

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO.240 OF 2014**

**Dated: 4<sup>th</sup> December, 2015**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. T. Munikrishnaiah, Technical Member.**

**In the matter of:-**

**M/S. DWARIKESH SUGAR )  
INDUSTRIES LIMITED, )  
Dwarikesh Puram, P.O. – Afzalgarh, )  
Bahadarpur, District – Bijnor, U.P. ) ... **Appellant****

**AND**

- 1. U.P. POWER CORPORATION )  
LIMITED, through its Managing )  
Director, )  
Shakti Bhawan, Ashok Marg, )  
Lucknow – 226 001. )**
- 2. PACHIMANCHAL VIDYUT )  
VITRAN NIGAM LTD., )  
Victoria Park, Meerut. )**
- 3. CHIEF ENGINEER, POWER )  
PURCHASE AGREEMENT U.P. )  
POWER CORPORATION LTD., )  
Shakti Bhawan, Ashok Marg, )  
Lucknow. )**
- 4. EXECUTIVE ENGINEER, )  
ELECTRICITY TRANSMISSION )**

**DIVISION, U.P. POWER )  
TRANSMISSION CORPORATION )  
LIMITED, )  
Sub-Station Dhampur, District – )  
Bijnor. )**

5. **UTTAR PRADESH )  
ELECTRICITY REGULATORY )  
COMMISSION, )  
Kishan Mandi Bhawan, IInd )  
Floor, Gomti Nagar, Lucknow – )  
226 010 – through its Secretary. )** ... **Respondents**

Counsel for the Appellant(s) : Mr. Buddy A. Ranganadhan

Counsel for the Respondent(s) : Mr. Rajiv Srivastava for  
**R-1 to R-4.**

Mr. C.K. Rai for **R-5.**

## **J U D G M E N T**

**PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON**

1. The Appellant – M/s. Dwarikesh Sugar Industries Limited established a Greenfield Project of 7500 TCD Sugar Mill at Bahadarpur, Bijnor along with cogeneration facility with ability to sell surplus 24 MW power/electricity. The total cost of the project when established was Rs.236 crores (approx.) out of which the cost of cogeneration facility was

Rs.93 crores. The Appellant borrowed huge sums of money from Banks and Financial Institutions for establishing the said project.

2. Respondent No.1 – U.P. Power Corporation Limited (“**UPPCL**”) has been authorized by Respondent No.2 – M/s. Paschimanchal Vidyut Vitran Nigam Limited (“**DISCOM**”) to execute/sign the PPAs and also to carry out the necessary relevant works on its behalf. All obligations under the PPA were undertaken by UPPCL on behalf of DISCOM. Respondent No.2 is the distribution licensee operating in the western part of the State of Uttar Pradesh and Respondent No.3 is a wing of the UPPCL entrusted with the work of entering into and signing of the PPAs with the generators. Respondent No.4 is the Executive Engineer, ETD in-charge of the 132 KV sub-station, Dhampur and is responsible for the maintenance (for UPPCL till January, 2008 and thereafter for U.P. Power Transmission Corporation Ltd.) of 132 KV Dhampur – DSIL transmission line and the bay. Respondent

No.5 is the Uttar Pradesh Electricity Regulatory Commission (**“the State Commission”**).

3. The Appellant entered into a PPA dated 28/4/2006 with the DISCOM for sale of 24 MW power generated from the Appellant’s cogeneration plant. It is the Appellant’s case that it was agreed between the parties to the PPA that the power from the generating plant located in the Appellant’s sugar mill at Dwarikesh Puram, District Bijnor shall be transmitted at 132 KV Sub-station, Dhampur through a 132 KV S.C. line and shall be interfaced with UPPCL’s grid sub-station located at Dhampur. The cost of construction of single circuit transmission line was agreed to be borne by the generator. By the above PPA, the generator was also given an option to entrust the construction of the transmission line to UPPCL. Clause 8.3 of the PPA providing for the above is reproduced hereinbelow:

*“8.3 The construction of transmission line and other supporting works for evacuation of power shall be undertaken by the Generating Company under approval and supervision of STU on*

*payment of 15% of the cost of the work as per Corporation's estimate towards the supervision. The generating Company may also opt to entrust the transmission line work to UPPCL on deposit work basis as per Corporation Rules. UPPCL will construct the bay at the grid sub-station as per Corporation's estimate at the Generating Company's Cost."*

4. Under clause 16 of the PPA, the generating company was to commission the generation facility and synchronize it with STU system grid by 15/10/2007.

