

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

**APPEAL NO. 197 OF 2017 &
IA NO. 501 OF 2017**

Dated: 07th May, 2018

**Present: HON'BLE MR. N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF

Jodhpur Vidyut Vitran Nigam Limited

New Power House, Basani,
Jodhpur - 342003

..... Appellant

VERSUS

1. Tirupati Fibres & Industries Ltd,

Through its Director
Tirupati Nagar, Abu Road-307 026
Distt: Sirohi (Rajasthan)

2. Rajasthan State Load Despatch Centre,

Rajasthan Rajya Vidyut Prasaran Nigam Ltd,
Through its Chief Engineer (LD)
New Prasaran Building, Heerapura,
Jaipur- 302 024

3. Rajasthan Electricity Regulatory Commission

Through its Secretary
Vidyut Viniyamak Bhawan,
Sahkar Marg, Near State Motor Garage,
Jaipur – 302005

..... Respondents

Counsel for the Appellant ... Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ashwin Ramanathan

Counsel for the Respondent(s)... Ms. Purti Marwah Gupta
Mr. C.S. Chauhan for R-1

Mr. Pradeep Misra
Mr. Manoj Kr. Sharma for R-2

Mr. R.K. Mehta
Ms. Himanshi Andley for R-3

J U D G M E N T

PER HON'BLE JUSTICE N.K. PATIL, JUDICIAL MEMBER

Jodhpur Vidyut Vitran Nigam Limited (hereinafter referred to as the '**Appellant**') presented the instant Appeal under Section 111 of the Electricity Act, 2003, being aggrieved by the Order dated 17.04.2017 (hereinafter referred to as the '**Impugned Order**'), passed in Petition No. RERC-1090/17 on the file of the Rajasthan Electricity Regulatory Commission, Jaipur, Rajasthan (in short '**State Regulatory Commission**') whereby the State Regulatory Commission has disposed of the Petition filed by Tirupati Fibres & Industries Ltd (in short, '**first Respondent**') who is a consumer of Jodhpur Discom and availing Short Term Open Access under RERC(Terms & Conditions of Open Access) Regulations, 2016. The State Regulatory Commission, while holding that the first Respondent did not act in compliance with the Regulations and did not intimate the schedule for procurement of power from third parties, has proceeded to direct the Appellant to pay for such electricity procured by the First Respondent from third parties and injected into the grid. Such

electricity was injected without the permission of the Appellant, was not required by the Appellant, no opportunity was given to the Appellant to reject the electricity and in such circumstances the question of the Appellant being required to pay for the electricity does not arise. The Appellant, further, sought to pass such other Order(s) as this Hon'ble Tribunal may deem just and proper in the interest of justice and equity.

BRIEF FACTS OF THE CASE:

1. The Appellant is a company incorporated under the provisions of the Companies Act, 1956 and existing under the provisions of the Companies Act, 2013, having its registered office in Jodhpur. The Appellant is one of the successor entities of the erstwhile Electricity Board and is vested with the functions of distribution and retail supply of electricity in the specified area of operation in the State of Rajasthan.

2. The first Respondent is a company existing under the provisions of the Companies Act, 2013 and is a High Tension industrial consumer of the Appellant, having a contract demand of 1650kVA with the Appellant, having its premises at Abu Road, District Sirohi in the State of Rajasthan.

3. Rajasthan State Load Despatch Centre, second Respondent herein, is the State Load Despatch Centre for the State of Rajasthan, performing the statutory functions as provided for under the provisions of the Electricity Act, 2003.

4. The Rajasthan Electricity Regulatory Commission, third Respondent herein, is the Regulatory Commission for the State of Rajasthan, exercising its powers and discharging functions under the provisions of the Electricity Act, 2003.

5. The first Respondent from time to time procures electricity from open access sources, primarily from the energy exchange to meet its power requirements, in addition to drawl of power from the Appellant. When the first Respondent procures power from third parties, under the terms of the Open Access Regulations, 2016 notified by the State Regulatory Commission, the contract demand and the obligation of the Appellant to supply power automatically gets reduced to such extent. For the above purpose, the Appellant as a distribution licensee, is required to know in advance the quantum of electricity proposed to be procured by

the consumer from third parties, by way of intimation of the schedule.

