IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 95 OF 2014

Dated: 18th February, 2015

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

IN THE MATTER OF

Chhattisgarh State Power Distribution Co. Ltd.
Vidyut Seva Bhavan, Danganiya,
Raipur-492013, Chhattisgarh,
Through its Additional Chief Engineer (RAC). .... Appellant/Petitioner

VERSUS

1. Central Electricity Regulatory Commission,
   3rd & 4th Floor, Chanderlok Building,
   36, Janpath, New Delhi- 110001.

2. Madhya Pradesh Power Management Co. Ltd.,
   Shakti Bhawan, Vidyut Nagar,
   Jabalpur-482008 (Madhya Pradesh).

3. Western Regional Power Committee,
   F-3, MIDC Area, Andheri (East),
   Mumbai-400093 (Maharashtra).

4. Western Regional Load Despatch Centre,
   F-3, M.I.D.C. Area, Marol,
   Andheri (East),
   Mumbai – 400093 (Maharashtra). ... Respondents

Counsel for the Appellant ... Ms. Suparna Srivastava
Ms. Nishtha Sikroria

Counsel for the Respondent(s)... Mr. G. Umapathy
Ms. R. Mekhala for R-2

Mr. M.G. Ramachandran
Ms. Anushree Bardhan
Ms. Poorva Saigal for R-4

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by Chhattisgarh State Power Distribution Co. Ltd. (in short, the **'Appellant'**), against the impugned order, dated 20.2.2014, passed by the Central Electricity Regulatory Commission (in short, the '**Central Commission'**) in Petition No. 193/MP/2012:Chhattisgarh State Power Distribution Co. Ltd. vs. Madhya Pradesh Power Management Co. Ltd. & Ors., whereby, the learned Central Commission has rejected the claim of the Appellant/petitioner for payment of interest/surcharge on reactive energy charges paid by Respondent No.2 to the Appellant after considerable delay, even when such interest/surcharge is payable under the Regulations of the Central Commission itself and there has been no waiver of claim of interest/surcharge by the Appellant which has wrongly been construed by the Central Commission. The findings of the learned Central Commission in the impugned order, dated 20.2.2014, rejecting the Appellant's claim for interest/surcharge, are as under:

> *"25. As regards the settlement of reactive energy charges for the period from September 2007 to October, 2012, in the meeting held on 12.8.2013 at WRLDC, Mumbai, the petitioner and MPPMCL were agreed to settle the issue mutually based on the bills provides by WRPC. With respect to the claim of the petitioner regarding reactive energy charges for the week 31.12.2012 to 6.1.2013, the petitioner should take up with matter with MPPMCL.*
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> *26. Further, the petitioner has also requested to direct MPPMCL to pay surcharge charge @ 0.04% towards reactive energy charges. Since the issue of surcharge had not been raised by the petitioner at the meeting held on 12.8.2013 with WRPC as well as before this Commission, the prayer of the petitioner with regard to recovery of surcharge, etc., is not considered in this petition.*
>
> *27. The petition is disposed of with the above."*

2. The Appellant/petitioner is the Distribution Company in the State of Chhattisgarh. Respondent No.1 is the Central Electricity Regulatory Commission, which is empowered and authorized to act in accordance with

the provisions of Electricity Act, 2003. Respondent No.2 is the Power Trading Company and is the successor of the Madhya Pradesh State Electricity Board and is performing the functions relating to purchase and sale of power and undertaking in relation thereto. Respondent No.3 is the Western Regional Power Committee (WRPC) and Respondent No.4 is the Regional Load Despatch Centre (RLDC) set up for the Western Region to exercise the powers and discharge the functions enjoined under the Act including the responsibility for carrying out real time operations for grid control in the Region and for keeping accounts of quantity of electricity transmitted through the Regional Grid.

3. The relevant facts giving rise to the instant Appeal are as under:

(a) that the Appellant/petitioner is the successor of the erstwhile Chhattisgarh State Electricity Board constituted under Section 5 of the Electricity (Supply) Act, 1948 read with Section 58 of the Madhya Pradesh Reorganization Act, 2000 to act as the Electricity Board for the State of Chhattisgarh after unbundling of the Electricity Board into different companies in terms of the Chhattisgarh State Electricity Board Transfer Scheme Rules, 2010 notified by the State Government under Section 131 of the Electricity Act, 2003 to come into force from 1.1.2009. The undertaking forming part of the distribution undertakings of the Board as set out in Schedule III of the Transfer Scheme stands transferred to and vested in the Appellant and all functions and duties pertaining to distribution of power in the State are now being performed by the Appellant w.e.f. 1.1.2009.

(b) that the Appellant/petitioner filed a petition under Section 79(1)(c) read with Section 142 of the Electricity Act, 2003, before the learned Central Commission being Petition No. 193/MP/2012 seeking the following specific reliefs:

> *"(a) Direct Respondent No.1 to pay to the Petitioner reactive energy charges in the sum of Rs.11,64,84,711/- (Rupees Eleven Crore Sixty Four Lakh Eighty Four*

Thousand Seven Hundred Eleven only) as billed by Respondent No.3 for the period from April 2006 to 1.7.2012 together with surcharge @0.04% per day on the outstanding amount as on 31.7.2012 amounting to Rs.3,12,32,619/- (Rupees Three Crore Twelve Lakh Thirty Two Thousand Six Hundred Nineteen only), aggregating to Rs.14,17,57,330/- (Rupees Fourteen Crore Seventeen Lakh Fifty Seven Thousand Three Hundred Thirty only);

(b) Direct Respondent No.1 to pay to the Petitioner further surcharge @ 0.04% per day on the outstanding amount of Rs.11,64,84,711/- (Rupees Eleven Crore Sixty Four Lakh Eighty Four Thousand Seven Hundred Eleven only) towards reactive energy charges from 1.8.2012 till payment thereof;

(c) Direct Respondent No.1 to pay to the Petitioner reactive energy charges as billed or may be billed to it by Respondent No.3 for the period from 2.7.2012 together with surcharge @ 0.04% per day on the delayed payment whenever applicable;

(d) Direct Respondent No.3 to furnish detail of outstanding reactive energy charges payable by Respondent No.1 to the Petitioner for the period prior to April 2006 and further direct Respondent No.1 to pay the said amount to the Petitioner along with surcharge @ 0.04% per day on the outstanding amount from the date it has become due;

(e) Initiate penal proceedings against Respondent No.1 under Section 142 of the Electricity Act, 2003 for failing to comply with the provisions of the Indian Electricity Grid Code, 2006 and the Indian Electricity Grid Code, 2010 notified by the Commission, as may be applicable towards payment of reactive energy charges as billed by Respondent No.3.

