

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY,
AT NEW DELHI
(APPELLATE JURISDICTION)**

**APPEAL NO. 75 OF 2015 &
APPEAL NO. 69 OF 2015 & IA NO. 105 OF 2015**

Dated: 2nd February, 2016

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

APPEAL NO. 75 OF 2015

In the matter of:-

**Chhattisgarh State Power Distribution Co. Ltd. ...Appellant(s)
Versus
Chhattisgarh State Electricity Regulatory
Commission & Ors. ...Respondent(s)**

APPEAL NO. 69 OF 2015 & IA NO. 105 OF 2015

In the matter of:-

**Chhattisgarh State Power Transmission Co. Ltd. ...Appellant(s)
Versus
Chhattisgarh State Electricity Regulatory
Commission & Ors. ...Respondent(s)**

**Counsel for the Appellant(s) : Ms. Suparna Srivastava
Ms. Anushka Arora**

**Counsel for the Respondent(s) : Mr. C.K. Rai
Mr. Paramhans for R-1**

**Mr. Sanjay Sen, Sr. Adv.
Ms. Divya Chaturvedi
Mr. Snehal Kakrania
Mr. S. Chauhan for R-2**

JUDGEMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

Chhattisgarh State Power Distribution Company Limited, Raipur is the Appellant in the present Appeal No. 75 of 2015 filed under section 111 of the Electricity Act, 2003 against the Impugned Order dated 02.01.2015 passed by the Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as “**State Commission**”- Respondent No. 1) in Petition No. 77/2013(D) whereby the State Commission has adjudicated upon the claim of Jindal Power and Steel Limited (hereinafter referred to as “**Respondent No.2**”) as regards captive status of its 4x135 MW power plant situated at Raigarh.

2. The Appellant is the distribution company in the State of Chhattisgarh. In this Appeal, Chhattisgarh State Power Distribution Company Limited being the State Transmission Utility in Chhattisgarh is Respondent No. 3.
3. In another Appeal No. 69 of 2015 filed under Section 111 of the Electricity Act, 2003 against the same Impugned Order dated 02.01.2015 dealing with the same issue as that of Appeal No. 75 of 2015 filed by the Appellant, the State Transmission Utility of

Chhattisgarh and in this Appeal, the Respondent No. 1, Respondent No.2 are the same as that in the case of Appeal No. 75 of 2015, however, Chhattisgarh State Power Distribution Company Limited is the Respondent No.3.

4. Since the issues involved in both the Appeals are same and against the same Impugned Order dated 02.01.2015 passed by the State Commission, we shall be deciding both the above appeals by the Appellants by the common order.

Respondent No.2 has set up a power plant consisting of 4 units of 135 MW each i.e. 540 MW situated at Dongamahua, Raigarh (Chhattisgarh) (hereinafter referred to as “**DCPP**”) which is claimed to be captive in entirety.

5. Respondent No.2 is engaged in the business of manufacture of steel and has steel plant in Raigarh alongwith a captive power plant of 286 MW capacity for meeting the power requirement of its steel plant and has been availing power import connection from the Appellant at 220 KV.
6. In addition to this 286 MW power plant, the Respondent No.2 has also set up 4x135 MW power plant (DCPP) at the same location which it claims to be captive in its entirety.

7. 286 MW captive power plant of the Respondent No.2 is connected to the steel manufacturing plant, which in turn, is connected to the State grid through 220 KV station of the Respondent No.3 at Raigarh.
8. As far as 540 MW of DCPP is concerned, as per the Appellants, its two units i.e. unit 1 & 2 are connected to this steel plant under the captive mode, however, the other 2 units i.e. unit 3 & 4 are not connected with the industrial load of the Respondent No.2 and are connected to the switchyard of the power plant of the M/s. Jindal Power Ltd., a subsidiary company of Respondent No.2 which, in turn, is connected to the regional grid through 400 KV line with inter connection line at Raipur. As per the Appellants, units 3 & 4 of DCPP are not in captive mode but maintaining a merchant Status.
9. The State Commission in its Impugned Order dated 02.01.2015 in Petition No. 77/2013(D) has decided to accord the captive status to all the 4 units of 135 MW of DCPP which in the opinion of the Appellants ought to have been for only unit 1 & 2 of DCPP and not for unit 3 & 4 of DCPP and unit 3 & 4 of DCPP should have been treated as merchant power rather than categorizing the same under captive use resulting into loss of revenue to the Appellants on account of

non-recovery of cross subsidy surcharge since the same would not be applicable to the captive units.

