In accordance with the proviso, in case the Member-Secretary was unable to resolve the dispute, the matter was to be reported to the Central Commission for a decision.

20.1. Thus, the Regulation 35 says that role assigned to the Member Secretary was of investigation of the dispute and thereafter of making efforts to resolve the dispute. The Member Secretary's role in the first instance was to act as a fact finding body and after ascertaining the fact to, conciliate between the parties to resolve the dispute. This provision had two purposes. Firstly, such disputes invariably involve technical issues which can be easily resolved by the Member-Secretary through persuasion etc. Secondly, the disputes would involve local issues and the Member-Secretary who closely co-ordinates with the entities in the region would be in a better position to conciliate between the parties. In this

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manner, the Member-Secretary rendered assistance to the Central Commission in resolution of the disputes.

20.2. The power of adjudication of disputes was not intended to be delegated to the Member- Secretary as such power could not be delegated to Member Secretary in view of the specific bar under Section 97 of the Electricity Act dealing with delegation of power. Presuming that the Member Secretary was to act as delegate of Central Commission to adjudicate the dispute, the Central Commission as delegator was not denuded of its power of adjudication and could itself exercise the power at any time concurrently with the Member Secretary which view is supported by **Ishwar Singh Vs. State of Rajasthan [(2005) 2 SCC 334]**, wherein the Hon'ble Supreme Court held that it is an accepted position in law that to 'delegate' to another is not to denude yourself. The delegating body will retain not only the power to revoke the grant but also power to act concurrently on matters within the area of delegated authority.

20.3. The Member-Secretary could not decide the claim for release of the UI charges, even if the claim was found to be justified, since his decision lacks enforceability.

20.4. The Central Commission, in the impugned order, has referred the dispute to the Member-Secretary, Eastern Regional Power Committee for investigation and it is sufficient compliance with the procedure specified under Regulation 35 of 2004 Regulations.

21. After considering the rival submissions of the parties, we do not find any force in the appellant's submissions and the submissions made on behalf of the respondent nos. 1 and 3 have merit to which we agree. Thus, we approve the findings recorded by the Central Commission on this issue and hold that the Central Commission was competent to pass the impugned order after considering Regulation 35 of Central Open Access Regulations, 2004. This Issue No. D is also decided against the appellant.

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22. ISSUE No. E - Claim Barred by Limitation

This issue is whether the present petition is barred by limitation and / or suffers from gross delay or latches?

22.1. On this issue, the following contentions have been raised by the appellant,

- (i) that the alleged claim of the respondent no.1/petitioner pertains to the period 2005-06 and the present petition has been filed in the year 2012 with a delay of about six years.
- (ii) that for a suit for recovery of money, the limitation prescribed under the Limitation Act, 1963 is three years and a suit for recovery of money would be barred by limitation as in the present case, the claim is beyond the prescribed period of limitation of three years.
- (iii) The respondent no.1/petitioner did not remain vigilant and slept over the matter for about six years and failed to explain the delay of six years in filing the impugned petition before the Central Commission.

23. Per contra, learned counsel for the respondent nos.1 and 3 have made the following submissions:-

that this Appellate Tribunal vide judgment dated 17.04.2013 in I. A. No. 262 of 2012 in Appeal No. 57 of 2009 (Gujarat Electricity Regulatory Commission Vs. Century Rayon & Ors.) has also held that the Limitation Act does not apply to proceedings under the Electricity Act. The relevant para 36 is extracted below:-

“36. From the above, it is clear that the Electricity Act and the Notification issued under the said special Act would certainly be construed to be a special law within the meaning of Section 29 of the Limitation Act. In view of the above, it has to be held that the Limitation Act would not apply to the Electricity Act. The limitation period prescribed for filing a review before this Tribunal under the powers conferred by this special Act is only 30 days without giving any power for condonation of the delay”

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24. The learned Central Commission, in the impugned order, has rejected the plea of the petition being barred by limitation or gross delay or latches by holding, in para no. 36 thereof, that the Electricity Act does not specifically lay down period of limitation for adjudication of disputes under Section 79 (1) (f) of the Electricity Act, 2003. The learned Central Commission has relied upon the case of **Sakuru Vs. Tanaji [(1985) 3 SCC 590]** in which the Hon'ble Supreme Court held that the provisions of Limitation Act, 1963 apply only to proceedings in 'Courts' and not to appeals or applications before bodies other than Courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure. The Hon'ble Supreme Court was dealing with a case in which it held that the Collector before whom the appeal was preferred by the appellant under Section 90 of the Act not being a Court, the Limitation Act, as such had no applicability to the proceedings before the Collector. Similar view was taken by the Hon'ble Supreme Court in the case of **Nityananda M. Joshi Vs. LIC [(1969) 2 SCC 199]** where the benefit of Section 5 of the Limitation Act was under consideration before the Hon'ble Supreme Court. Regarding proceedings before the Collector, it was held that Collector was vested with certain powers under CPC, the benefit of Section 5 of the Limitation Act was not given by the Hon'ble Supreme Court observing that no question of extending time could therefore arise.