(f) And pass any other or further order(s) as the Commission deems fit in the fact and circumstances of the case."

(c) that the Central Commission notified the Indian Electricity Grid Code, 2006 (Grid Code, 2006), which came into effect from 1.4.2006. In suppression of the Grid Code, 2006, the Central Commission, on 28.4.2010, notified Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (2010 Grid Code), which came into effect

from 3.5.2010. Regulation 6.6 of the Grid Code provides as under:

> *"1. Reactive power compensation should ideally be provided locally, by generating reactive power as close to the reactive power consumption as possible. The beneficiaries are therefore expected to provide local VAr compensation/generation such they do not draw VArs from the EHV grid, particularly under low-voltage condition. However, considering the present limitations, this is not being insisted upon. Instead, to discourage VAr drawals by beneficiaries, VAr exchanges with ISTS shall be priced as follows:*
>
> - *The Regional Entity except Generating Stations pays for VAr drawal when voltage at the metering point is below 97%*
> - *The Regional Entity except Generating Stations gets paid for VAr return when voltage is below 97%*
> - *The Regional Entity except Generating Stations gets paid for VAr drawal when voltage is above 103%*
>
> *Provided that there shall be no charge/payment for VAr drawal/return by a Regional Entity except Generating Stations on its own line emanating directly from an ISGS.*
>
> *2. The charge for VArs, shall be at the rate of 10 paise/kVArh w.e.f. 1.4.2010, and this will be applicable between the Regional Entity, except Generating Stations, and the regional pool account for VAr interchanges. This rate shall be escalated at 0.5 paise/kVArh per year thereafter, unless otherwise revised by the Commission."*

(d) that the present petition was filed before the Central Commission for implementation of the mechanism for reactive energy charges specified in the Grid Code and payment of such charges by the Madhya Pradesh Power Management Co. Ltd. (MPPMCL), Respondent No.2 herein, for the period from 1.4.2006 onwards. It has been submitted in the petition that reactive energy is required to be minimized so as to reduce the losses and bring efficiency in the system

(e) that according to the petition, Regulation 6.6 of the Grid Code, 2006, set out the mechanism for reactive power pricing and

also provides for payment of charges towards reactive energy for which accounting is done by the concerned Regional Load Despatch Centre (RLDC). Regulation 6.6 of the Grid Code, 2006 also provides for settlement of reactive energy charges and accordingly, MPPMCL has to pay the reactive energy charges for its drawal during voltage conditions of grid to the Appellant/petitioner for supplying the same reactive energy during that period.

(f) that, according the petition, Regulation 6.6 of the 2010 Grid Code also provides for reactive energy pricing mechanism and complementary commercial mechanisms, respectively in line with Grid Code, 2006. In terms of Chapter 6 of the 2010 Grid Code, the defaulting constituents are required to pay simple interest @ 0.04% for each day of delay and in case of persistent payment default towards reactive energy charges; the matter is to be reported by RLDC to Member-Secretary, Regional Power Committee for initiating remedial action.

(g) that, according to the petition, MPPMCL was not paying reactive energy charges to the Appellant/petitioner as also to its predecessor Board since April, 2006 as per the provisions of the Grid Code. Accordingly, the Appellant/petitioner, vide its letter, dated 13.6.2011, requested the MPPMCL/Respondent No.2 to pay outstanding Rs.7,22,24,095/- and make weekly payment of reactive energy charges regularly as and when weekly reactive charges are finalized by WRLDC. WRPC was also requested to intervene and advise the Respondent No.2 to pay the outstanding reactive energy charges immediately to the Appellant/petitioner. Despite repeated reminders, Respondent No.2 did not make any payment with regard to reactive energy charges. It has also been submitted in the petition that as on 14.2.2012, a sum of Rs.10,58,40,238/- along with delayed

payment surcharge is pending against the Respondent No.2 towards reactive energy charges.

(h) that the Appellant, vide its letter, dated 17.2.2012, informed the Respondent No. 2 that if payment is not made within 15 days, it will be forced to take legal action to recover outstanding reactive energy charges and for non-compliance of Central Commission's Regulations. Meanwhile, Respondent No. 3/WRPC raised further bills of Rs.14,30,43,133/- including delayed payment surcharge towards reactive energy charges up to 20.5.2012. Subsequently, the Appellant, vide its letter, dated 30.7.2012, requested the Respondent No. 2 to pay the outstanding payment with a request to WRPC to intervene and advise MPPCL to pay the outstanding reactive energy charges immediately to the Appellant.

(i) that the Appellant also submitted in the said petition that as per the provisions of Grid Code, 2006, bills towards reactive energy charges issued by WRLDC on weekly basis are to be settled by the concerned constituents within a period of 12 days, failing which, they are liable to pay simple interest @ 0.04% for each day of delay. WRLDC had been issuing the said weekly bills where under MPPMCL was required to pay reactive energy charges. However, MPPMCL failed and refused to pay the reactive energy charges.