6. However, on various occasions in the months of March and April, 2016 the first Respondent did not intimate the schedule for procurement of electricity from open access sources to the Appellant. On account of the above, the Appellant was not aware of open access procurement and had planned its affairs including its power purchases and supply to consumers on the said basis. The bills for supply of electricity were also raised by the Appellant accordingly.

7. Be that as it may, the first Respondent disputed the monthly invoices raised by the Appellant and filed a representation before the second Respondent under Regulation 30 of the Open Access Regulations, 2016 and also filed a writ petition being SB CWP No. 11705/2016 before the Hon'ble High Court of Rajasthan, Jodhpur. The Hon'ble High Court, vide its interim Order dated 19.11.2016, directed the first Respondent to deposit Rs. 30 lacs within 15 days and till the decision of the petition filed by the first Respondent. The representation of the first Respondent was rejected by the second Respondent vide Order dated 02.02.2017.

Though, the first Respondent has not chosen to question the correctness of the decision dated 02.02.2017 passed by the second Respondent, the first Respondent proposed to file a petition before the State Regulatory Commission, third Respondent herein, under Section 56(1) and Section 142 of the Electricity Act read with Regulation 30 and 31 of the Open Access Regulations, 2016 seeking directions for redressal of grievances by the mechanism under Section 42 of the Electricity Act.

8. After receipt of the notice, the Appellant has filed his reply opposing the prayer sought by the first Respondent contending that the first Respondent was in default in not providing for the schedules, which was required in the light of Sub-Regulations 26(7) of RERC (Terms & Conditions for Open Access) Regulations, 2016 to the Appellant, and on account of not being provided with such schedules the Appellant was not in a position to give any credit to the first Respondent in energy on post-facto basis. The entire transaction on real time basis occurred on the basis that there was no schedule provided for by the first Respondent.

9. The said matter came up for consideration before the State Regulatory Commission, third Respondent herein. The State

Regulatory Commission has, inter-alia, held that when the first Respondent did not give the schedules to the Appellant for open access purchase and had acted contrary to the Regulations, the first Respondent could not seek the benefit of such electricity from open access sources, when the Appellant had arranged its affairs and supplied electricity to the first Respondent. The State Regulatory Commission upheld the bills raised by the first Respondent.

10. The State Commission, having regard to the facts and circumstances of the case, held that, it will be equitable that Discoms are directed to give credit for the actual energy charges paid by the first Respondent to the Power Exchange for purchase of energy during the disputed period. For the electricity injected from the open access sources, the same was not intended to be supplied to the distribution licensee free of cost. Therefore, the State Regulatory Commission has erred in granting the relief of energy charges to the first Respondent against the Appellant. It is the case of the Appellant that the electricity was not sought for by the Appellant, was injected without the knowledge of the Appellant, no opportunity could be granted to reject the electricity

and, therefore, there can be no question of application of the principles of *quantum merit*.

11. Taking all these facts and circumstances of the case, as stated above, the Appellant herein, being aggrieved by the impugned Order dated 17.04.2017 passed in Petition No. RERC-1090/17 on the file of the Rajasthan Electricity Regulatory Commission, Jaipur so far it relates to issue no.2 i.e. whether the first Respondent may be allowed any relief in this case, presented this appeal.

SUBMISSIONS MADE BY THE APPELLANT:

12. The learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant, at the outset, fairly submitted that, the Appellant presented this Appeal so far it relates to issue no.2 framed by the State Regulatory Commission whether the first Respondent may be allowed any relief in this case only. The principal submission of the learned counsel appearing for the Appellant is that the State Regulatory Commission has grossly erred in holding that the Appellant is liable to pay the actual energy charges paid for by the first Respondent for the energy drawn from open access sources.

13. He vehemently submitted that, the State Regulatory Commission has failed to appreciate that the situation has arisen on account of default of the first Respondent and, therefore, the first Respondent could not seek any benefit out of the same contrary to the relevant regulations and contrary to the relevant provisions of the Electricity Act and Rules.

14. The learned counsel for the Appellant was quick to point out and submitted that, the State Regulatory Commission has failed to appreciate that the first Respondent did not provide any schedule for procurement of electricity from open access sources, which is mandated by the Regulations. By not providing with the schedule, the Appellant was never informed of the proposed procurement from open access sources, and the entire energy was arranged from the existing sources and supplied by the Appellant. The transactions having occurred on real time basis, there is no occasion for post-facto payment of any amount of electricity injected without the consent or knowledge of the Appellant.