10. The Appellant is functioning as distribution licensee in the Chhattisgarh State and is performing all functions and duties pertaining to distribution of electricity. The Appellant is entitled to recover such charges from generator and other persons as are admissible and leviable under the provisions of Electricity Act, 2003 and the Regulations framed by the State Commission which has been set up under the provisions of Electricity Act, 2003 to perform all such functions as are enjoyed upon it under Section 86(1) of the Electricity Act, 2003, including adjudication of disputes between licensees and the generating companies.
11. The main issue in the present Appeal is regarding grant of captive status to all the 4 units of 135 MW each of DCPD by the State Commission to Respondent No.2 which has resulted in loss of revenue on account of non-recovery of cross subsidy surcharge by the Appellants from the Respondent No.2 in respect of units 3 & 4 consisting of 135 MW each of DCPD.
12. The Appellants submit that cross subsidy surcharge is leviable on all consumers for balancing of cost of supply between subsidizing

consumers and subsidized consumers of the distribution licensees which is under universal supply obligation under Section 43 of the Electricity Act, 2003 which mandate supply of electricity on request to consumers of the State and the above balance between the subsidizing and subsidized consumers cannot be disturbed otherwise it would result into an enhanced tariff for the subsidized consumers. The Appellants further state that the cross subsidy surcharge is recovered from the consumers who are not availing supply from the distribution licensees and the only exception being a captive use for which cross subsidy surcharge is not payable.

13. The Appellants submits that under the prevailing Regulations of the State Commission, grant of connectivity is necessarily to be sought for injecting power by a captive generating plant into intra state transmission system and a detailed procedure is prescribed for seeking such connectivity by filing of application to the nodal agency i.e. State Transmission Utility (STU) or the transmission licensee or the State Load Despatch Centre (SLDC) in the prescribed format and on receipt of the application, the nodal agency in consultation and through coordination with other agencies involved in bilateral transactions, shall process the application and carry out the

necessary inter connection study. The Appellants made a reference of Regulations 10(5) of the State Commission's Regulations, 2011 which states that intra state user in case of expansion of capacity including captive generating plant has to make a fresh application for modification in connectivity arrangements and the Regulations do not permit that if any unit of generating plant has obtained connectivity with the grid, the other unit added subsequently at the same location can also get automatically connected with the grid without obtaining separate permission, as such the Appellants alleged that only unit 1 & 2 of DCPD were given connectivity by the STU under the captive category and subsequently additional units 3 & 4 at DCPD for which a separate permission has not been sought by the Respondent No.2 from STU/SLDC ought not to be considered under captive use.

14. In support of the above arguments of the Appellants, they have cited the relevant extracts of Electricity Act, 2003, State Commission's prevailing Regulations, Grid Code etc.
15. The issue in question in both the above Appeals is ***whether the State Commission in its Impugned Order dated 02.01.2015 erred in considering the 4 units of 135 MW each of DCPD under active use instead of only first 2 units of 135 MW each of DCPD?***

16. We have heard at length Ms. Suparna Srivastava, Learned Counsel for both the Appellants, Ms. Sanjay Sen, Learned Sr. Counsel for Respondent No.2 and Mr. C.K. Rai, Learned Counsel for the Respondent No.1 and considered their written submissions and arguments put forth by the rival parties during the hearing before us and our observations are detailed herein as under.
17. As alleged by the Appellants that the State Commission erred in holding the entire plant of DCPD comprising of all the 4 units of 135 MW each being treated as captive for the relevant years even when the admitted position on record before the State Commission has been that it is only two units of DCPD i.e. units 1 & 2 which are connected to the steel plant (the captive load) and as such, it is only the first two units of DCPD which can be considered having captive status. The main grievance of the Appellants as described in the above Appeals is that when the other two units of DCPD i.e. units 3 & 4 are not connected to the steel plant and have not gained connectivity with the system of Respondent No. 3 as mandatorily required under the Connectivity Regulations and the Grid Code but are instead connected to the regional grid for transmission of power under long term open access granted to Respondent No.2, the power

generated from these units and supplied to the steel plant does not qualify as captive use and as such, attracts levy of cross-subsidy surcharge as mandated under section 42 of the Electricity Act, 2003.