(j) that according to the petition, taking bill towards reactive energy charges issued by WRPC for the week up to 1.7.2012 into account, the following amount including delayed payment surcharge is outstanding against MPPMCL as on 31.7.2012:

Outstanding amount for the period April 2006 to 1.7.2012:	Rs.11,64,84,711.00
Surcharge @ 0.04% per day on the outstanding amount as on 31.7.2012:	Rs. 3,12,72,619.00
Total:	Rs.14,77,57,330.00

(k) that M.P. Power Management Co. Ltd (MPPMCL), Respondent No.2 herein, in its reply, dated 1.1.2013, before the Central Commission, submitted that 220 kV Amarkantak-Kotmikala-Ckt. I, 220 kV Amarkantak- Kotmikala-Ckt II, 400 kV Bhilai-Sarni line and 132 kV Balaghat - Dongargarh line were classified as inter-State transmission lines after bifurcation of the erstwhile State of Madhya Pradesh into States of Madhya Pradesh and Chhattisgarh in the year 2000. The majority of the outstanding amount of Reactive Energy Charges (REC) claimed by the Appellant is on account of 400 kV Bhilai-Sarni line which was constructed by the erstwhile MPEB. After reorganization of the State of M.P., the ownership and maintenance of 400 KV Bhilai - Sarni line from Bhilai sub-station up to Chhattisgarh/MP State Border is with the Appellant and that from the Border to Sarni TPS is with MPPMCL. Similar is the case of ownership and maintenance of other three lines. MPPMCL further submitted that as per the decision of Standing Committee of WRPC, the LILO of 400 kV Bhilai - Sarni line was carried out by PGCIL at 756/400 kV Seoni sub-station and the said LILO was charged by PGCIL on 18.9.2007. In view of the LILO, the aforesaid Inter-State line became 400 kV Bhilai- Seoni ISTS between Chhattisgarh and PGCIL and 400 KV Seoni - Sarni ISTS between Madhya Pradesh and PGCIL. Accordingly, the reactive energy charges are to be settled between the respective beneficiary and ISTS. MPPMCL also submitted that WRPC, while issuing weekly bills of Reactive Energy Charges (REC) between Madhya Pradesh and Chhattisgarh, have also considered 400 kV Bhilai-Sarni as Inter-State line between both States instead of considering the two separate lines of respective States connected with ISTS. Thus, WRPC has issued the weekly bills of REC from 18.9.2007 onwards without considering the actual flow of Reactive Energy between ISTS and Chhattisgarh / Madhya Pradesh States. The

matter was taken up with WRPC and WRLDC with request to revise the REC w.e.f 18.9.2007 onwards. WRLDC had made necessary changes in the accounts of VArh charges w.e.f. 29.10.2012 and that old bills would be revised by February, 2013. For the other lines, they have requested the Appellant to hold a joint meeting. However, the Appellant and MPPMCL have not convened any joint meetings in this regard to arrive at a mutually agreed mechanism, rate, etc. Such a meeting was essential for fair settlement of present disputed bills in question. MPPMCL, vide its letter, dated 13.12.2012, had requested the Appellant to convene a joint meeting in this regard.

(l) that Western Regional Load Despatch Centre (WRLDC), in its reply, dated 15.11.2012, before the Central Commission regarding computation of VAr exchange directly between two regional entities except generating stations on the interconnecting lines owned by them (solely or jointly), submitted that as per Clause 6.6.7(iii) of the Indian Electricity Grid Code (IEGC), 2010, the scheme shall be applied in case of disagreement between two concerned Regional Entities. As per Clause 11 of IEGC, 2010, Regional Power Committee (RPC) Secretariats shall prepare weekly statement of VAr charges to all regional Entities with ISTS and between two regional entities. According to the Grid Code, payment for reactive energy exchanges on State owned lines shall be settled mutually between the respective States and RLDCs do not maintain any payment details with respect to such VAr payment as these are not routed through Regional Reactive Pool Accounts maintained by WRLDC

(m) that WRLDC, in its reply before the Central Commission, also submitted that it is responsible for operating Regional Reactive Pool Accounts for the VAr exchanges of regional entities with

ISTS only and the VAr exchange between two regional entities on the lines owned by them need to be settled mutually between the respective entities.

(n) that WRLDC, in its further reply, dated 14.5.2013, filed before the Central Commission, submitted that the Appellant and MPPMCL have not informed regarding any arrangement agreed between them for payment of VAr charges for the lines owned by them (singly or jointly). As per Regulation 8 of the Grid Code, the effected constituents are required to report any discrepancy within a period of 15 days. On 5.11.2012, MPPMCL intimated WRPC regarding discrepancy noticed in the VAr accounts between MPPMCL and the Appellant w.e.f. 29.10.2012 onwards. WRLDC vide its letter, dated 21.12.2012, had informed MPPMCL that required revisions will be carried out by February 2013.

(o) that the Appellant, in its rejoinder, dated 15.2.2013, to the reply of MPPMCL, filed before the learned Central Commission, submitted that as per the provisions of the Grid Code, WRPC is responsible for preparing weekly statement of VAr charges as between two regional entities and is also now undertaking revision therein unilaterally at the behest of MPPMCL when the matter is sub-judice before the Commission.

(p) that WRLDC, vide its letter, dated 30.8.2013, has confirmed that a meeting was hled on 20.8.2013 at WRLDC, Mumbai on 12.8.2013 and in the said meeting, the representatives of CSPDCL and MPPMCL were agreed for settlement of energy charges account based on the statement prepared by WRLDC for the period September, 2007 to October, 2012, by excluding the Sarni-Bhilai transmission line from the reactive energy charge account between the Appellant and MPPMCL. The statement was verified by the representative of MPPMCL and CSPDCL. WRLDC has submitted that the final MP-CG net after

adjustment of Seoni-Bhilai transmission line comes out to be Rs. 8,75,71,004/-.

(q) that the Appellant, vide its affidavit, dated 22.10.2013, has also confirmed that MPPMCL has made a payment of Rs.10,19,63,947/- towards reactive energy charges on 13.9.2013. However, upon receiving such payment and while examining the above computation communicated to it for the payment received up to 28.7.2013, following deficiencies in payment were noticed and communicated to MPPMCL vide letter, dated 19.9.2013:

(i) An amount of Rs. 2,21,045/- for the week 31.12.2012 to 6.1.2013 has not been included in the reactive energy account up to 28.7.2013.

(ii) The surcharge payable as per applicable Regulations is not considered for the payment which is worked out Rs. 4,24,08,248/- till 13.9.2013, the date of payment by MPPMCL.

(iii) Thus, a total amount of Rs. 4,26,28,739/- is still outstanding against MPPMCL towards reactive energy account up to 28.7.2013 with surcharge payable up to 13.9.2013.