15. The State Regulatory Commission has failed to appreciate that electricity operations are on real time basis. The electricity is

injected based on the schedules finalized by the stake-holders and the parties arrange their affairs accordingly. The Appellant had supplied electricity to the first Respondent to meet its demand and had also arranged its power purchases and daily schedules accordingly. Therefore, the Appellant cannot be post facto asked to pay for electricity it did not require and it did not ask for.

16. Further, the State Regulatory Commission has also failed to appreciate that the Regulations do not provide for any such credit/payment to be made for. There is no contract also between the Appellant and the first Respondent to make any such credit for the actual energy charges paid by the first Respondent.

17. Further, the State Regulatory Commission has failed to appreciate that the prayers sought for by the first Respondent were only on the issue for directions to adjudicate the disputes by the relevant forum under Section 42. The first Respondent had invoked Section 56 & Section 142, which had no application and also it has been held so by the State Regulatory Commission. In the circumstances, the State Regulatory Commission has erred in granting monetary relief to the first Respondent contrary to the

relevant Regulations. Therefore, on this ground also, the Order impugned dated 17.04.2017 passed by the State Regulatory Commission is liable to be vitiated.

18. The State Regulatory Commission has also erred in observing that the Appellant has not denied the flow of electricity into the system. The State Regulatory Commission has failed to appreciate that the electricity flow is not regulated, but operates in terms of laws of physics. The Appellant not being in the knowledge of the injection or schedule, cannot be asked to pay for such electricity injected. The State Regulatory Commission has also erred in observing that the electricity was not intended to be supplied free of cost. The State Regulatory Commission has failed to appreciate that the test for applying the principle of quantum meruit and thereby directing to give credit for the actual energy charges paid by the first Respondent on equitable basis is that the Appellant ought to have voluntarily received the goods and enjoyed the use of the same. In the absence of the above, there was no occasion for the State Regulatory Commission directing the Appellant to give credit for the actual energy charges paid by the first Respondent. Therefore, it manifests on the face that the reasoning given in paragraphs 21 & 22 of the impugned order

passed by the State Commission is liable to be set-aside on the ground that the first Respondent has failed to make out any good ground to seek redressal of the grievances before the State Commission.

19. The learned counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court of India reported in 1962 Supp(1) SCR 876: AIR 1962 SC 779 in the case of *State of West Bengal v B.K. Mondal and Sons* (in paras 14 & 18); (2002) 5 Supreme Court Cases 203 in the case of *State of Ä.P. v National Thermal Power Corpn Ltd and Others* (in paras 21 & 22); this Appellate Tribunal's judgment reported in 2011 SCC OnLine APTEL 77 [2011] APTEL 17 in the case of *Indo Rama Synthetics (I) Ltd v Maharashtra Electricity Regulatory Commission* (in paras 8 & 11).

20. Finally, he placed reliance on the judgment and order dated 08.05.2008 passed by this Appellate Tribunal in Appeal Nos. 123 & 124 of 2007 on the file of the Appellate Tribunal for Electricity, New Delhi in the case of *M/s Hyderabad Chemicals Limited v Andhra Pradesh Electricity Regulatory Commission & Anr.*

21. Further, he submitted that, if the ratio of law laid down by the Hon'ble Apex Court and by this Appellate Tribunal in the relevant paragraphs prevail, as referred above, the impugned Order dated 17.04.2017 passed by the State Regulatory Commission is liable to be vitiated.

PER-CONTRA,
SUBMISSIONS MADE BY THE FIRST RESPONDENT:

22. The learned counsel, Ms. Purti Marwaha Gupta, appearing for the first Respondent vehemently submitted and justified the Order impugned dated 17.04.2017 passed by the third Respondent whereby deciding the issue no. 2 against the Appellant. The said reasoning recorded in paragraphs 21 & 22 of the impugned Order is strictly in consonance with the relevant material available on record and with the relevant provisions of the rules and regulations. The State Commission, after thorough evaluation of the oral and documentary evidence available on record and the reply filed by the first Respondent, has recorded the finding that the first Respondent purchased electricity from power/energy exchange is not disputed by the Appellant herein. The Appellant's dispute is that the said power has not been purchased duly following the procedure prescribed. The power

purchased has cost the first Respondent and the same was not intended for the Appellant to be supplied free of cost. Any power purchased even if not consented to, but utilized in the system, due to the very nature of electricity, cannot be considered as available to the Appellant free of cost. The Appellant nowhere denied the power, that has been purchased by the first Respondent, has not flown into the system. As per the relevant regulation, everyday mail will be issued by the second Respondent intimating the Appellant and it cannot be compelled to the first Respondent to pay twice i.e. for purchasing the electricity and also for supplying the electricity contrary to the relevant regulations and the stand taken by the Appellant without producing an iota of document to show that it is not utilized in the system is nothing except making bald statement.