5. In compliance with the order dated 25/5/2006 passed by the State Commission, a final re-stated PPA dated 15/11/2006 was entered into between the Appellant and the DISCOM through Respondent No.3 with no change in the major conditions as contained in the PPA dated 28/4/2006. It is the Appellant's case that even before signing of the initial PPA dated 28/4/2006 with the DISCOM, the Appellant had already arrived at a verbal understanding with the DISCOM that the construction of 132 KV transmission line of 28 kms. between the generator's facility and 132 KV sub-station

Dhampur, Bijnor will be carried out by UPPCL on deposit work basis as per the rules of the Corporation. It is the Appellant's case that since the terms of clause 8.3 of the PPA on the construction of the transmission line and the bay were very clear, no separate agreement was entered into between the Appellant and UPPCL.

6. UPPCL awarded the contract for supply of materials and construction of 132 KV SC transmission line of 28 kms. to M/s Hythro Power Corporation Limited ("**the Contractor**"). UPPCL also entered into separate agreements with the Contractor for the supply of material. As per the above agreements, the said transmission line was to be completed by the contractor by 31/12/2006. According to the Appellant, the construction of the bay at Dhampur sub-station of UPPCL was carried out by UPPCL itself. The Appellant was not involved with it at any stage as it was not required as per the terms of the PPA. UPPCL forwarded to the Appellant from time to time the sanctioned estimates with regard to the said construction work. According to the Appellant, on account of the

contractor, there was delay in the construction of transmission line. The construction of transmission line could be finally completed on 1/2/2008 as against the stipulated date 31/12/2006. There was delay of over 13 months in completion of construction of the said transmission line. After completion of the construction, evacuation of electricity was started on 4/2/2008.

7. The Appellant then filed a petition being Petition No.614 of 2009 before the State Commission claiming, inter alia, compensation for the delay in construction of the transmission line. The said petition was dismissed by the State Commission vide Order dated 12/11/2009. The matter was carried in appeal by the Appellant to this Tribunal, which was dismissed on 20/10/2011. The Appellant carried the matter to the Supreme Court. The Supreme Court dismissed the civil appeal on 6/2/2012.

8. After completion of the construction work of the transmission line, the Appellant received letter dated

20/8/2008 whereby cost of construction of the transmission line and the bay was again revised by UPPCL and a demand was raised calling upon the Appellant to pay balance payment of Rs.2,36,62,000/- towards finally executed estimate for the construction of the transmission line and the bay.

9. As per clause 8.5 of the PPA, the annual maintenance of the transmission line and the bay at UPPCL sub-station was done by UPPCL on payment of Annual Maintenance Charges (“**AMC**”) by the Appellant at 1.5% of the total cost incurred on Power Evacuation System inclusive of line to UPPCL for the first year and with annual escalation upto the maximum of 5% thereof in subsequent years. The above amount of AMC was to be adjusted by UPPCL from the Power Purchase Bill of the Appellant for the first month of the Financial Year.

10. According to the Appellant, in accordance with Clause 8.5 of the PPA, UPPCL had been regularly deducting the AMC from the first bill of the Appellant for every year on the total cost of Power Evacuation System determined at



Rs.5,97,08,000/- i.e. the total amount deposited by the Appellant towards construction work of the transmission line and the bay. The details of the amounts deducted towards AMC are as below:

F.Y. 2007-08	(4/2/2008 to 31/3/2008)	Rs. 8,95,620.00
F.Y. 2008-09		Rs. 9,40,401.00
F.Y. 2009-10		Rs. 9,87,421.00
F.Y. 2010-11		Rs.10,36,792.00

11. According to the Appellant, Respondent No.4 i.e. the Executive Engineer, UPPTCL by letter dated 26/4/2011 unilaterally enhanced the cost of construction of the transmission line and the bay to Rs.833.70 lakhs (being the total cost paid by the Respondent to the Contractor) for the purposes of AMC and raised the bill of AMC at Rs.15,20,052/- calculated @ 1.5%. Respondent No.4 also applied the above determined cost of transmission line at Rs.833.70 lakhs for calculating AMC with retrospective effect i.e. from the F.Y.

2007-08 and raised demand of Rs.15,29,794/- towards the alleged differential amount of the enhanced AMC.