(r) that that according to the Appellant/petitioner, MPPMCL was requested to verify the detail and ensure payment of the outstanding reactive energy charge of Rs. 4,26,28,739/- within next 15 days. In response, MPPMCL, vide its letter, dated 28.9.2013, informed that it had complied with the directions of the Commission, dated 18.7.2013, and had made full payment of bilateral reactive energy charges on 13.9.2013.

(s) that when the matter was being heard before the Central Commission, the representative of MPPMCL submitted that out of four lines, there is no dispute regarding three lines and the

issue remains only in respect of Bhilai-Sarni transmission line. If the issue in respect of Bhilai-Seoni and Seoni-Sarni transmission lines is resolved, MPPMCL will pay the bills within fifteen days thereafter. Accordingly, since, both the parties were agreed that there is no dispute regarding three transmission lines, MPPMCL was directed by the learned Commission to settle the reactive energy charges in respect of these three lines. Reactive Energy Account (REA) was prepared by WRPC between CSPDCL and MPPMCL based on the inputs submitted by WRLDC for the period September, 2007 to October, 2012 for Amarkantak-Kotmikala-1, Amarkantak-Kotmikala-2, Sarni-Bhilai and Balaghat-Dongarghat. In September, 2007, Sarni-Bhilai transmission line was made LILO at Seoni sub-station and Sarni-Seoni line and Bhilai-Seoni line became MP-ISTS line and Bhilai-ISTS line, respectively. Therefore, the reactive energy charges of Sarni-Bhilai line has been excluded from the reactive energy account between Chhattisgarh and Madhya Pradesh.

(t) that the submission of WRLDC before the learned Commission was that WRLDC is responsible for operating Regional Reactive Pool Accounts for the VAr exchanges of regional entities with ISTS only and the VAr exchange between two regional entities on the transmission lines owned by them need to be settled mutually between the respective entities.

(u) that according to the directions of the Central Commission, a meeting to resolve the dispute regarding reactive energy charges was held at WRLDC, Mumbai on 12.8.2013, in which meeting, the same points were discussed and the representatives of CSPDCL and MPPMCL agreed for settlement of energy charge account based on the statement prepared by WRPC for the period September, 2007 to October, 2012. The said statement was verified by the MPPMCL and CSPDCL and in the said meeting, dated 12.8.2013, held at Mumbai, the Appellant and

MPPMCL were agreed to settle the issue mutually based on the bills provided by WRPC. It was also agreed in the said meeting that with respect to claim of the Appellant regarding reactive energy charges for the week 31.12.2012 to 6.1.2013, the Appellant should take up the matter with MPPMCL.

(v) that in the impugned petition, the Appellant requested to the Central Commission to direct MPPMCL to pay surcharge @ 0.04% towards reactive energy charges. The learned Central Commission, in the impugned order, has observed that the issue of surcharge had not been raised by the Appellant-petitioner at the meeting held on 12.8.2013 with WRPC as well as before the Commission, the prayer of the Appellant-petitioner with regard to recovery of surcharge, etc., is not considered in the instant petition.

4. The main grievance of the Appellant in the instant Appeal is that the learned Central Commission has wrongly refused the delayed payment surcharge in the impugned order on the ground that the issue of surcharge had not been raised by the Appellant-petitioner at the meeting held on 12.8.2013 with WRPC as well as before the Commission.

5. The only issue arising for our consideration is **whether the Appellant/petitioner is entitled to delayed payment surcharge or interest over the amount which the Respondent No.2 had already paid**?

6. On this issue, relating to the payment of surcharge or interest, the following submissions have been made by the Appellant/Petitioner:

(a) that the learned Central Commission has wrongly rejected the Appellant's claim for payment of interest/surcharge by Respondent No.2 with respect to the reactive energy charges

paid by Respondent No.2 to the Appellant after considerable delay even when such interest/surcharge is payable under the Regulations of the Central Commission because the Appellant has never waived its claim for surcharge.

(b) that the finding of the learned Central Commission regarding the fact that the issue of surcharge was not raised by the Appellant before the Central Commission is wrong because in the petition itself, such a prayer was made by the Appellant. The learned Central Commission has failed to consider the claim made by the Appellant in its petition itself, in which it requested the Central Commission to direct the Respondent No.2 to pay to the Appellant/petitioner surcharge @ 0.04% per day on the outstanding amount as per the Grid Code 2006 and 2010.

(c) that since the matter of payment of reactive energy charge was only referred by the Central Commission to the WRPC and because the matter of surcharge or interest was not referred by the Central Commission to the WRPC, the matter of surcharge or interest was not raised by the Appellant in the meeting held on 12.8.2013 between the parties with WRPC. The finding of the learned Central Commission on this point is against law.

(d) that since the issue of payment of reactive energy charges was only directed by the Central Commission to be resolved in the meeting held with the WRPC, the issue of interest on delayed reactive energy payments has never been the subject matter of discussion or resolution with the WRPC. The impugned Order suffers from serious infirmities causing grave injury to the Appellant by denying the Appellant its legitimate statutory claim to payment of surcharge on delayed reactive energy payment made to it by the Respondent No.2.

(e) that according to the statutory provisions regarding reactive energy payment, the reactive energy is a component of total energy and is required to be minimized so as to reduce the losses and bring efficiency in the system. The Indian Electricity Grid Code, 2006 or 2010 provides for payment of reactive energy (VAr) charges for discouraging reactive energy drawals by beneficiaries and its settlement as per aforesaid pricing methodology given in clause 6.6 of the 2006 Grid Code w.e.f. 1.4.2006 and on rates as prescribed by the Central Commission from time to time.

(f) that the Grid Code further emphasizes that these payments are to have "high priority", meaning thereby that the constituents are statutorily enjoined to pay their respective reactive energy charges on a high priority basis to the concerned constituents. The mechanism for reactive energy payment in reference to drawls/injections from/to regional grid requires payment to be made in a regional pool account. However, the payments towards drawl/injection through the transmission lines between two constituent states of the Region are made directly as between the constituents who are under an obligation to pay or receive the same.