23. To substantiate her submission, she quick to point out and vehemently submitted that, the first Respondent is running a spinning mill and currently there are around 1200 employees working in the Company. As per the Indian Electricity Act, and the Electricity (Supply) Act, 1948, the generation and distribution of the electrical energy was under the direct control of the Boards established by the various State Governments. With the reforms

in the field of generation and distribution of the electricity, various Governments came with the formation of distribution Companies providing for various measures for boosting the production and generation of electricity and encouraging captive generation of electrical energy by industrial/mining units which consumed bulk of electrical energy. Efforts were also made for undertaking measures for optimum utilization and minimum wastage of the energy etc.

24. It is the case of the first Respondent that they availed two sources of Power as per existing mechanism; (i) The Energy supplied by the Discom and (ii) The energy purchased from power exchange through Open Access on the distribution and the transformation system in the State.

25. The agreements were executed in regard to availing the Power through Open Access and such agreements are renewed from time to time. As per the agreement, the first Respondent was entitled to draw electricity at any time at its option and as per the prevailing practices before coming into force of RERC. The first Respondent was freely entitled to draw electricity by way of Open Access in terms of the agreement to pay minimum

charges at the contract demand even if the first Respondent does not consume electricity to the extent of contract demand.

26. The first Respondent purchased power under Open Access Scheme from IEX through M/s Knowledge Infrastructure, New Delhi. The first Respondent in the month of March, 2016 & April, 2016, purchased 686478 units and 664445 units respectively under Open Access Scheme against which 232004 units & 260945 units was allowed respectively by Discom in respective months. It is submitted that, the Appellant in its power bill stated that for the particular days of the month of March & April, 2016 power purchase information was not communicated to Jodhpur Discom/Appellant by 10 A.M. before one day of power purchase day.

27. The dispute arose between the Appellant and the first Respondent on 12.04.2016 when on account of some errors in the schedule of the Jodhpur Discom, Appellant herein, a demand of Rs.45,69,869/- was raised in the electricity bill issued on 11.04.2016 for the month of March, 2016. The first Respondent inquired about the aforesaid illegal demand and approached the Appellant through M.D. and S.E. (RA&C), Jodhpur

Discom/Appellant. The Appellant had asked the first Respondent to deposit 50% of the amount of Rs.45,69,869/- for the month of March, 2016 and the rest adjudication and adjustment would be made subsequently. The first Respondent while reserving its right had deposited 50% i.e. 22,84,935/- of the billing amount for the month of March, 2016 with the Appellant on 17.05.2016 and the same was duly accepted and acknowledged by the Appellant.

28. Once again, the first Respondent had received an illegal demand of Rs.87,25,680/- raised in the electricity bill issued on 09.05.2016 for the month of April, 2016 from the Appellant wherein arrear of March, 2016 was also included and the amount of 403500 units purchased under Open Access in the month of April, 2016 was also not considered and the same illegal demand continued thereafter.

29. It is the specific case of the first Respondent that though the first Respondent had paid to the power exchange as per the open access schedule and accordingly, electricity was injected in the account of the first Respondent but, however, the Appellant has not adjusted the electricity received through open access and

included such electricity consumption in the regular billing which is contrary to the relevant regulations.

30. After making all the efforts appraising the relevant regulations, their grievances have not been redressed nor extended any relief to the Appellant. Therefore, there is no other option except to question the Order dated 02.02.2017 passed by the SLDC, RRVPNL before the State Regulatory Commission, third Respondent herein, wherein the third Respondent, after hearing the matter at length, has passed an order dated 17.04.2017 directing the Appellant to give credit for the actual energy charges paid by the first Respondent to the Power Exchange for purchase of energy during the disputed period. The reasoning given by the State Regulatory Commission, third Respondent herein, in para nos. 21 & 22 of its impugned Order, are well founded and well reasoned and, therefore, interference by this Court does not call for. Hence, the instant Appeal filed by the Appellant may be dismissed as devoid of merits.