12. The Appellant challenged the said action of the Respondent by filing a petition being Petition No.784 of 2012 before the State Commission. The State Commission dismissed it vide its order dated 24/2/2012.

13. According to the Appellant, the AMC for F.Y. 2011-12 paid by the Appellant under protest in the bill of Rs.15,20,052/- was calculated on the basis of enhanced cost of the transmission line and the bay and the Respondents had already appropriated a sum of Rs.15,29,794/- by way of unilateral deduction from the bills of electricity sold by the Appellant to the Respondents. This action of the Respondents was challenged by the Appellant in Appeal No. 77 of 2012 in this Tribunal. This Tribunal disposed of the said appeal vide its judgment and order dated 18/2/2013 by remanding the matter to the State Commission with a direction to decide whether the deduction as prayed by UPPCL in the energy bill raised by the Appellant was unauthorized.

14. It appears that the Appellant was not content with the remand order. According to the Appellant, Clause 35 of Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions for Supply of Power and Fixation of Tariff for sale of power from Captive Generating Plants, Co-generation, Renewable Sources of Energy and Other Non-Conventional Sources of Energy based Plants to a Distribution Licensee) Regulations, 2005 (“**UPERC Regulations, 2005**”) deals with the Evacuation of Power. Proviso 3 to Clause 35(2) of the UPERC Regulations 2005 provides for sharing of the cost of laying the transmission line and bays etc. i.e. terminal equipments and associated synchronization equipments to the sub-station etc. if the same exceeds 0.25 crores/MW. The relevant provisions of the UPERC Regulations, 2005 are quoted hereinbelow.

#### **“CHAPTER 4**

#### **COMMON TERMS AND CONDITIONS APPLICABLE TO ALL PLANTS COVERED UNDER CHAPTER 2 AND CHAPTER 3.**

**“35. Evacuation of Power.**

(1) xxx xxx xxx

(2) The cost of laying **the transmission line to the sub-station, the required bay, terminal equipments and associated synchronization equipment**, shall be borne by the generating plant and such work shall be undertaken under the supervision of the Licensee of the area in which the plant is located.

xxx xxx xxx

xxx xxx xxx

Provided further that if the total capital cost of the transmission line including bays etc. is likely to exceed 0.25 Cr./MW, a Co-generation plant generating electricity based on bagasse/biomass **may approach to Commission for considering sharing of the incremental cost by the concerned distribution licensee or STU.** (emphasis supplied).

Clause 41.2 of the PPA dated 15/11/2006 provides for applicability of the provisions of the UPERC Regulations, 2005, which clearly states as under:

*“Clause 41.2:- The provisions of UPERC’s Regulation, 2005, whatever required, will be applicable under this agreement.”*

15. Since in the present case, the total cost of transmission line including bays, etc. i.e. terminal equipments and associated synchronization equipments exceed Rs.0.25 crore / MW, the Appellant filed a petition in the State Commission being Petition No.835 of 2012 in terms of 3<sup>rd</sup> proviso to Clause 35(2) of the UPERC Regulations, 2005 praying that the Respondents be directed to share the incremental cost beyond Rs.600.00 lakhs incurred in laying and construction of the said 132 KV transmission line. By the impugned order, the State Commission disposed of the said petition holding, *inter alia*, that construction and completion of the dedicated transmission line was the absolute responsibility of the Appellant and, hence, no sharing can be allowed. Hence, the Appellant has filed this Appeal.

16. Admittedly, this is the fourth round of litigation between the parties as is evident from the facts narrated in the appeal memo which we have reproduced in the preceding paragraphs. It is necessary to know more about the nature of previous proceedings and details about the orders passed therein because, in our opinion, a lot turns on them. We shall, therefore, at the cost of repetition refer to the previous proceedings and the orders passed therein, in some detail.

17. The Appellant filed Petition No.515 of 2008 contending that it had started crushing operations in December, 2007 and was in a position to evacuate power to the Grid, but it was not possible due to non-availability of evacuation system. The Appellant prayed that temporary arrangement be made for the said purpose. The State Commission permitted the temporary arrangement upto 30/4/2008 by its order dated 6/2/2008. The State Commission observed that the construction of dedicated transmission line is the responsibility of the Appellant under the regulations; the Appellant should have

monitored the progress of construction and that the primary responsibility of delay lies with the Appellant. It is pertinent to note that this order is not challenged by the Appellant. The Respondents, therefore, contend that the Appellant has accepted the responsibility of delay and, therefore, cannot claim any damages.

