

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

Appeal No. 51 and 79 of 2013

Dated: 11th November, 2013

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

In the matter of:

Appeal No. 51 of 2013

**Tamil Nadu Generation and Distribution Corporation Limited ... Appellant (s)
No. 144, Anna Salai
Chennai – 600 002**

Versus

- 1. Central Electricity Regulatory Commission ...Respondent(s)
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001**
- 2. Power Grid Corporation of India Limited
Saudamini, Plot no.2, Sector – 29
Gurgaon – 122 001**
- 3. Karnataka Power Transmission Corporation Ltd.
Kaveri Bhavan, Bangalore – 560 001**

4. **Transmission Corporation of Andhra Pradesh Ltd.
Vidyut Soudha, Hyderabad – 500 049**
5. **Kerala State Electricity Board (KSEB)
Vaidyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004**
6. **Electricity Department
Governemnt of Pondicherry
Pondicherry – 605 001**

**Counsel for the Appellant(s) : Mr. Ramji Srinivisan, Sr. Adv.
Mr. S. Vallinayagam**

**Counsel for the Respondent(s) : Mr. M G Ramachandran
Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Swagatika Sahoo**

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JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

Whether the Central Electricity Regulatory Commission (“Central Commission”) has jurisdiction to adjudicate upon a dispute between two Licensees relating to charges for operation and maintenance of a part of inter-State transmission system which is owned by one of the Licensees and operated and maintained by the other Licensee for on behalf of the former is the issue raised in these Appeals.

2. The Appellant Tamil Nadu Generation and Distribution Corporation Ltd, (“TANGEDCO”) is a distribution licensee which is also engaged in the business of generation and a successor entity of Tamil Nadu Electricity Board (“TNEB”). The Appellant in Appeal no. 51 of 2013 has challenged the order dated 19.9.2012 in

which the Central Commission has declined to adjudicate upon the dispute raised by the Appellant due to lack of jurisdiction. In Appeal no. 79 of 2013 the Appellant has challenged the order dated 8.3.2011 passed by the Central Commission determining the tariff of the transmission system of the Respondent no.2 on the ground that the Central Commission has not dealt with the dispute regarding operation and maintenance charges for the inter-State transmission system which the Appellant is maintaining on behalf of the Respondent no. 2.

3. The Central Commission is the Respondent no. 1. Power Grid Corporation of India Ltd. ("POWERGRID") is the Respondent no. 2 which is undertaking the inter-State transmission of electricity and also discharges the function of Central Transmission Utility. The Respondent nos. 3 to 6 are the other beneficiaries of

inter-State transmission system owned by the Respondent no. 2.

4. The facts of the cases are as under:-

4.1 POWERGRID (Respondent no.2) executed a transmission scheme by Loop-in-Loop-out (“LILO”) of both the circuits of Sriperumbadur-Nellore 400 KV line at 400 KV Alamathy sub-station owned by TNEB under the system strengthening scheme of the Southern Regional Grid and commissioned the same on 1.6.2006. The terminal equipments or bays for controlling these 4 circuits at Alamathy were erected by TNEB, the predecessor of TANGEDCO (Appellant) as a deposit work on behalf of POWERGRID. However, the ownership of the assets remained with POWERGRID. It was also agreed between TNEB and POWERGRID that the operation and maintenance of the bays at Alamathy

would be perpetually done by TNEB for which a maintenance contract would be entered into between them. Accordingly, since the commissioning of the bays at Alamathy on 1.6.2006, the same are being operated and maintained by TNEB/its successor entity.

4.2 POWERGRID (R-2) filed Tariff Petition being Petition no. 143 of 2007, for determination of transmission charges for its transmission system including the LILO of both circuits of Sriperumbadur-Nellore 400 KV double circuit line at Alamathy 400 KV sub-station. The Central Commission vide order dated 12.5.2008 decided the transmission tariff for the above assets, in accordance with its Tariff Regulations, 2004 applicable for the period 2004-09.

4.3 TNEB wanted that the operation and maintenance charges payable to them by POWERGRID for operation

and maintenance of the bays at Alamathy 400 KV sub-station of the POWERGRID should be at the same rate as allowed to POWERGRID in the Operation and Maintenance norms under the Tariff Regulations applicable to POWERGRID (R-2). However, POWERGRID offered lower operation and maintenance charges than the O&M norms as specified by Central Commission in its Regulations as applicable to its transmission tariff. As a result of the dispute between the TNEB and POWERGIRD, agreement for operation and maintenance of the bays at Alamathy 400 KV sub-station could not be entered into between them.