(g) that the Central Commission has committed an illegality in denying the Appellant its legitimate dues of reactive energy charges for almost 7 years.

(h) that clause 7 of the Grid Code further provides that if payments against the reactive energy charges as billed every week by the Regional Power Committee (RPC) Secretariat are delayed by more than two days i.e. beyond 12 days from statement issued, the defaulting constituent is to pay simple interest at the rate of 0.04% for each day of delay. The provision for interest on delayed reactive energy payment is thus a statutory prescription made under the Regulations of the Central

Commission and the same is never required to be claimed from a beneficiary who is making delayed payment of reactive energy charges.

(i) that the question, therefore, is of non-compliance of provisions of Grid Code in case interest on delayed payment is not made and a plea of delay and latches for settling the claim for interest is wholly alien to the scheme of payment of statutory interest on delayed reactive energy charges.

(j) that the Grid Code Regulations, 2006 have been superseded by the Central Commission by the Grid Code Regulations, 2010 notified on 28.4.2010 to come into force from 3.5.2010. The Grid Code Regulations, 2010 also contain similar provisions regarding reactive energy payments as were existing in Grid Code Regulations, 2006.

(k) that during the period, the erstwhile Chhattisgarh State Electricity Board had been in existence and, thereafter, WRPC had been issuing statements to Respondent No.2 towards reactive energy charges as prescribed in the Grid Code. After unbundling of the Board and based on the available records, it was observed by the Appellant/petitioner that Respondent No.2 was not making any reactive energy payments right from April, 2006 and, accordingly, a statement for the period from April, 2006 to March, 2011 was prepared and a sum of Rs.7,22,24,095/- was found to be outstanding and payable by Respondent No.2 to the Appellant.

(l) that after the resolution, in its meeting, dated 12.8.2013, Respondent No.2 was directed to make payment of all outstanding reactive energy charges within 15 days to the Appellant. Needless to say, such payment was necessarily to be made along with interest on delayed payment as provided in the Grid Code and as claimed by the Appellant in the Petition.

WRPC was performing the function of issuing weekly VAr statements to the beneficiaries in the Western Region and was not an adjudicatory authority to resolve any disputes between beneficiaries with respect to reactive energy dues and for which the jurisdiction vested solely with the Central Commission and could not be delegated to the WRPC by the Central Commission.

(m) that WRPC not being an adjudicatory authority but only carrying out VAr accounting as per the provisions of Grid Code, the entire issue of payment of reactive energy charges between the Appellant and Respondent No.2 had wrongly been sent for resolution by the Central Commission to the meeting to be convened by WRPC. Since, it was specifically recorded in the record of proceedings of the Central Commission that there was no dispute regarding payment of reactive energy charges for other three lines, it followed that when the issue regarding Bhilai-Sarni was resolved and the Report was submitted by WRPC to the Central Commission, the reactive energy charges as settled by taking into account the changed status of Bhilai-Sarni line were to be paid by Respondent No.2 to the Appellant within 15 days along with interest as claimed in the petition, which interest the Appellant was entitled to receive under the Grid Code.

(n) that the learned Central Commission has erred in not appreciating that interest or surcharge is a just compensation for deprivation of the use of money. The definition of interest has been laid down by the Hon'ble Supreme Court in the matter of Central bank of India vs. Ravindra & Ors. [(2002) 1 SCC 367], and also in the matter of Alok Shankar Pandey vs. Union of India & Ors. [(2007) 3 SCC 545].

(o) that when the Appellant had not raised the issue of surcharge in the meeting with WRPC, as the same had not been within the

assigned scope of discussions with WRPC, the Central Commission has, in fact, proceeded on the basis as if the Appellant has waived its claim of surcharge on Respondent No.2. This Appellate Tribunal in the matter of Tamil Nadu Electricity Board vs. M/s TCP Ltd. & Ors [2011 ELR (APTEL) 0458] has dealt with the principles of waiver. Since, the surcharge over delayed reactive energy charge has never been waived by the Appellant/petitioner, the same could not said to have been waived by the Appellant.

7. ***Per contra***, the learned counsel for the Respondent No.2/MPPMCL has made the following submissions:

(a) that the present appeal is directed against the impugned order, dated 20.2.2014, to the extent of non-grant of interest/surcharge on the alleged delayed payment of Reactive Energy Charges (REC) paid by the Respondent No.2 to the Appellant.

(b) that the impugned order of the Central Commission is in accordance with the provisions of IEGC 2006 and 2010. The provisions of IEGC did not allow any surcharge on delayed payment of reactive energy charges between regional beneficiaries for the transmission lines owned by them. In fact, regional entities were to agree for settlement of reactive energy charges between them mutually and despite repeated request by Respondent No.2, vide letters, dated 13.12.2012 and 18.1.2013, this settlement took place at the instance of the Central Commission in the meeting held at WRLDC, Mumbai on 12.8.2013. Prior to the said date, the Appellant neither entered into any settlement/agreement with the Respondent No.2, nor raised any demand from April, 2006 to 12.6.2011. The Appellant, vide its letter, dated 13.6.2011, has raised the demand based on reactive energy charges as per statements of

WRPC/WRLDC for the period from 1.4.2006 to March, 2011 amounting to Rs.7.22 crore for the first time. Thereafter, the Appellant, vide its letter, dated 8.11.2011, followed by another letter, dated 17.5.2012, made a demand for the outstanding reactivity charges. However, no claim for surcharge/interest was made by the Appellant.

(c) that the Appellant, vide letter, dated 30.7.2012, sent to Respondent No.2 for the first time claimed interest @ 0.04% per day. This was followed by another communication, dated 8.8.2012, and, thereafter, impugned petition was filed before the Central Commission where a prayer was sought for the payment of interest/surcharge.

(d) that as regards interest @ 0.04% per day, this was applicable for non-payment of reactive energy charges/VAr into pool account being maintained & monitored by Regional Load Despatch Centre (RLDC) for settlement of same between beneficiaries and ISTS. Terms and conditions for settlement of reactive energy charges between two regional entities on the lines owned by them are to be settled mutually. Assuming without admitting that the interest @ 0.04% is applicable, even then the same would not be applicable as the amount was paid within 15 days of the mutual settlement arrived pursuant to the meeting convened by WRLDC.