18. Thereafter, the Appellant filed Petition No.615 of 2009 seeking settlement, entertaining and adjudicating the disputes and differences pertaining to losses suffered by the Appellant due to inordinate delay in completing the construction of 132 KVSC transmission line to 132 KV Sub-station and of 132 KV Bay at the said sub-station. The grievance of the Appellant was that due to the delay caused by the Respondents in construction of the said line and Bay, power could not be evacuated from December, 2007 though the plant was ready to supply power. Power could be evacuated and sold by the Appellant to the Respondents with effect from 9/2/2008. Thus, there was no sale of electricity for 54 days. The Appellant, therefore, prayed that the losses suffered by the

Appellant may be ascertained, liability of the Respondents may be fixed under the PPA and the Respondents may be compelled to pay to the Appellant money for the losses suffered by it. The State Commission by its order dated 12/11/2009 held that the absolute responsibility of construction and completion of dedicated transmission line remains with the generating company whether it has constructed the line or has got it done by some other agency. The generating company should ensure that on the date of commissioning, the construction is completed. It should adopt measures to ensure timely compliance. The State Commission in the circumstances concluded that losses, if any due to delay in completion of the line in no way could be attributed to the Respondents. The petition was thus disposed of.

19. The Appellant preferred two appeals against the State Commission's order dated 12/11/2009 being Appeal No.19 of 2010 and Appeal No.20 of 2010 to this Tribunal. This Tribunal disposed them of by order dated 20/10/2011. The



question which this Tribunal dealt with was whether under the PPA executed between the Appellant and the DISCOM, the Appellant is entitled for any compensation, damages for delay in construction of evacuation line by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent therein that is UPPCL and M/s. UP Power Transmission Corporation Limited respectively. This Tribunal by its order dated 20/10/2011 confirmed the State Commission's order and dismissed the appeals. This Tribunal, *inter alia*, held that the responsibility of constructing the dedicated transmission line was that of the Appellant; that the Appellant had option to construct the line either by itself or through UPPCL; that the Appellant on his own volition opted for the 2<sup>nd</sup> alternative i.e. it entrusted the work to UPPCL; that UPPCL's role was that of executing agency and that the Appellant should have entered into a separate execution agreement with UPPCL incorporating appropriate clause safeguarding its interest in the event of delay in construction of dedicated transmission line. This Tribunal further observed that under the Electricity Act, the distribution licensee is responsible for developing and

maintaining distribution system. Establishment of transmission line is not the function of a distribution licensee. This Tribunal further noted that the State Commission has in its order dated 5/2/2008 passed in Petition No.515 of 2008 held that construction of dedicated transmission line is the responsibility of the Appellant and the primary responsibility for the delay lies with the Appellant. This Tribunal noted that by not challenging this order, the Appellant accepted the responsibility. While confirming the State Commission's order, this Tribunal held that the Appellant is not entitled to any amount for losses suffered by it because the Appellant itself was responsible for the delay in construction of transmission line. This Tribunal held that the Appellant should have executed agreement with UPPCL containing a clause that UPPCL will indemnify the Appellant if there is delay in execution of work. This Tribunal further held that there was no clause in the PPA under which the Appellant would be entitled to damages suffered on account of delay in construction line. Clause 24.2 related to willful misconduct or negligence by DISCOM. It is pertinent to note that the appeals

filed by the Appellant in the Supreme Court were dismissed by the Supreme Court.

20. Thereafter, the Appellant filed Petition No.784 of 2012 in the State Commission praying that a direction be issued to UPPTCL to withdraw the demand of Rs.2,36,62,000/- raised against the Appellant towards the difference in cost of construction of transmission line, to re-compute the amount of AMC for F.Y. 2011-12 by applying cost of transmission line at Rs.5,97,08,000/- and to withdraw the demand of Rs.15,29,794/- raised against the Appellant towards the difference in amount of AMC paid in last four financial years and to direct Respondent No.5 therein (the Contractor) to make full payment of bill of the Appellant amounting to Rs.2,78,05,602.06 towards the cost of power sold and to allow any other suitable and effective relief to the Appellant.