18. The main allegation of the Appellant is that the cross-subsidy surcharge has wrongly been denied by the State Commission to the Appellants by treating the said unit 3 & 4 of DCPD also as being for captive use, thereby causing grave financial loss to the Appellants. That too in light of the fact that under the provisions of the Electricity Act, 2003, cross-subsidy surcharge has been maintained so as to benefit various classes of consumers of the distribution licensees on account of recovery of cross-subsidy surcharge and in their view, any denial of rightful recovery of cross-subsidy surcharge would ultimately adversely affect these subsidized consumers of the distribution licensees.
19. The Appellants further submitted that as per the provisions of the Connectivity Regulations notified by the State Commission, it is essentially required as per the Regulation 10(3) that a captive generating plant is to mandatorily seek connectivity with the Appellants' system for injecting power in the transmission system by making an application in the prescribed form detailing therein the

quantum of power to be injected in the system. In case of any enhancement for injection, a fresh application for modification in connectivity arrangement is required and in view of this for each generating unit of a captive generating plant which is desirous of connecting to the State Grid(the Appellant's system), separate connectivity is necessarily to be obtained. The Appellants further state that the prescribed Regulations do not permit that if any unit of the generating plant has obtained connectivity with the State grid, the other units can also be connected with the grid without obtaining separate connectivity and the State Grid code also prescribed the connectivity conditions and criteria for users connected to or seeking connection to intra-State transmission system.

20. The Appellants alleged that in furtherance of vigilance inspection, the status of power generation in DCP, including unit 3 & 4 has been examined and as per the certified generation of energy data for units 3 & 4 of DCP obtained from the Chief Electrical Inspector, Raipur, it was observed that the generation from unit 3 was also fed to steel plant as per captive use and within the premises, the Respondent No.2 has installed Auxiliary Bus for facilitating transfer of power from units 3 & 4 for captive use on the need basis.

21. As per the Appellants, Respondent No. 2 has violated the legal provisions and has illegally and unauthorizedly been supplying power from the unit 3 & 4 and by running the same in parallel with the State grid without obtaining connectivity as mandatorily required under the State Commission's Regulations, 2011. The Appellants further stated that during the matter was heard by the State Commission, the Appellants brought to the notice of the State Commission the Judgment dated 30.04.2013 of this Tribunal passed in Review Petition No. 2/ 203 in Appeal No. 137/2011: M/s. JSW Energy Ltd. Vs. Karnataka Electricity Regulatory Commission wherein, this Tribunal has held that a captive user is required to identify the unit/units intended for captive consumption at the time of induction of equity stage itself and relevant portion of this Judgment is reproduce below:-

“Pre-identification of the unit/units is also essential from prevention of gaming aspect as illustrated by the following example:

Two units at a generating station of 100 MW and 200 MW produced say 1000 MU and 2000 MU in a year respectively. The Captive user consumed around 2000 MU in a particular year. Consumption of 2000 MU is more than 51% of total generation of two units, therefore the captive user would claim total consumption as captive identifying both units as captive generators. Suppose captive user could consume only 1100 MU, it would identify Unit B as captive and claim full 1100 MU as

captive consumption. Whereas consumption of 1100 MU, being less than 51% of total generation from both units, would not have qualified to be captive if both the units were identified as captive generators. Further, assume in a particular year the captive generator could consume only 900 MU. It would identify Unit A as captive and claim 900 MU as captive consumption which it could not have, if both the units or unit B was identified as captive generator.”