(e) that the provisions of Grid Code 2006 and 2010 provide for payment of simple interest @ 0.04% for each day of delay in payment of reactive energy charges by the defaulting constituents with ISTS in to pool account only. Settlement of reactive energy charges between the regional entities for the interconnecting lines owned by them would be as per mutual agreement between them.

(f) that the Central Commission, vide its Record of Proceedings, dated 18.7.2013, in Petition No. 193 of 2012, directed WRPC to convene a meeting between Appellant, Respondent No.2 and Respondent No.4 to resolve the dispute regarding reactive energy charges within a period of 15 days and Respondent No.2 would liquidate the outstanding payment within 15 days from the date of settlement by WRPC. Accordingly, meeting was held between Appellant and Respondents at WRLDC, Mumbai on 12.8.2013 and the matter regarding payment of reactive energy charges was resolved between the Appellant and the Respondent No.2. The only settlement of payment of reactive energy charges between the Appellant and Respondent No.2 was decided and Appellant did not at all raise issue for payment of interest/surcharge. The Central Commission, while passing the impugned order, acted in accordance with the provision of the Grid Code, i.e. neither there was provision of payment of interest on delayed payment of reactive energy charges for the lines owned by the Appellant and Respondent No.2 nor did both Appellant and Respondent No.2 decide the same mutually in the meeting held on 12.8.2013. Moreover, the Appellant, vide letter, dated 28.1.2013, has confirmed further action in settlement of reactive energy charges with Respondent No.2 as per the order of the Central Commission, i.e. they relied on provision 6.6.7(iv) of Grid Code 2006 and 2010. There is absolutely no error in the impugned order of the Central Commission.

(g) That the Appellant never raised any demand towards claim of weekly reactive energy bills to the Respondent No.2 from April, 2006 till 12.6.2011. The Appellant, vide its first letter, dated 13.6.2011, demanded payment of reactive energy charges for the period from April, 2006 to March, 2011 as per the statement issued by WRLDC/WRPC, Mumbai. The said demand of the Appellant was erroneous as the computation of

reactive energy charges between the Appellant and Respondent No.2 included the reactive energy charges of 400 kV Bhilai-Seoni line which was to be settled between the Appellant and ISTS.

(h) that in the case of reactive energy charges between regional entities for interconnecting transmission lines owned by them, there was no provision for payment of interest in the Indian Electricity Grid Code. Mutual agreement between the Appellant and Respondent No.2 was made in the meeting, dated 12.8.2013 and in accordance with the decision taken in the meeting and as per directions of the Central Commission, Respondent No.2 has paid entire reactive energy charges of Rs.10.196 crore (April, 2006 to August, 2012) within a period of 15 days from WRPC's letter, dated 30.8.2013, communicating the reactive energy charges to be paid by the Respondent No.2 to the Appellant. Since, after the settlement of the terms and conditions of reactive energy charges in the meeting held on 12.8.2013, the Respondent No.2 is making regular payment of the same to the Appellant and no amount is outstanding with the Appellant as on date. Thus, the Appellant's demand for imposition of interest on delayed payment of reactive energy charges is not tenable.

(i) that this Appellate Tribunal's judgment in the matter of Ispat Industries Ltd. vs. Maharashtra Electricity Regulatory Commission (MERC) and Ors. reported in 2010 ELR (APTEL) 931 cannot be applied in the present case because MERC had imposed delayed payment charges on the energy bills of MSEDCL in accordance with Tariff Regulations prescribed by them.

(j) That the ruling of this Appellate Tribunal in the case of M/s TCP Ltd. vs. TNERC reported in 2011 ELR (APTEL)0458

regarding waiver of rights is wholly inapplicable in the instant case.

(k) that the claim for interest/surcharge is not only against the Grid Code but also would be hit by latches as held by the Hon'ble Supreme Court in the case of Karnataka Power Corporation Ltd. vs. K. Thangappan and Anr. reported in (2006) 4 SCC 322.

(l) that after the unbundling of State Electricity Board, both Appellant and Respondent No.2 have to follow accounting procedure as per the Companies Act, 1956. The definition of liability and obligation provided in Accounting Standard (AS) 29 are reproduced hereunder:

> *"Definition:*
> *10. The following terms are used in this Standard with the meetings specified:*
> *10.1 A provision is a liability which can be measured only by using a substantial degree of estimation.*
> *10.2 A liability is a present obligation of the enterprise arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits.*
> *10.3 An obligating event is an event that creates an obligation that results in an enterprise having no realistic alternative to settling that obligation."*

(m) that the Appellant has not raised any invoice of reactive energy charges till 18.7.2012 and its right to claim delayed payment interest/surcharge is not sustainable from the aforesaid legal point of view as well as from Accounting Standard point of view.

8. Before we start with our discussion and conclusion on the arguments raised by the contesting parties, we deem it proper to note that the Appellant/petitioner, for the first time, vide its letter, dated 13.6.2011, informed the Chief General Manager of the Respondent No.2 that in accordance with Regulation of Central Electricity Regulation Commission, the constituents have to pay reactive energy charge based on the calculation made by the Western Regional Power Committee (WRPC) every

week. On going through the records, the Appellant has observed that Respondent No.2 is not paying reactive energy charge to Chhattisgarh State Power Distribution Co. Ltd. (CSPDCL) since long back enclosing statement for the period from April, 2006 onwards and up to April, 2011, giving details of the so called outstanding amounts of reactive energy charge, further intimating that payment details prior to April, 2006 are under scrutiny and shall be informed separately. By this letter, the Appellant requested the Respondent No.2 to make weekly payment of the reactive energy charge to the Appellant regularly as and when the weekly reactive energy charge is finalized by WRPC. Thus, the said outstanding amount was for the first time detected by the Appellant itself on 13.6.2011, showing outstanding payment of reactive energy charge since April, 2006 to March, 2011 and further noting that payment details prior to April, 2006 were under scrutiny. Thus, the Appellant itself was not sincere and diligent in detecting the said outstanding amount for more than 5 years prior to the date of this letter, dated 13.6.2011.