21. The State Commission by its order dated 24/2/2012 dismissed the petition. The State Commission referred to its judgment in Petition No.614 of 2009 and judgment in Appeal

Nos.19 and 20 of 2010 carried from the said order. The State Commission observed that in its judgment in Appeal No.19 and 20 of 2010, this Tribunal had confirmed the State Commission's view that responsibility of speedy construction of the transmission line and its monitoring was of the Appellant. The Appellant was not entitled for compensation for the loss caused to it because it could not supply electricity to the Respondents by evacuating it. The Appellant should have entered into a separate agreement with the executing agency, UPPCL for indemnifying it. The State Commission observed that in the circumstances, the issue of increase in cost of dedicated transmission line and AMC raised by the Applicant was not admissible.

22. The Appellant challenged the said order vide Appeal No.77 of 2012. This Tribunal by its order dated 18/2/2013, set aside the State Commission's order and remanded the matter to the State Commission. This Tribunal observed that the State Commission has held that it had no jurisdiction to decide the issue because there was no separate execution

agreement between the Appellant and UPPCL and the PPA did not have any such clause for indemnifying the Appellant in case of delay in construction of transmission line. This Tribunal observed that in Appeal Nos.19 and 20 of 2010, the dispute pertained to the Appellant's claim for compensation from UPPCL for delay in construction of transmission line, but the present dispute has nothing to do with the construction of the transmission line or the delay in construction of the same. This Tribunal further observed that the present case is about unauthorized deductions made by the Respondents from the energy bills raised by the Appellant for power generated and sold to the Respondents under the PPA. It is a dispute between a generating company and a licensee which is covered by Section 86(1)(f) of the Electricity Act. This Tribunal referred to Clause 23 of the PPA which provides that any dispute between the parties to the PPA can be adjudicated by the State Commission on a petition being filed by either of the parties and held that the present dispute is completely within the jurisdiction of the State Commission. This Tribunal while remanding the matter to the State Commission, directed the

State Commission to decide whether the deduction as prayed by UPPCL in the energy bill raised by the Appellants was unauthorized.

23. While the matter was being prosecuted by the Appellant in this Tribunal, the Appellant was also negotiating settlement with the Respondents. On 16/2/2013, the Appellant and UPPCL entered into Annual Maintenance Contract dated 16/2/2013 wherein they agreed upon the cost of dedicated transmission line as Rs.7,93,38,340/- as reconciled cost on which AMC has to be paid. In pursuance of the agreement entered upon between the Appellant and UPPCL, the State Commission disposed of the matter remanded to it by this Tribunal vide its order dated 18/2/2013 in the following terms:

*“..... Sri S.P. Pandey on behalf of UPPCL and Sri D.D. Chopra, Advocate on behalf of M/s. Dwarikesh Sugar Ind. Limited submitted that they have signed the Annual Maintenance Contract only when the dispute on cost of dedicated transmission line and AMC has been removed. They added that the reconciled cost*

*of dedicated transmission line Rs.7,93,38,340/- and AMC as per the contract has been fully paid.*

*5. Since, both the parties have agreed in writing as per the Annual Maintenance Contract dated 16/2/2013 and accordingly the cost of dedicated transmission line Rs.7,93,38,340/- has been agreed and AMC has been paid, the Commission does not find any issue to further ponder upon.*

*However, it is necessary to elucidate that, in future, the AMC charges shall be deducted strictly under the provisions of PPA, Regulations and the Annual Maintenance Contract.*

*6. Therefore, the petition, remanded by Hon'ble APTEL, stands disposed of with the observations as above."*

24. Learned counsel for the Appellant has also confirmed that remand order has worked itself out.

25. It is clear from the above proceedings and orders passed therein that it has been the consistent view of the State Commission and this Tribunal and confirmed by the Supreme Court that the construction of dedicated transmission line was the responsibility of the Appellant, that the Appellant was responsible for delay in construction of the said line; that the Appellant was not entitled to any amount for losses suffered

by it on account of delay as it was responsible for the delay and that the Appellant should have executed an agreement with UPPCL containing a clause that UPPCL will indemnify the Appellant if there is delay in execution of work, but the Appellant has not done so.

26. Not being successful in any of its attempts to recover any cost or damages from UPPCL, the Appellant relying upon proviso to Clause 35(2) of the UPERC Regulations, 2005 and Clause 41.2 of the PPA dated 15/11/2006, filed Petition No.835 of 2012 before the State Commission on 3/10/2012 against UPPCL and others praying that direction be issued to the Respondents to share the incremental cost beyond Rs.600 lakhs incurred in laying and construction of the 132 KV SC transmission line to the sub-station, bay, etc.