It is clear from the above discussion that a captive consumer may indulge in gaming and identify any unit as captive depending upon its own consumption during the relevant year. Such an arrangement would frustrate the very purpose of law.

In light of the above judgment, the Appellants alleged that the present case of the Respondent No.2 is gaming with the ulterior motive of claiming undue benefit of exemption from payment of cross-subsidy surcharge and the Appellants pleaded before the State Commission that the Respondent No.2 is necessarily to be directed to pay cross-subsidy surcharge and the Appellants be allowed to claim the same under the Supplementary Bill, however, the State Commission has failed to appreciate the allegations put forth by the Appellants and considered the units 3 & 4 of DCPD under captive use without realizing that for units 3 & 4 of DCPD, the Respondent No. 2 has not obtained necessary connectivity from the concerned authority as required in law.

22. The Appellants further alleged that the Impugned Order of the State Commission granting captive status to all the 4 units of DCPD of the Respondent No.2 suffers from serious legal infirmity and as such, is liable to be set aside.
23. The Learned Counsel for Respondent No.2 brought our attention to the line diagram indicating therein the existing connectivity status of all the 4 units of DCPD & claimed that the same was approved by the Chief Electrical Inspector and further stated that all the 4 units from the stage of inception i.e. DPR stage itself have been envisaged to be for captive use and unit 1 & 2 are connected to unit 3 & 4 through Auxiliary Bus and the generation from unit 1 & 2 of DCPD is meant to meet the power requirement of the steel plant and the Auxiliary Bus has been put in the system to facilitate flexibility for connecting unit 3 & 4 for the captive power requirement of the steel plant in case of emergency or when unit 1 or 2 is shut down due to break down or annual overhauling. Respondent No. 2 stated that such arrangements are duly approved by the Chief Electrical Inspector in its phasewise line diagram. It is further submitted that the generation from the unit 3 & 4 of DCPD could be transmitted to CTU system in case not required for the captive use of its steel plant as well as through the

Auxiliary Bus to the STU system in case of requirement of captive use for its steel plant and this arrangement has been done with full knowledge of Chief Electrical Inspector which is evident from the approved line diagram and the Chief Electrical Inspector is in fact the final authority in terms of Section 162 of the Electricity Act, 2003. Respondent No. 2 further submitted that the Appellant has not questioned these findings of the Chief Electrical Inspector and as such this line diagram has attained finality.

24. In response to the various allegations of the Appellants, the Learned Counsel for the Respondent No.2 submitted that the undertaking given by it to the effect that it will not connect more than 2 units of 135 MW each for captive use and this undertaking given by it that it will not connect more than 2 units of 135 MW at any point has not been violated in any manner. The surplus power from unit 3 & 4 are sold to third party on short term basis through CTU system which is maintained by Power Grid Corporation of India Limited and in the event of outages of unit 1 & 2 of DCP, the generation from unit 3 & 4 is used for supply of power to the captive load of its steel plant.

25. The Respondent No.2 further submitted that captive power plants have been promoted in the country to cater to the power shortage and irregular power supply to industries to facilitate industrial growth, industrial development and employment opportunities and legal requirement for qualification of generating plant as captive power plant are as follows:-

“Section 2 (8) of the Act defines captive generating plant: ‘Captive generating plant’ means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association”

Rules 3 of the Electricity Rules, 2005:

“3. Requirement of captive Generative plant:

(1) No power plant shall qualify as a captive generating plant under section 9 read with clause (8) of section 2 of the act unless:-

(i) Not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) Not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use....”

“In view of the above provisions, there are only two requirements for qualifying as a CPP:-

(a) Ownership of not less than 26% ; and

(b) Captive Consumption of not less than 51% of the aggregate electricity generated in such plant.”

26. The Respondent No. 2 further submitted that it has consumed more than 51% of the aggregate power generated during the years in dispute and given the details as under:-

Financial year	Total Generation units in 4x135 DCCP	Captive use – units	Percentage of captive use
2010-2011	636,710,682	300,879,731	53%
2011-2012	1,625,102,427	871,380,367	60%
2012-2013	2,506,657, 097	1,204,511,625	53%

In view of the above, it is clear that Respondent No.2/JSPL has fulfilled both the criteria i.e. Ownership of more than 26% and Quantum of power of self-consumption not less than 51% as prescribed under the Electricity Act, 2003.