9. It is also necessary to mention here that the record of proceedings before the learned Central Commission in the impugned petition, particularly, dated 18.7.2013, notes that according to the Appellant/petitioner, the Respondent No.2/MPPMCL is not paying reactive energy charges to the Appellant since April, 2006. WRPC and WRLDC, as per the learned counsel for the Appellant, are shifting onus on each other. The learned counsel for the Appellant/petitioner requested the Central Commission to direct WRPC, WRLDC and MPPMCL to settle the issue at an early date. The record of proceedings further depicts that the representative of WRLDC submitted that ABT was introduced in the Western Region in 2002 and the meter readings for inter-State transmission lines are made available on WRLDC website as well as in Regional Energy Account (REA), the matter of reactive energy charges needs to be mutually settled between the two States in terms of Regulations 6.6.7 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, as the readings are available in

public domain for three transmission lines between Chhattisgarh and Madhya Pradesh. This record of proceedings, further, shows that in the beginning, the learned counsel for the Appellant/ petitioner requested the Commission for settlement of the said dispute. The representative of the Respondent No.2/MPPMCL also requested the Commission to direct the Appellant/petitioner to resolve the issue through mutual discussion because if the issue in respect of Bhilai-Seoni and Seoni-Sarni transmission lines was resolved, the MPPMCL would pay the bills within 15 days thereafter. Thus, the said dispute about the payment of reactive energy charge was directed to be settled by the Central Commission. The Commission observed that both the parties agreed that there was no dispute about three transmission lines and the Commission further directed the MPPMCL to settle the reactive energy charge with the Appellant/petitioner in respect of these three transmission lines. The Central Commission directed the WRPC to convene a meeting with all the concerned parties to resolve the dispute regarding reactive energy charge within a period of 15 days and, further, directed the Respondent No.2 to liquidate the outstanding payment within 15 days from the date of settlement by WRPC. The Central Commission, further directed the said petition to be listed for further hearing, if required, based on the outcome of the meeting to be held by WRPC.

10. The record of proceedings, dated 18.7.2013, clearly makes it evident and crystal clear that at the behest of both the parties i.e. Appellant/petitioner as well as the Respondent No.2/MPPMCL, the dispute regarding payment of reactive energy charges was referred by the learned Central Commission to the Western Regional Power Committee (WRPC).

11. It is also clear from the impugned order that regarding the settlement of reactive energy charges for the period from September 2007 to October, 2012, in the meeting held between the parties on 12.8.2013 at WRLDC, Mumbai, the Appellant/petitioner and the Respondent No.2/MPPMCL were agreed to settle the issue mutually based on the bills provides by WRPC,

on the statement prepared by WRPC for the period September, 2007 to October, 2012. The statement was verified by the representatives of both the parties and the final amount, after adjustment of Seoni-Bhilai transmission line, amounting to Rs. 8,75,71,004/- was paid by the Respondent No.2 to the Appellant/petitioner. We further find that in the impugned order, the learned Central Commission clearly held that with respect to the claim of the Appellant/petitioner regarding reactive energy charges for the week 31.12.2012 to 6.1.2013, the Appellant/petitioner should take up the matter with the Respondent No.2/MPPMCL. The learned Central Commission by the impugned order declined the payment of surcharge or interest payment towards reactive energy charges on the ground that the issue of surcharge was not raised by the Appellant/ petitioner in the meeting held on 12.8.2013 between the parties with WRPC as well as before the Central Commission.

12. On the basis of the above analysis, we find that the impugned order of the Central Commission is in accordance with the provisions of Indian Electricity Grid Code, 2006 and 2010. The provisions of the Grid Code did not allow any surcharge on delayed payment of reactive energy charges between regional beneficiaries for the transmission lines owned by them. In fact, the regional entities were to agree for settlement of reactive energy charges between them mutually. Since, the matter about the payment of reactive energy charges was not being decided among the contending entities, and inspite of repeated correspondence between them, when the solution did not come out, both the contending parties i.e. Appellant as well as Respondent No.2 approached the learned Central Commission and at the instance of the Central Commission, the matter was referred to the WRPC and, in the meeting, dated 12.8.2013, the matter was settled as we have detailed above. Since, the whole matter regarding payment of reactive energy charges was referred to the WRPC and the same was discussed in the said meeting between the representatives of the contending parties i.e. Appellant and Respondent No.2. The representative of the Appellant did not raise the issue regarding payment of surcharge or interest on the

delayed payment of reactive energy charges. As stated above, both the contending parties agreed to the payment of reactive energy charges and then the matter was finally settled. If, there was any doubt in the mind of the representative of the Appellant, the same could be raised before the Central Commission after the submission of the report before the Central Commission regarding the mutual settlement entered into between the parties at the WRPC meeting held on 12.8.2013 at Mumbai. Thus, after submission of the WRPC's report before the Central Commission, the Appellant kept mum regarding the payment of surcharge on the said delayed payment of reactive energy charges.

13. The Appellant, vide its letter, dated 30.7.2012, sent to the Respondent No.2 for the first time claimed interest @ 0.04% per day. This was followed by another communication, dated 8.8.2012, and, thereafter, the impugned petition was filed before the learned Central Commission seeking relief of payment of interest/surcharge. If the same dispute regarding payment of reactive energy charges was only being referred by the Central Commission to WRPC, even at that stage, the representative of the Appellant did not raise the matter that the issue of payment of surcharge should also be referred to the WRPC. Even during the meeting held between the contending parties before the WRPC, the representative of the Appellant did not like to raise the issue of payment of surcharge over delayed payment of reactive energy charges. There was no mention of the same in the detailed report of WRPC which was submitted to the Central Commission. If the representative of the Appellant was really keen and interested, he could raise the same even before the Central Commission after submission of the report by the WRPC, but the Appellant kept mum throughout for the reasons best known to the Appellant.

14. We are unable to accept the contention of the Appellant that since the issue of payment of reactive energy charges was referred by the Central Commission to the WRPC, the Appellant did not think it proper to raise the issue of payment of surcharge over the said delayed payment of reactive

energy charges. We are also unable to accept the submission of the Appellant that the Appellant during the proceedings of the meeting before the WRPC, remained under the impression that only the issue of payment of reactive energy charges had been referred to the WRPC by the Central Commission and, hence, the same could be raised by the Appellant during the meeting before the WRPC.