25. After considering the various case laws on the point of applicability of Limitation Act to the proceedings before the Electricity Regulatory Commission, the learned Central Commission, in para 40 of the impugned order, has noted that the respondent no.1 / petitioner has been approaching the GRIDCO and OPTCL from time to time for settlement of its claims for payment of U.I. charges and has been diligently pursuing its claim for recovery of U.I. charges. The GRIDCO and OPTCL, who were respondents before the Central Commission, examined the respondent no.1/petitioner's claim departmentally and found that the petitioner was not paid the U.I. charges for over generation of electricity, though GRIDCO had received these charges for the State as a whole and was required to disburse them to the embedded Intra-State entities and at no stage, there was any denial

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of the liability to pay the U.I. charges or rejection of the claim. Hence they, being public authorities, cannot be permitted to defeat the claim of the petitioner on technical pleas of limitation etc. The Central Commission clearly recorded finding that the petitioner's claim cannot be held to be suffering from any reasonable delay or latches as petitioner has been diligently and reasonably pursuing the claim for U.I. charges and the preliminary objection of limitation has been rejected in the impugned order.

26. We have deeply and cautiously considered and pondered over the rival submissions of the parties including the case laws cited on the issue. We have given anxious consideration to the findings recorded by the Central Commission in the impugned order on the applicability of Limitation Act to the proceedings before the Central Commission and also the point of delay and latches. We may add that very recently the Hon'ble Supreme Court, in T.N. Generation & Distribution Corpn. Limited Vs. PPN Power Gen. Co. Pvt. Ltd., in its judgment dated 04.04.2014, in Civil Appeal No. 4126 of 2013 while deciding statutory appeal (Second Appeal) under Section 125 of the Electricity Act, 2003 against the judgment and order dated 22.02.2013 of this Appellate Tribunal, in para no. 48 of the judgment, has observed as under:-

"48. The next submission of Mr. Nariman is that the claim of the respondents would have been held to be time barred on reference to arbitration. We are not able to accept the aforesaid submission of Mr. Nariman. On the facts of this case, in our opinion, the principle of delay and latches would not apply, by virtue of the adjustment of payments being made on FICO basis. The procedure adopted by the respondent, as observed by the State Commission as well as by the APTEL, would be covered under Sections 60 and 61 of the Contract Act. APTEL, upon a detailed consideration of the correspondence between the parties, has confirmed the findings of fact recorded by the State Commission that the appellant had been only making part payment of the invoices. During the course of the hearing, Mr. Salve has pointed out that the payment of entire invoices was to be made each time which was never adhered to by the appellant. Therefore, the respondents were constrained to adopt FIFO method. Learned senior counsel also pointed out that there was no complaint or objection ever raised by the appellant. The objection to the method adopted by the respondents on the method of FIFO, was only raised in the counter affidavit to the petition filed by the appellant before the State Commission. According to the learned senior counsel, the plea is an afterthought and has been rightly rejected by the State Commission as well as the APTEL. We also have no hesitation in rejecting the submission of Mr. Nariman

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on this issue. In any event, the Limitation Act is inapplicable to proceeding before the State Commission."

27. Thus, the Hon'ble Supreme Court while dealing with a Statutory Appeal under Section 125 of the Electricity Act, 2003, in para 48 thereof has clearly observed, " we have no hesitation in rejecting the submission of Mr. Nariman on this issue. In any event, the Limitation Act, is inapplicable to the proceedings before the State Commission.

28. In view of above discussion, we agree to the reasoning given by the Central Commission in the impugned order and all the submissions of the appellant are held to be without any merits, since there is a direct judgment recently pronounced by the Hon'ble Supreme Court while dealing with the statutory Appeal under Section 125 of the Electricity Act, 2003. The views of this Appellate Tribunal whether in favour or against the applicability of Limitation Act have no significance. Thus, the issue no. E relating to limitation, delay and / or latches is decided against the appellant.