27. The Respondent No.2 further submitted that the entire DCCP was acting as CPP from the date of inception i.e. from DPR stage and this fact has been duly accepted by the State Commission in the various orders issued even before the Impugned Order dated 02.01.2015.
28. The Respondent No. 2 further submitted that there is no requirement under the prevailing regulations that restricts unit 3 & 4 have to be permanently disconnected or isolated from the CTU for the purpose

of connection with the State Grid. On the other hand, the relevant provisions contained in the various Regulations envisage the connectivity for generator to STU as well as CTU.

29. The Respondent No.2 further submitted that the contractual commitment with CTU for utilization of open access capacity is not of any relevance for determination of captive status of DCPP. Any generating unit whether an IPP or CPP could be connected either to ISTS or STU or both as per Indian Electricity Code (IEC). In this context, it is submitted that Units 1 & 2 of DCPP are connected to STU after taking appropriate approval from the State Load Despatch Centre and units 3 & 4 of DCPP are connected to Inter-State Transmission system of CTU after taking appropriate approval from CTU. At any point of time only two units of DCPP would be connected to STU which meant that the maximum capacity of DCPP to the State Grid would be the same and the same undertaking was given by the Respondent No.2 while obtaining connectivity of DCPP.
30. The Respondent No.2 submitted that this Tribunal's Judgment dated 30.04.2013 as quoted by the Appellant above, wherein it was held that to calculate or identify a CPP in accordance with each independent unit and not for an aggregate consumption of both the

units. In the opinion of Respondent No.2, the said Judgment of this Tribunal is not applicable in the present case since DCPD is fully owned by Respondent No.2. In case a CPP is established by an industrial company for its own use, then only the twin test of ownership and captive consumption as provided in law has to be taken into consideration for determining the status of CPP and it further stated that since twin test for determining CPP status was fully passed in the present case, the State Commission very rightly vide its earlier orders dated 01.07.2013 and 05.03.2013 upheld the captive status of DCPD and further submitted that these orders have never been appealed and, therefore, attained finality.

31. The Respondent No.2 further stated that the demand of cross-subsidy surcharge by the Appellant is patently unlawful. It has further submitted that the parallel operation charges since November, 2011 have duly been paid by the Respondent No.2 to the concerned authorities.
32. With regard to switchover from CTU to STU, as stated by the Appellant is violating the safety norms as prescribed in the State Grid Code, Respondent No. 2 stated that till date, the Appellants have not raised the issue of safety, if any, with them and the Appellants have

failed to issue any notice or brought on record any instance to show that the supply of electricity from units 3 & 4 of DCPD has caused any safety violation/concern in relation to the grid.

33. The Learned Counsel for the State Commission defended the Impugned Order dated 02.01.2015 issued by the State Commission and stated the Judgment of the State Commission was relied on the following documents submitted by the Respondent No.2:-

- (a) Copy of the Detailed Project Report for phase 2 of the 4 x 135 MW DCPD of JSPL
- (b) Copy of the Permission granted by Chief Electrical Inspector, Raipur for HT installation for proposed captive power plant at 4 x 135 MW phase 2 Dongamahua unit 3 & 4 dated 23.02.2011;
- (c) Copy of the Permission granted by Chief Electrical Inspector dated 28.12.2010 for proposed 2 x 135 MW units 4 x 135 MW phase 2 captive power plant, Dongamahua;
- (d) Licence to import and store Petroleum in an installation;
- (e) Copy of Renewal of Consent under Water (Prevention and Control of Pollution) Act 1974;

- (f) Copy of Provisional Order by Boiler inspectorate, Raipur under Indian Boilers Act, 1923; and
- (g) Copy of the Licence to work a factory.