SUBMISSIONS MADE BY THE SECOND RESPONDENT:

31. The learned counsel, Mr. Pradeep Misra, appearing for the second Respondent/Rajasthan State Load Despatch Centre, inter-

alia, contended and vehemently submitted that, in the instant appeal, the Appellant has neither made any allegation against the second Respondent nor any relief has been sought against the second Respondent. Replying Respondent only decided the representation of the first Respondent as per the Regulation as quasi-judicial authority, hence, the name of replying Respondent i.e. Rajasthan State Load Despatch Centre, Rajasthan Rajya Vidyut Prasaran Nigam Ltd through its Chief Engineer (LD), Heerapura, Jaipur-302024, be deleted from array of parties.

32. Further, he submitted that, the representation submitted by the first Respondent was duly considered by the replying Respondent and the same was rejected as first Respondent violated the provisions of RERC (Terms and Condition for Open Access) Regulations, 2016. Therefore, he submitted that, no relief, as such, has been sought against the second Respondent by the Appellant. Therefore, the Appellant may be directed to delete the name of the second Respondent from array of parties in the interest of justice and equity.

SUBMISSIONS MADE BY THE THIRD RESPONDENT:

33. The learned counsel, Mr. Raj Kumar Mehta, appearing for the third Respondent submitted that, the impugned Order passed by the State Regulatory Commission is strictly in consonance with the relevant Regulations. After due appreciation of the relevant material available on record, the State Regulatory Commission has rightly justified the passing of equitable order by assigning valid and cogent reasons in paragraph nos. 21 & 22 of the Order impugned. Therefore, interference by this Court does not call for

OUR CONSIDERATION:

34. We have heard the learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant, learned counsel, Ms. Purti Marwaha Gupta, appearing for the first Respondent, learned counsel, Mr. Pradeep Misra, appearing for the second Respondent and learned counsel, Mr. Raj Kumar Mehta, appearing for the third Respondent at considerable length of time. We have also perused the ground urged in the memo of appeal filed by the Appellant and reply filed by the Respondent Nos. 1 & 2.

35. After thorough evaluation of the entire records available at threadbare, the only issue that arise for our consideration is:

“Whether the impugned Order dated 17.04.2017 passed in Petition No. RERC-1090/17 so far it relates to issue No.2 answered by the State Regulatory Commission against the Appellant is sustainable in law?”

36. The State Regulatory Commission, after considering the oral and documentary evidence and submissions of the learned counsel appearing for both the parties and after going through the relevant regulations, has assigned valid and cogent reasons and recorded the findings in paragraph nos. 21 & 22, which are reproduced herein below:

“21. Commission has looked into the facts as submitted. The fact that Petitioner has purchased the electricity from Exchange is not disputed by the Discom. Discom’s dispute is that the said power has not been purchased duly following the procedure prescribed. Thus the power purchased has cost the Petitioner and the same was not intended for the Discoms to be supplied free of cost. Any power purchased even if not consented to, but utilized in the system, due to the very nature of electricity cannot be considered as available to Discoms free of cost. The Respondents have nowhere denied the power that has been purchased by the Petitioner has not flown into the system.

22. In the light of facts and circumstances of this case, it will be equitable that Discoms are directed to give credit for the actual energy charges paid by the Petitioner to the Power Exchange for purchase of energy during the disputed period. Petitioner, within 15 days from the date of this Order, shall submit to the Discoms, the documentary evidence that it has bought the energy through Power

Exchange and paid for it. In case it fails to produce the document as evidence, within the time allowed, then no credit shall allowed thereafter by Discoms.”

37. At the outset, the learned counsel appearing for the Appellant vehemently submitted that the only issue arises for our consideration in the instant Appeal is issue no. 2 i.e. whether first Respondent may be allowed any relief in this case. The principal submission of the learned counsel appearing for the Appellant is that, the reasoning assigned in the impugned Order in paragraphs 21 & 22 are contrary to the relevant regulations. To substantiate his submissions, he quick to point out and submitted that there is no intimation as such intentionally and deliberately the first Respondent has not communicated to the Appellant and the Appellant's dispute is that the said power has not been purchased duly following the procedure prescribed. The power purchased has cost to the first Respondent and the same was not intended for the Appellant to be supplied free of cost and any power purchased even if not consented to, but utilized in the system, due to the very nature of electricity cannot be considered as available to the Appellant free of cost. The said reasoning assigned by the State Regulatory Commission cannot be sustainable and is liable to be set-aside. Further, the State Regulatory Commission also