4.4 Aggrieved by the stand taken by POWERGRID in respect of O&M expenses for the bays at Alamathy, the TNEB filed a petition being Petition no. 11 of 2010 seeking the intervention of the Central Commission to direct POWERGRID to pay the normative O&M

expenses specified in the Tariff Regulations of 2004 notified by the Central Commission for maintaining the bays at Alamathy sub-station. On 19.9.2012, the Central Commission dismissed the Petition no.11 of 2010 observing that it did not have jurisdiction in the matter under Section 79 (1)(f) of the Electricity Act.

4.5 Aggrieved by the impugned order dated 19.9.2012, the Appellant, as successor of TNEB, has filed Appeal no. 51 of 2013.

4.6 In the meantime, POWERGRID filed Petition no. 123 of 2010 before the Central Commission for approval of tariff for the period 2009-14 for the very same asset in respect of which Petition no. 11 of 2010 regarding dispute on operation and maintenance charges of the asset payable to TNEB was pending before the Central Commission. The Central Commission by order dated

- 8.3.2011 approved the tariff of POWERGRID for the period 2009-14.
- 4.7 Aggrieved by the non-consideration of the issue raised by the TNEB in Petition no. 11 of 2010 regarding O&M expenses payable to the Appellant by POWERGRID (R-2), the Appellant filed a Review Petition against the Tariff Order dated 8.3.2011.
- 4.8 This Review Petition was dismissed by the Central Commission on 26.9.2012. Thereafter, the Appellant filed Appeal no. 79 of 2013 against the original tariff order dated 8.3.2011 on the issue of jurisdiction of the Central Commission to adjudicate upon the dispute between TNEB/its successor entity and POWERGRID regarding the operation and maintenance charges payable by POWERGRID to TNEB/its successor entity.

5. Since the same issue is involved in both these Appeals, a common judgment is being rendered.

6. On the above issue, we have heard Shri Ramji Srinivasan, Learned Senior Counsel for the Appellant and Shri M G Ramachandran, Learned Counsel for POWERGRID (R-2).

7. The only question that arises for our consideration in the matter is whether the Central Commission has jurisdiction to adjudicate upon a dispute between the two licensees, one of them being a licensee for inter-State transmission system, relating to charges for operation and maintenance for a part of inter-State transmission system owned by the inter-State transmission system licensee and operated and maintained by the other licensee?

8. According to Shri Ramji Srinivasan, Senior Advocate representing the Appellant, adjudication of the dispute in question squarely falls within the jurisdiction of the Central Commission under Section 79(1)(f) of the Electricity Act, 2003 which covers the disputes involving an inter-State Transmission System Licensee and another Licensee in the matter of regulation of inter-State transmission of electricity and tariff of inter-State transmission of electricity.

9. According to Shri M G Ramachandran, Learned Counsel for the Respondent no.2, the claim of the Appellant falls outside the jurisdiction of the Central Commission as the dispute between the Appellant and the Respondent no. 2 is not of the nature specified under Section 79(1)(f) of the 2003 Act. The Appellant was engaged by the Respondent no. 2 as the contractor and in that capacity the operation and

maintenance of four number 400 KV feeder bays at Alamathy belonging to the Respondent no. 2 was entrusted to the Appellant. The dispute between the employer and contractor cannot be a subject matter under Section 79 of the Electricity Act for the Central Commission to consider. Further, according to him, only routine/normal operation and maintenance activities are under the scope of the Appellant and specific activities are excluded from their scope which are undertaken by POWERGRID.

10. Let us examine the findings of the Central Commission in the impugned order dated 19.9.2012. The relevant extracts of the impugned order are reproduced below.

“17. Therefore, the core issue raised for adjudication in the petition is in regard to the payment of O&M charges by PGCIL to the petitioner TNEB.