It is submitted that the above documents demonstrate that from its very inception starting with the DPR stage, all the four units were classified as captive generating plants to secure its captive energy requirement of its steel plant and surplus power after captive usage was proposed to be sold in the national market for which it has availed connectivity with the CTU and in support of the same, the relevant portion of the Central Commission's Order dated 09.05.2011 passed in Petition No. 105 of 2010 relating to application for grant of Inter-State Transmission license is reproduced below:-

“2. The applicant has submitted that Jindal Power Limited (JPL) has set up a generating station of 1000(4x250) MW Thermal Power Plant at Tamnar in Raigarh District of Chhattisgarh. As part of the generation project, JPL has established 258 km dedicated transmission line i.e. 400 kV D/C Transmission Line from JPL, Tamnar Power Plant to Power Grid Corporation of India Limited (PGCIL) substation at Kumhari in Raipur District of Chhattisgarh for evacuation of power from the place of generation to the interconnection point for onward inter-State Transmission. The applicant has further submitted that Jindal Steel and Power Limited (JSPL) is engaged in the business of manufacture of steel and steel products. JSPL has independently established captive power plants at Raigarh for an aggregate capacity of 358 MW and is in the process of commissioning an additional 540 MW at Dongamahua,

Raigarh District. The power units of JSPL are connected to the switchyard of the generation project of JPL. JSPL has some surplus generation from time to time which it is in a position to sell to third parties subject to applicable laws and regulations.

- 5. The applicant vide its affidavit dated 19.04.2011 has submitted that the Jindal Steel and Power Limited (JSPL) vide Power of Attorney dated 5.11.2008 authorised it to do all such acts as was necessary for obtaining long-term open access with Central Transmission Utility (CTU) for evacuation of its power. It has been further submitted that in pursuance of the said Power of Attorney, long term open access was applied by the applicant on behalf of JSPL for transmission of 400 MW through PGCIL line and the applicant vide its letters dated 16.09.2009 and 29.09.2009 brought to the notice of PGCIL that the said 400 MW would comprise:-**
 - (a) 175 MW from 4x250 MW power plant at Tamnar;**
 - (b) 225 MW to be injected ex-bus, JPL from 4x135 MW captive plant at Dongamahua.**

- 6. The petitioner has further submitted that a Bulk Power Transmission Agreement (BPTA) was signed on 24.2.2010 between the JPL and PGCIL for 400 MW of power with bifurcation of 225 MW from 4x135 MW captive power plant at Dongamahua of JSPL and 175 MW from existing 4x250 MW Tamnar Thermal Power Station of JPL. Even though the name of JSPL is missing in the LTOA granted by PGCIL and BPTA signed on 24.2.2010, it is evident that JSPL has already obtained Long Term Open Access from PGCIL for transmission of 225 MW power from its captive power plant at Dongamahua. It has been further submitted that considering that JSPL has already authorised JPL to obtain LTOA on its behalf and also that there is no change in the location of plant nor change in the quantum of power, the application already made should be treated as having been made on behalf of JSPL”**

As mentioned above, the connectivity with the CTU sought by the Respondent No.2 for 225 MW was from the 4 x 135 MW captive power plant of DCPD and the grant of transmission licence to the Respondent No.2 was accorded by the Central Commission vide its above order.

34. The Learned Counsel for the State Commission stated that the State Commission in the present Petition has reiterated its earlier decision made in various petitions (including period under dispute) and held that 4x135 MW power plan of Respondent No.2 is maintaining captive status and, therefore, levy of cross-subsidy surcharge for said period will not be applicable, however, parallel operation charges will be leviable as per prevailing Rules & Regulations.
35. The State Commission also stated in the Impugned Order that if there is any allegation for violation of grid code etc., the State Commission was of the view that the said issue has to be decided separately and can not become subject matter of levy of cross-subsidy surcharge on the ground that on account of connectivity with CTU, unit No. 3 & 4 of DCPD have lost their CPP status.