15. Since, the issue of surcharge over the alleged delayed payment of reactive energy charges was not raised during the meeting before the WRPC and also the same was not raised before the Central Commission after submission of the report by WRPC and also during the hearing of the impugned petition before passing of the impugned order. We are, further, unable to accept the contention of the Appellant that only the issue of payment of reactive energy charges was referred by the Central Commission to the WRPC. We further note that the record of proceedings of the Central Commission clearly depicts that the whole issue relating to payment of reactive energy charges including the surcharge/interest on the said delayed payment of reactive energy charges was referred by the Central Commission to WRPC because when the issue of payment of reactive energy charges was being referred to the Central Commission, it clearly implied that the same reference would include the issue of surcharge or interest, if any.

16. We further take note of the predicament in the instant case that the Appellant never raised any demand towards claim of weekly reactive energy bills to the Respondent No.2 from April, 2006 to 12.6.2011 and the Appellant, vide its first letter, dated 13.6.2011, demanded payment of reactive energy charges for the period from April, 2006 to march, 2011, as per the statement issued by the WRLDC/WRPC, Mumbai. We think that the demand of surcharge or interest on the alleged delayed payment of reactive energy charges was erroneous as the computation of reactive energy charges between the Appellant and Respondent No.2 included the

reactive energy charges of 400 kV Bhilai-Sarni line, which was settled between the Appellant and ISTS. In case of reactive energy charges between the regional entities for interconnected transmission lines owned by them, there was no provision of payment of interest in the Indian Grid Code. Since, mutual agreement between the Appellant and Respondent No.2 was made in the meeting, dated 12.8.2013, and in accordance with the decision taken in the meeting and as per the directions of the Central Commission, the Respondent No.2 has paid the entire reactive energy charges from April, 2006 to August, 2012 within a period of 15 days from WRPC's letter, dated 30.8.2013, communicating the reactive energy charges to be paid by the Respondent No.2 to the Appellant. Further, since, after the settlement of the terms and conditions of reactive energy charges in the meeting held on 12.8.2013, the Respondent No.2 is making regular payment of the same to the Appellant and no amount is admittedly outstanding with the Appellant as on date. Thus, the Appellant's demand for imposition of interest or surcharge on so-called delayed payment of reactive energy charges is not tenable and the same is not acceptable to us in the facts and circumstances of the matter.

17. Further, we may take note of this submission of WRLDC made before the Central Commission that WRLDC is responsible for operating Regional Reactive Pool Accounts for the VAr exchanges of regional entities with ISTS only and the VAr exchange between two regional entities on the transmission lines owned by them need to be settled mutually between the respective entities and the learned Central Commission, only thereafter, directed referring of the said dispute to the WRPC where the matter was finally resolved between the parties in the meeting held on 12.8.2013 and both the parties, thereafter, acted upon the mutual settlement.

18. Further, the Regulation 6.6.7(iv) of the Grid Code provides that computation of payment of such VAr shall be effected and mutually agreed between the two beneficiaries. In the light of this provision and other regulations, we do not find any substance in the submissions raised on

behalf of the Appellant. The submission raised by the Respondent No.2 are well merited and are valid and the same are acceptable to us also.

19. We do not find any infirmity, illegality or perversity in the impugned order, dated 20.2.2014 by the Central Commission **and, accordingly, this issue is decided against the Appellant**.

20. **SUMMARY OF OUR FINDINGS**:

20.1 The learned Central Commission is legally justified in rejecting the claim of the Appellant/petitioner for the payment of surcharge or interest on reactive energy charges paid by Respondent No.2 to the Appellant and the approach of the Central Commission is legally valid and sound requiring no interference by this Appellate Tribunal at this stage. The Appellant/petitioner, for the first time, detected the issue of non-payment of reactive energy charges by Respondent No.2 to the Appellant for the period from April, 2006 to March, 2011 and then the Appellant, for the first time, sent letter, dated 13.6.2011 informing the same to Respondent No.2. Even in the year 2011, more than 5 years after the said non-payment of reactive energy charges by the Respondent No.2 to the Appellant the same came to the notice to the Appellant while the Appellant went through the records in the year 2011. Thus, the said outstanding amount was first time detected by itself on 13.6.2011 showing the outstanding payment of reactive energy charge since April, 2006 to March, 2011, further noting that payment details prior to April, 2006 were under scrutiny. We find that in this way, the Appellant itself was not sincere and diligent in detecting the said outstanding amount for more than 5 years prior to the letter, dated 13.6.2011.

20.2 The facts and the impugned order, further clarify the position that the learned Central Commission while referring the issue of non-payment of reactive energy charges by the Respondent no.2 to the Appellant referred the whole issue including surcharge or interest on the alleged non-payment of reactive energy charges and there was no need for any further

clear direction in the said reference. Once the issue regarding the non-payment of reactive energy charges was referred by the Central Commission to the WRPC, it implied that the issue of surcharge or interest for the alleged delay of payment of the reactive energy charges was included therein. Since the Appellant did not raise the issue of surcharge/interest on the reactive energy charges in the meeting of WRPC and also not before the Central Commission, the Appellant cannot legally be allowed to claim the same thereafter. Thus, the refusal of payment of surcharge or interest over the alleged delayed payment of reactive energy charges by the Central Commission is perfectly and legally justified.

21. In view of the above discussions, we do not find any merits in the Appeal and the instant Appeal, being Appeal No. 95 of 2014, is hereby dismissed without any order as to costs. The impugned order, dated 20.2.2014, passed by the Central Electricity Regulatory Commission in Petition No.193/MP/ 2012, is hereby affirmed.

PRONOUNCED IN THE OPEN COURT ON THIS 18th DAY OF FEBRUARY, 2015.

(Justice Surendra Kumar)	**(Rakesh Nath)**
Judicial Member	**Technical Member**

√ **REPORTABLE/~~NON-REPORTABLE~~**

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