18. *Before going into the merits of the case, it is necessary to examine certain preliminary issues regarding jurisdiction of the Commission to adjudicate the dispute in question, and also with regard to the locus standi of the petitioner to raise this dispute, and consequently whether the petition is maintainable.*

19. *Section 79 (1) of the Electricity Act, 2003 ("2003 Act") reads as under:*

*"Section 79. (Functions of Central Commission): --
- (1) The Central Commission shall discharge the following functions, namely:-*

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

- (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;*
- (g) to levy fees for the purposes of this Act;*
- (h) to specify Grid Code having regard to Grid Standards;*
- (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;*
- (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;*
- (k) to discharge such other functions as may be assigned under this Act.”*

20. *It is evident from the provisions of Section 79(1)(f) that the Commission has the jurisdiction to adjudicate only the dispute involving the generating companies or transmission licensees in regard to matters connected with Clauses (a) to (d) of Section 79(1). However, the present petition raises a dispute between an Utility and a transmission licensee. The issue raised for adjudication in the petition is in regard to the payment of O&M charges by PGCIL to TNEB not with regard to matters connected with determination of tariff of the respondent. The petition has been filed by the petitioner in the*

capacity of an O&M Contractor. Under Section 79(1)(f), the Commission can “adjudicate upon disputes involving generating companies or transmission licensee” and not adjudicate upon disputes involving transmission licensee and O&M Contractors and other contractors. Therefore, the present petition falls outside the scope of Section 79(1)(f) of the Act and is accordingly not maintainable.”

11. Thus, the Central Commission decided that the dispute in question involved a Transmission Licensee and an operation and maintenance contractor and not with regard to matters connected with determination of tariff of POWERGRID. Accordingly, the Central Commission decided that the petition filed by the Appellant fell outside the scope of Section 79(1)(f) of the 2003 Act and therefore, not maintainable.

12. Let us now examine if the dispute in question falls within the scope of Section 79(1)(f) of the Act.

13. We find that POWERGRID and TNEB, the predecessor of the Appellant, entered into an agreement on 6.1.2006 for construction of 400 KV bays for the LILO of POWERGRID's 400 KV Nellore-Sriperumbudur double circuit line at Alamathy sub-station of TNEB. Under this agreement TNEB had to execute the work on deposit basis on behalf of POWREGRID. However, the ownership of the assets would remain with POWERGRID. It was also agreed under this agreement, that on completion of execution of the bays by TNEB, the operation and maintenance of the bays would be perpetually done by TNEB and charges payable by POWERGRID to TNEB would be finalized after mutual discussions and a separate Memorandum of Understanding would be signed between them in this regard. The Agreement dated 6.1.2006 also provides that in case of non-settlement of dispute arising out of or relating to the Agreement,

or breach or validity, thereof, the same would be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996.

14. The MOU/Agreement for operation and maintenance of the bays at Alamathy could not be finalized as the TNEB was demanding charges as specified by the Central Commission in its Tariff Regulations for determining the transmission charges for inter-State transmission system i.e. the Operation and Maintenance charges as allowed to POWERGRID for these bays in computing POWERGRID's transmission tariff by the Central Commission.

15. Let us now examine Section 79(1) of the Electricity Act, 2003.

“19. Section 79 (1) of the Electricity Act, 2003 (“2003 Act”) reads as under:

*“Section 79. (Functions of Central Commission): --
- (1) The Central Commission shall discharge the following functions, namely:-*

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e) -----

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

-----“

16. Thus, under Section 79(1)(f) of the Electricity Act, 2003, the Central Commission is empowered to adjudicate upon the disputes involving generating companies or

Transmission Licensees in regard to matters connected with Clauses (a) to (d) of Section 79(1). Clauses (a) and (b) deal with regulation of tariff of generating companies. Clause (c) deals with regulation of inter-State transmission of electricity. Clause (d) deals with determination of tariff for inter-State transmission of electricity.

17. We feel that the present dispute is not related to determination of tariff for inter-State transmission of electricity or regulation of inter-State transmission of electricity. The dispute in this case is between an inter-State Transmission Licensees and a State utility relating to charges for operation and maintenance of a portion of transmission system owned by the inter-State Transmission Licensee but operated and maintained by the State utility on behalf of the former. The inter-State Transmission Licensee (POWERGRID) and TNEB for

their mutual convenience and by mutual consent have agreed that the bays at Alamathy owned by POWERGRID will be operated and maintained by TNEB. The charges for providing the operational and maintenance services by TNEB to POWERGRID is not a matter under the jurisdiction of the Central Commission.