36. After having gone through the submissions as made above, we do not find any ground to consider units 3 & 4 of DCPD not under captive status even considering the fact that the Respondent No.2 has obtained open access to sell the electricity in the market through CTU network. In light of the fact that the DCPD was from the inception itself developed as CPP and has passed twin test laid down in the statute i.e. the Respondent No.2 having equity share of more than 26% and electricity consumption for captive use not less than 51% of the total generation from such plant and in our observation, the Respondent No.2 has maintained captive status of all the four units of DCPD in the past years under question.
37. We also observed that all these aspects and the concerned documents submitted by the Respondent No.2 to the State Commission have been perused by the State Commission while concluding the matter and the relevant extracts of the Impugned Order dated 02.01.2015 is reproduced below:-

“48. Under the provisions of Electricity Act, 2003 connectivity of TG-3 and TG-4 with CTU does not make them as IPP. As per the Electricity Rules, 2005 which provides a twin test for classifying a CGP. According to which the consumer of electricity must own at least 26% of the ownership of the CGP. Further, it must consume minimum 51% of the net generation of the CGP. In the present case, it is beyond doubt that the petitioner owns 100% share of TG-3 and TG-

4 and is consuming more than 51% of the net generation from the CGPs as has been accepted by the report of the Chief Electrical Inspector.

- 49. The Commission in its previous orders of determination of captive status of various CPPs in the State for the year 2010-11 and 2011-12 has admitted TG-3 and TG-4 of DCPD as a part of petitioner CGP and therefore it don't needs further elaboration. The respondent plea that TG-3 and TG-4 are connected to the CTU, it is deemed to be an IPP is entirely misplaced because the status of IPP/ CGP is not based on connectivity but as per the Electricity Rules, 2005 it is based on ownership and consumption criteria alone, which is very clear from the reading of the above rules.**
- 50. During the arguments, the petitioner was advised to explain whether he has taken all possible steps in declaring TG-3 and TG-4 as captive units. In response, the petitioner through its petition and rejoinder also relied on the affidavit dated 15.05.2014 has enclosed additional documents which, inter alia, relied on the following:-**

“3. That the issue in the instant petition is with regard to the captive status of JSPL's 4x135 MW power plant at Dongamahua, in particular with regard to unit 3 and unit 4. In this regard, JSPL is seeking to file the following additional documents to substantiate its contention.”

For establishing that, the petitioner has established all the 4 units of 135 MW at Village Dongamahua was for captive purpose, he has submitted following documents:

- (a) Copy of the Detailed Project Report for phase 2 of the 4 x 135 MW DCPD of JSPL;**
- (b) Copy of the Permission granted by Chief Electrical Inspector, Raipur for HT installation for proposed captive power plant at 4 x 135 MW phase 2 Dongamahua unit 3 & 4 dated 23.02.2011;**

- (c) Copy of the Permission granted by Chief Electrical Inspector dated 28.12.2010 for proposed 2 x 135 MW 13.8 KV TG sets at 4 x 135 MW phase 2 captive power plant, Dongamahua;**
- (d) Licence to import and store Petroleum in an installation;**
- (e) Copy of Renewal of Consent under Water (Prevention and Control of Pollution) Act 1974;**
- (f) Copy of Provisional Order by Boiler inspectorate, Raipur under Indian Boilers Act 1923; and**
- (g) Copy of the Licence to work a factory.**

51. From the above documents submitted by the petitioner will unequivocally demonstrate the petitioner from its very inception starting with the DPR, it is proposed that all four units were classified as captive generating plants of JSPL. To secure its captive energy requirement of his steel plant and the surplus power was proposed to be sold in the national market for which he has availed connectivity with the CTU for which CSPDCL has annexed the order of the Central Commission dated 09 05 2011 Passed in Petition No. 105 of 2010 relating to application for grant of inter-State license through JPL. In the said order at paragraph 2 it is, inter alia, provided as follows:

“2. The applicant has submitted that Jindal Power Limited (JPL) has set up a generating station of 1000(4x250) MW Thermal Power Plant at Tamnar in Raigargh District of Chhattisgarh. As part of the generation project, JPL as established 258 km dedicated transmission line i.e. 400 kV D/C Transmission Line from JPL, Tamnar Power Plant to Power Grid Corporation of India Limited (PGCIL) substation at Kumhari in Raipur District of Chhattisgarh for evacuation of power from the place

of generation to the interconnection point for onward inter-State transmission. The applicant has further submitted that Jindal Steel and Power Limited (JSPL) is engaged in the business of manufacture of steel and steel products. JSPL has independently established captive power plants at Raigarh for an aggregate capacity of 358 MW and is in the process of commissioning an additional 540 MW at Dongamahua, Raigarh District. The power units of JSPL are connected to the switchyard of the generation project of JPL. JSPL has some surplus generation from time to time which it is in a position to sell to third parties subject to applicable laws and regulations.”