27. While disposing of the said petition, the State Commission in the impugned order referred to Annual Maintenance Contract dated 16/2/2013 under which cost of the dedicated line was mutually agreed upon by the parties to



be Rs.7,93,38,340/-. The State Commission noted that in view of this agreement, it was not necessary to ponder over the said issue. In the circumstances, the remand matter was disposed of by order dated 29/4/2013. The State Commission reiterated its earlier view that the responsibility of the construction and completion of the dedicated transmission line was that of the Appellant and that the Appellant could have executed separate execution agreement incorporating indemnifying clause safeguarding its interest in case of delay in construction of transmission line which was not done. The State Commission, therefore, held that the Appellant was not entitled to sharing of costs.

28. Assailing the impugned order, Mr. Ranganadhan, learned counsel for the Appellant submitted that the Appellant does not want to reagitate the issues settled by the various orders of the State Commission and the Tribunal and the Supreme Court regarding responsibility of construction and completion of the dedicated transmission line. The Appellant was not renewing the prayer for damages which was rejected by this

Tribunal. The Appellant is totally on a new ground namely proviso 3 to clause 35(2) of the UPERC Regulations, 2005 under which a co-generation plant generating electricity on bagasse/biomass may approach the State Commission for considering sharing of the incremental cost by the concerned distribution licensee or S.T.U. if the total capital cost of the construction line including bay, etc. is likely to exceed 0.25 crore/MW. Counsel submitted that in this case, the total capital cost has exceeded 0.25 crores and, therefore, this case is covered by the said provision. Counsel for the Respondents on the other hand strongly opposed this submission.

29. That the Appellant is responsible for delay in construction line; that it is not entitled to any damages is not disputed and cannot be disputed by the Appellant. Various orders of the State Commission and of this Tribunal make this position clear. The Supreme Court has also confirmed this view. Now the question is whether proviso to Clause 35(2) is applicable to the present case. In our opinion, it does not cover the present case. The Appellant has been held

responsible for the delay in construction of the dedicated transmission line. It is held that the Appellant is not entitled to damages. It is further held that the Appellant has not entered into any agreement with UPPCL containing a clause that UPPCL to which work of construction was assigned by the Appellant would indemnify it. All these orders have now been accepted by the Appellant. In fact, there was a settlement between the parties and the Appellant entered into Annual Maintenance Contract dated 16/2/2013 with UPPCL under which cost of the dedicated transmission line was fixed at Rs.7,93,38,340/-. There can be no dispute about the fact that the cost of the construction increased because of delay. The Appellant has been held responsible for the delay. The reasoning of all the previous orders of the State Commission which were confirmed by this Tribunal would be frustrated if direction is given to the Respondents to share the incremental cost. That would be indirectly negating all the earlier orders of this Tribunal. Indirectly, the Appellant is seeking a relief which was denied to it. It would be putting a premium on the Appellant's conduct in not monitoring the work of construction

and not ensuring that it is completed within the stipulated time. Moreover, proviso to Clause 35(2) merely states that "... a co-generation plant generating electricity based on bagasse/biomass may approach the Commission for considering sharing of cost ....". It does not say that it is mandatory for the State Commission to pass an order directing sharing of costs. It is an enabling provision. In our opinion, in the facts of this case, the prayer for sharing is rightly rejected. The State Commission has rightly accorded quietus to a long drawn litigation.

30. It was urged on behalf of UPPCL that concept of sharing the cost as contemplated in proviso 3 to Regulation 35(2) of the UPERC Regulations, 2005 was not available to the Appellant on 3/10/2012 that is the date on which Petition No.835 of 2012 was filed in the State Commission because the UPERC Regulations, 2005 had ceased to be in force w.e.f. 1/10/2009 after coming into operation of the UPERC CNCE Regulations, 2009. This was countered by counsel for the Appellant by relying on Section 6 of the General Clauses Act

and provisions of Uttar Pradesh General Clauses Act, 1904. Since we have held on facts that proviso to Clause 35(2) of the UPERC Regulations, 2005 is not applicable to the present case, it is not necessary to deal with the said submission. In the circumstances, the appeal is dismissed.

31. Pronounced in the Open Court on this 4<sup>th</sup> day of December, 2015.

**T. Munikrishnaiah**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

✓ **REPORTABLE/~~NON-REPORTABLE~~**