18. The Central Commission under Section 79(1)(d) of the Electricity Act has to determine the tariff of the Transmission Licensee involved in the business of inter-State transmission of electricity. The Central Commission does not have the jurisdiction over the arrangement that a inter-State Transmission Licensee has with another licensee or any other entity for providing operation and maintenance services for its transmission system and the rates payable to such

- licensee or entity for providing the operation and maintenance services.
19. The Central Commission has power to regulate the inter-State transmission of electricity. However, the terms and conditions of the contract for providing operation and maintenance services to the inter-State Transmission Licensee by any licensee or entity will not fall under regulation of inter-State transmission of electricity and will not fall under the jurisdiction of the Central Commission.
 20. The Central Commission has notified the Tariff Regulations for determining transmission tariff applicable to inter-State transmission of electricity under Section 61 of the Electricity Act. Operation and maintenance of transmission system is a component of transmission tariff. Tariff Regulations 2004 applicable

for the period 2004-09 and Tariff Regulations of 2009 applicable for the period 2009-14 notified by the Central Commission specify operation and maintenance charges as a component of transmission tariff admissible to the inter-State Transmission Licensee. These Regulations are not applicable for the charges of operation and maintenance services provided to the inter-State Transmission Licensee by any agency. Thus, if another licensee or any other entity is providing operation and maintenance services to the transmission licensee of inter-State transmission system, it will not be regulated by the Central Commission.

21. If the dispute raised by TANGEDCO had been relating to transmission tariff payable to POWERGRID for LILO of Sriperumbadur-Nellore 400 KV double circuit line at Alamathy then the same would fall within the jurisdiction of the Central Commission. Further, if the dispute had

been relating to transmission of electricity on the inter-State transmission system, it would also be within the jurisdiction of the Central Commission. However, in the present case the transmission tariff of POWERGRID or regulation of inter-State transmission of electricity is not under dispute. The present dispute involves operation and maintenance payable to TNEB or its successor entity for operating and maintaining a part of inter-State transmission system on behalf of POWERGRID under a mutually agreed arrangement. The relationship between POWERGRID and TNEB with respect to operation and maintenance services provided by TNEB or its successor entity is that of employer and contractor and cannot be a subject of regulation by the Central Commission under Section 79 of the 2003 Act.

22. POWERGRID is responsible for operation and maintenance of its transmission system. TNEB and

POWERGRID mutually agreed that the POWERGRID'S bays at Alamathy will be perpetually operated and maintained by TNEB/its successor entity. The operation and maintenance charges payable to TNEB or its successor entity has to be decided mutually depending on the scope and terms and conditions of operation and maintenance agreed between the parties. Such scope and terms and conditions of operation and maintenance as well as the charges payable by POWERGRID for the O&M services are not connected with Clauses a) to d) of Section 79(1) of the Electricity Act. Such dispute has to be resolved by arbitration in accordance with Arbitration and Conciliation Act, 1996 as agreed in the Agreement dated 6.1.2006 between TNEB and POWERGRID.

23. In view of above we feel that the present dispute is not covered under Section 79(1)(f) of the Electricity Act

and, therefore, the Central Commission does not have powers to adjudicate upon the present dispute involving POWERGRID and the Appellant.

24. Learned Senior Counsel for the Appellant has referred to the following judgments to press his point that the Central Commission has the jurisdiction over the present dispute:

- (i) (2007) 7 SCC 517 in the matter of Union of India Vs. Tata Tele Services (Maharashtra) Ltd.
- (ii) (2003) 3 SCC 186 in the matter of Cellular Operators Association of India and others Vs. Union of India and others.
- (iii) Judgment dated 9.1.2009 by this Tribunal in Appeal no. 35 of 2008 in the matter of Uttar Pradesh Power Corporation Ltd. Vs. CERC and others.

(iv) Judgment dated 10.12.2009 by this Tribunal in Appeal no. 161 of 2009.

25. In Union of India Vs. Tata Tele Services (Maharashtra) Ltd. (2007) 7 SCC 517, the Hon'ble Supreme Court has held that the specialized Tribunal namely TDSAT has been constituted for the purpose of dealing with specialized matters and disputes arising out of Licences granted under the Act and, therefore, there is no reason to restrict the jurisdiction of the Tribunal by keeping out of its purview a persons whose offer has been accepted and whom a Letter of Intent is issued and who had even accepted the Letter of Intent. It was held that any breach or alleged breach of obligation arising after acceptance of the offer made in response to a notice inviting tender would also normally come within the purview of a dispute that is liable to be settled by the specialized Tribunal. The Hon'ble Supreme Court held

that there was no reason to restrict the expressions of licensor or licensee occurring in Section 14(a) (i) of the Act and to exclude a person who had been given a Letter of Intent regarding a telecommunication circle and who had accepted the Letter of Intent. Thus, in this judgment the issue was relating to licence to be given under the Act which was within the jurisdiction of TDSAT. This judgment is not applicable in the present case as it is not a case where the Appellant is providing operation and maintenance services under a licence or under any provision of the Electricity Act. The operation and maintenance services provided by the State utility is by mutual consent and agreement with the inter-State Transmission Licensee as its contractor, which is not required to be regulated and is beyond the jurisdiction of the Central Commission under the Electricity Act, 2003.