29. Issue No. F-Non-Installation of Special Energy Meters

29.1. The SLDC, who was respondent before the Central Commission but has not been impleaded in the instant Appeal, took up a preliminary objection that the Special Energy Meters of 0.2 accuracy class required for U.I. Accounting were not installed and respondent no.1/petitioner executed an agreement for short term open access on 05.07.2006, so its claim for the period prior to 05.07.2006 is not maintainable. On this issue, learned counsel for the appellant including GRIDCO put half hearted emphasis. The Central Commission has recorded a finding in the impugned order that the petitioner's claim for the U.I. charges cannot be summarily rejected on the ground of non-installation of Special Energy Meters with 0.2 accuracy class and the means for verification of the petitioner claim have to be found.

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30. We have considered this issue also. We agree to the findings recorded in the impugned order by the Central Commission. This issue is also decided against the appellant.

31. The appeal is without merits and is liable to be dismissed as all the issues have been decided against the appellant.

32. SUMMARY OF FINDINGS

32.1. The Central Commission has jurisdiction to entertain a petition under Section 79 (1) (f) of the Electricity Act, 2003 relating to disputes involving generating companies or transmission licensees in regard to matters connected with clauses (a) to (d) of sub-Section (1) of Section 79 of the Electricity 2003 and refer any dispute for arbitration.

32.2. The Central Commission or any State Electricity Regulatory Commission or this Appellate Tribunal has no jurisdiction or power to add, substitute or delete any word in any of the provisions of the Electricity Act, 2003 or Regulations for Electricity or any State Regulations. This Appellate Tribunal is not competent and empowered to quash or set-aside or declare or decide the validity of any of the provisions of the Electricity Act, 2003, Central Commission or State Regulations. It can only interpret the provisions as the facts and circumstances of any particular case warrant.

32.3. The dispute with regard to segregation of unscheduled inter change charges (U.I. Charges) between the embedded entities in the State falls within the jurisdiction of the respective State Commission in view of Regulation 18 (ii) of the CERC (Open Access in inter-State Transmission) Regulations, 2004. Regulation 18 (ii) of the CERC (Open Access in inter-State Transmission) Regulations, 2004 does not confer jurisdiction on the State Commission to the exclusion of Central Commission. All that Regulation 18 (ii) of the CERC (Open Access in inter-State Transmission) Regulations, 2004 provides for is that in case of embedded

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customers, the settlement of U.I. claims or charges shall be done at the State level.

32.4. In the present case, since the dispute pertains to non-payment of U.I. charges due to M/s. Bhushan Power & Steel Limited - respondent no.1 in terms of CERC (Open Access in Inter-State Transmission) Regulations, 2004, which were notified by the Central Commission in discharge of its functions to regulate inter-State Transmission of Electricity and hence the Central Commission is empowered to adjudicate upon the said dispute. This dispute is clearly beyond the competence or jurisdiction of the concerned State Commission. U.I. Mechanism was evolved by the Central Commission as a means to regulate inter-State Transmission of Electricity.

32.5. A petition, without first approaching the Member-Secretary in view of Regulation 35 of the CERC Open Access Regulations, 2004, filed before the Central Commission is maintainable as the Central Commission is fully competent to decide the dispute complained of before it.

32.6. The provisions of Limitation Act, 1963 are not applicable to the proceedings before the Central Commission or the State Commissions under the provisions of Electricity Act, 2003 as recently held by the Hon'ble Supreme Court in the case of T.N. Generation & Distribution Corporation Limited Vs. PPN Power Gen. Co. Pvt. Ltd. in its judgment dated 04.04.2014, in Civil Appeal No. 4126 of 2013 while deciding statutory appeal (Second Appeal) under Section 125 of the Electricity Act, 2003 against the judgment and order dated 22.02.2013 of this Appellate Tribunal, in para no. 48 of the judgment that "in any event, the Limitation Act is inapplicable to proceeding before the State Commission."

32.7. The instant claim is not barred by limitation and further it does not suffer from any gross delay or latches.

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32.8. Any claim for the U.I. charges cannot be summarily rejected or dismissed on the ground of non-installation of the Special Energy Meters with '0.2 accuracy class.'

33. Consequently, the instant appeal is, being without merits, dismissed and the impugned order dated 09.05.2013 passed by the learned Central Commission in Petition No. 163/MP/2012 is hereby affirmed. No order as to costs.

Pronounced in open Court on this 1st day of July, 2014.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ REPORTABLE/NON-REPORTABLE

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