

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

**Dated:30<sup>th</sup> June, 2014**

**Present:**

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON**  
**HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**Appeal No. 78 of 2014**

**M/s. A D Hydro Power Limited**  
**Bhilwara Towers**  
**A-12, Sector-1,**  
**NOIDA-201 301**

**... Appellant**

**Versus**

**Central Electricity Regulatory Commission**  
**3<sup>rd</sup> & 4<sup>th</sup> Floor,**  
**Chanderlok Building,**  
**36, Janpath,**  
**New Delhi-110 001**

**.....Respondent**

**Counsel for the Appellant : Ms. Seema Jain**

**Counsel for the Respondent (s): Mr.M S Ramalingam**  
**Mr. Dushyant K. Mahant**

## J U D G M E N T

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON

1. M/s. A D Hydro Power Limited is the Appellant herein.
2. Aggrieved by the Impugned Order passed by the Central Commission dated 3.1.2004, dismissing the Application filed by the Appellant for amendment of the Regulations, the Appellant has filed this Appeal.
3. The short facts are as follows:
  - (a) The Appellant is a 192 MW Run of the River Hydro electric power plant situated in the tributaries of Beas river in Kullu district, Himachal Pradesh which was commissioned on 10.9.2010.
  - (b) The Appellant started generation of electricity which was transmitted through ISTS of Nalagarh.
  - (c) Since the Appellant's plant was dependent on the water availability in the tributaries, it generated electricity up to its installed capacity only for a few months of a year. However, the Appellant had to pay the transmission charges for transmission of electricity generated by it in accordance with its installed capacity.

(d) Although its generation was less than of its capacity, the Appellant had to pay the transmission charges for the entire 192 MW.

(e) Therefore, the Appellant, on 20.9.2013 approached the Central Commission and filed a Petition contending that it was aggrieved since Regulations for the transmission of electricity were not in accordance with section 61 of the Electricity Act, 2003 or the National Electricity Policy or the National Tariff Policy or the Hydro Power Policy and that therefore, praying for the amendment to the existing Regulations to address the difficulty faced by the Generators.

(f) The Central Commission heard the Appellant.

(g) Ultimately, on 3.1.2014, the Central Commission passed the Impugned Order dismissing the Application mainly on the ground that filing of the Petition for initiating amendments to the existing Regulations is not the proper process and that the existing provisions of Sharing Regulations themselves were adequate for calculation of transmission charges.

(h) This finding of the Central Commission is challenged in this Appeal.

4. When the matter came-up for admission, this Tribunal asked the learned Counsel for the Appellant as to the exact provision under which the Application was filed before the Central Commission.
5. It was submitted that the Petition was filed u/s 178 of the Electricity Act read with Regulations 35 of the Central Electricity Regulatory Commission (Open Access in Inter State Transmission) Regulations, 2004.
6. Section 178 deals with the powers of the Central Commission to frame the Regulations. Regulation 35 of the (Open Access Inter State Transmission) Regulations, 2004 also would relate to the issue which is not connected with the prayer made by the Appellant.
7. Therefore, we entertained the doubt with regard to the maintainability of the Appeal. Accordingly, we issued notice to Central Commission to hear them with regard to maintainability of the Appeal.
8. Accordingly, the learned Counsel for the Central Commission appeared before this Tribunal and filed the reply mainly contending that this Appeal was not maintainable since the prayer of the Appellant before the Central Commission as well as before the Tribunal would

relate to the validity of the Regulations which cannot be raised and agitated before this Tribunal.

9. The learned Counsel for the Appellant filed a rejoinder stating that the Central Commission has got the powers u/s 178 of the Act to frame Regulations or to amend the Regulations so as to address the difficulties being faced by the Generators.
10. We have carefully considered the submissions made by the parties.
11. It is noticed from the Petition filed before the Central Commission that the Petition was filed u/s 178 of the Electricity Act, 2003 with the following prayers:

*“(a) Make provisions in the relevant regulations to provide an equal playing field for different type of generators, so that the transmission charges for all generators are same for the equal amount of energy injected by them.*

*(b) Issue specific regulations containing the terms and conditions for payment of transmission charges by different types of generators on energy actually injected by them;*

*(c) Pass other or further order that this Hon’ble Commission may deem fit and proper in the facts and circumstances of the present case”.*

12. The Central Commission is having powers u/s 79 to discharge the various functions under Section 79 (1) (a to k).

13. These functions would not relate to framing of Regulations or to amend the Regulations.
14. The main functions of the Central Commission is to adjudicate upon the dispute involving Generating Companies or transmission licensee in regard to the matters connected with the Clauses (a) to (d).
15. The learned Counsel for the Appellant is not able to demonstrate as to under what provisions u/s 79 (a) to (d), the Petition filed by the Appellant before the Central Commission could be entertained.
16. As mentioned above, the Petition was filed seeking the prayer for making relevant Regulations to provide an equal playing field for different type of generators so that the transmission charges for all the generators are the same.
17. This prayer has been made on the ground that the present Regulations relating to the transmission of electricity are not in accordance with Section 61 of the Electricity Act or the National Electricity Policy or the National Tariff Policy or the National Hydro Power Policy. So, by this prayer, the Appellant has prayed to cancel the prevalent Regulations and to make new Regulations to remove the difficulty faced by the Generators with regard to the payment of transmission charges.

18. As noticed in the Petition, there is no prayer for the adjudication of dispute between the parties u/s 79 of the Act,
19. On the other hand, the Appellant approached the Central Commission to make new Regulations or to amend the Regulations on the ground that the prevalent Regulations are not in consonance with the Electricity Act, 2003 or the National Electricity Policy etc.,
20. As correctly pointed out by the learned Counsel appearing for Respondent Central Commission, the Regulation framed u/s 178 of the Act under delegatory legislation, cannot be questioned before the Appellate Tribunal by way of an Appeal whereas the remedy with regard to the validity of the existing Regulations would be available only before the High Court under Article 226 of the Constitution as laid down in the Constitution Bench of the Hon'ble Supreme Court in Civil Appeal No.3902 of 2006 dated 15.3.2010 (PTC India Limited Vs Central Commission).
21. Therefore, we are constrained to hold that this Appeal is not maintainable as per the dictum laid down by the Hon'ble Supreme Court.
22. Before parting with this case, we feel it proper to refer one more aspect referred to in the reply filed by the Central Commission. In the reply, it is stated that there was a proposal by the Central Commission to make amendments

in accordance with Section 178 of the Electricity Act, 2003 read with Electricity (Procedure for Previous Publication) Rules, 2005 and in respect of this proposal, the comments/Objections/Suggestions from the stakeholders and other interested persons have been invited on the draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2014 and there will be a public hearing before the finalisation of the said amendment of the Regulation and the Appellant is also at liberty to place his grievance before the Central Commission on this issue for consideration by the Central Commission.

23. In view of the above statement made by the Central Commission, in its reply, it is open to the Appellant to make suggestions before the Central Commission at the public hearing relating to the issue.

24. With these observations, the Appeal is dismissed as not maintainable.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 30<sup>th</sup> June, 2014

√REPORTABLE/~~NON-REPORTABLE~~