26. In Cellular Operators Association of India Vs. Union of India and others (2003) 3 SCC 186, Hon'ble Supreme Court held that TDSAT was required to exercise its jurisdiction in terms of Section 14-A of the Act. It was further held that the extent of jurisdiction of a court or a Tribunal depends upon the relevant statute. TDSAT is a creator of statute. Its jurisdiction is also conferred by the statute. In this particular case the matter was relating to question of promoting wireless in local loop with limited mobility. In this case Appellant approached the Tribunal under Section 14 (a) challenging the decision of the Commission promoting the fix service provider to offer a wireless local loop (WLL) with limited mobility. The Tribunal by the impugned judgment rejected the application which was challenged before the Hon'ble Supreme Court. In this case the matter was squarely within the jurisdiction of the TDSAT. In the present Appeal, under Section 79(1)(f) of the Electricity Act,

2003, the jurisdiction of the Central Commission to adjudicate upon has been confined to the matters connected with Clauses (a) to (d) of Section 79(1) of the Act. The matter of dispute in the present case is not connected with Clauses a) to d) of Section 79(1) of the Act and is beyond the jurisdiction of the Central Commission.

27. In Appeal no. 35 of 2008, UP Power Corporation Limited had challenged the order of the Central Commission in which the Central Commission had rejected the objection of UP Power Corporation Ltd. regarding jurisdiction of the Central Commission in the matter related to regulation of inter-State transmission of electricity between two States under Section 79(1)(c) and held that the matter was under the jurisdiction of the Central Commission under Section 79(1)(f) of the Electricity Act, 2003. The Tribunal dismissed the Appeal

by judgment dated 9.1.2009 confirming the jurisdiction of the Central Commission. This case was related to conveyance of electricity by means of transmission lines from the territory of one State to the territory of another State which was qualified to be categorized as, inter-State transmission of electricity. Finding in this case will not be applicable to the present Appeal where the issue is not related to regulation of inter-State transmission of electricity.

28. In Appeal no. 161 of 2009, the Tribunal held that Section 79(1)(a) empowers Central Commission to adjudicate upon the dispute involving the generating companies with regards to matter connected with regulation of tariff of the generating companies owned by the Central Government and the matter was relating to fixation of rates of power supply from a central generating company to a Distribution Licensee. The

Tribunal held that Central Commission had powers to adjudicate into the matter. This case was clearly a case of supply of power by a central generating company to a distribution licensee and fell within the jurisdiction of the Central Commission. Thus, the findings of the Tribunal in this case are not relevant to the present Appeal.

29. In view of above, we do not find any infirmity in the order of the Central Commission.

30. Summary of our findings.

i) The matter of dispute in the present case relates to charges for operation and maintenance services provided by a State utility for a part of inter-State transmission system owned by POWERGRID under an arrangement mutually agreed to between

the parties and not under any provision of the Electricity Act, 2003. The matter relates to the charges for the operation and maintenance services provided by a State utility as a contractor to a transmission licensee of inter-State transmission system (POWERGRID), which is not connected with Clauses a) to d) of Section 79(1) of the Electricity Act, 2003 and, therefore, beyond the jurisdiction of the Central Commission under Section 79(1)(f) of the Act.

- ii) The operation and maintenance charges as specified in the Central Commission's Tariff Regulations for inter-State transmission of electricity will be applicable for the transmission tariff of POWERGRID. The operation and maintenance charges for the O&M services provided by the TNEB or its successor entity to**

POWERGRID will depend on the scope and terms and conditions of the arrangement mutually agreed between the parties and has to be mutually decided by the parties. In case of dispute in the matter, the same has to be settled by arbitration according to the Arbitration and Conciliation Act, 1996 as agreed to in the agreement dated 6.1.2006 between the parties.

31. In view of above, the Appeals are dismissed as devoid of any merits. No order as to cost.

32. Pronounced in the open court on this 11th day of November, 2013.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

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