Further in paragraph 5 and 6, it is also provided as follows:-

“5. The applicant vide its affidavit dated 19.4.2011 has submitted that the Jindal Steel and Power Limited (JSPL) vide Power of Attorney dated 5.11.2008 authorized it to do all such acts as was necessary for obtaining long-term open access with Central Transmission Utility (CTU) for evacuation of its power. It has been further submitted that in pursuance of the said Power of Attorney, long term open access was applied by the applicant on behalf of JSPL for transmission of 400 MW through PGCIL line and the applicant vide its letters dated 16.9.2009 and 29.9.2009 brought to the notice of PGCIL that the said 400 MW would comprise,-

- (a) 175 MW from 4x250 MW power plant at Tamnar;**
- (b) 225 MW to be injected ex-bus, JPL from 4x135 MW captive plant at Dongamahua.**

6. ***The petitioner has further submitted that a Bulk Power Transmission Agreement (BPTA) was signed on 24.2.2010 between the JPL and PGCIL for 400 MW of power with bifurcation of 225 MW from 4x135 MW captive power plant at Donga Mahua of JSPL and 175 MW from existing 4x250 MW Tamnar Thermal Power Station of JPL. Even though the name of JSPL is missing in the LTOA granted by PGCIL and BPTA signed on 24.2.2010, it is evident that JSPL has already obtained Long Term Open Access from PGCIL for transmission of 225 MW power from its captive power plant at Dongamahua. It has been further submitted that considering that JSPL has already authorized JPL to obtain LTOA on its behalf and also that there is no change in the location of plant nor change in the quantum of power, the application already made should be treated as having been made on behalf of JSPL.***
52. ***From the various submissions made by the petitioner and respondent, at no stage, it is observed that JSPL is operating its plant in the two systems parallelly. Further, the ability to switch from the CTU to the STU system was done with the full knowledge and approval of the Chief Electrical Inspector as is evidenced in the approved line diagram. The Chief Electrical Inspector while computing/ certifying the energy data for the year 2010-11 and 2011-2 was fully aware of the fact that JSPLs TG-3 and TG-4 was supplying power through the CTU and also self consuming power during the period when TG- 1 and TG-2 were in outage. At no stage has the Chief Electrical Inspector placed any objection to the said arrangement or issued any show cause notice to JSPL. Even if there is an allegation of violation of Grid Code etc., the said issue has to be decided separately and cannot become a subject matter of levy of cross subsidy surcharge on the ground that on account of***

connectivity with CTU TG-3 and TG-4 have lost their CGP status.”

38. We observed that the State Commission have gone through all the relevant provisions contained in the various Regulations for according the captive status to all the four units of DCPD and they have been consistent in maintaining the same stand even in the earlier orders issued by them and very rightly so.
39. In our opinion, the DCPD has been envisaged as captive power plant right from the inception and meets both the stipulated conditions discussed above for obtaining captive status irrespective of the fact that it is besides connected to STU is also connected to CTU, it would retain its status as captive so long as it passes twin test as laid down in the law.
40. As regards the violation of various safety considerations brought out by the Appellant, the Appellant is free to initiate any action in accordance with the law provided the Appellant is able to establish the same and in that case, penal provisions as contained in various Regulations would be attracted without fail.

ORDER

41. In light of the above, we find no merit in the Appeals filed by the Appellants and as such, these Appeals are hereby dismissed. The Impugned Order dated 02.01.2015 passed by the State Commission does not suffer from any defect and is hereby upheld. No order as to costs.

Pronounced in the open court on this **2nd day of February, 2016.**

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

✓
~~REPORTABLE/NON-REPORTABLE~~
dk