committed an error holding that the Appellant nowhere denied the power that has been purchased by the first Respondent has not flown into the system but, what is relevant to be considered by the State Regulatory Commission whether the purchased electricity by the first Respondent followed the procedure prescribed under the relevant regulations and the State Regulatory Commission held that the action taken by the Appellant, in issuing the bill, without giving deduction to energy purchased in Open Access is justified and legal and issue No.2 answered in favour of the Appellant and against the first Respondent. If that is the case, the State Regulatory Commission, ought not to have issued direction to the Appellant to give credit for the actual energy charges paid by the first Respondent to the power exchange for purchase of energy during disputed period cannot be sustainable. Therefore, he submitted that, the Order impugned passed by the State Regulatory Commission is liable to be set-aside.

38. Further, he submitted that, the State Regulatory Commission is not justified in directing the payment of money by the Appellant to the first Respondent for electricity injected without knowledge and consent of the Appellant and also not

justified in granting relief to the first Respondent who has not followed the Regulations which has resulted in the present claim being made by the first Respondent. The State Regulatory Commission ought to have taken judicial note regarding the Appellant, being innocent party, can be asked to pay any amount to the first Respondent who has acted contrary to the relevant provisions of the Regulations. Taking all these facts into consideration, the Order impugned is liable to be vitiated.

39. The learned counsel appearing for the first Respondent submitted that, the Appellant has not made any good ground, as such, to entertain the relief sought in the instant appeal filed by the Appellant is misconceived and on the ground that the State Regulatory Commission after due deliberation in the matter and after considering the oral and documentary evidence available on record has rightly justified in passing the appropriate order strictly in consonance and in accordance with the relevant provisions of the Regulations applicable to the facts and circumstances of the case. The reasoning assigned in para nos. 21 & 22 of the State Regulatory Commission's order are just and reasonable. There is no error nor any material irregularity in the Order impugned passed

by the State Regulatory Commission, third Respondent herein, which is equitable in nature.

40. The learned counsel appearing for the first Respondent specifically pointed out that the State Commission has taken note about the purchase of the power has not been disputed by the Appellant and the Appellant nowhere denied the power that has been purchased by the first Respondent has not flown into the system. Once it is flown into the system, the Appellant is liable to give credit for the actual energy charges paid by the Appellant to the Power Exchange for purchase of energy during the disputed period. This aspect of the matter has been looked into and considered and appreciated and recorded in the findings of fact by the State Regulatory Commission in paragraph nos. 21 & 22 of the Order. Therefore, on this ground also, interference by this Court does not call for.

41. Further, she submitted that, the reliance placed by the learned counsel appearing for the Appellant on the judgments of the Hon'ble Apex Court and this Appellate Tribunal, are not applicable to the facts and circumstances of the case in hand on the ground that it is not the case of the Appellant to sought any

relief under Section 70 of the Contract Act. The Appellant misconstrued that the State Regulatory Commission has directed to pay the compensation is contrary to the direction given by the State Regulatory Commission. The State Regulatory Commission has directed to give credit for the actual energy charges paid by the first Respondent to the power exchange for purchase of energy during the disputed period. Therefore, she submitted that, on this ground also the appeal filed by the Appellant is liable to be dismissed as misconceived with costs.

42. After careful consideration of the case made out by the Appellant and the learned counsel appearing for the first Respondent, as stated supra, the core issue arise for our consideration is whether direction issued by the State Regulatory Commission to the Appellant to give credit for the actual energy charges paid by the first Respondent to the power exchange for purchase of energy during the disputed period is justifiable. It is significant to note that what has emerged from the relevant material available on record and not in dispute that the first Respondent has purchased electricity from the exchange is not disputed by the Appellant. The Appellant's dispute is that the said power has not been purchased duly following the procedure

prescribed under the relevant provisions of the Regulations. It is pertinent to note that, after critical evaluation of the oral and documentary evidence available in the file and after considering the case made out by the Appellant and the Respondents, the State Regulatory Commission has recorded its finding that any power purchased even if not consented to, but utilized in the system, due to the very nature of electricity cannot be considered as available to the Appellant free of cost. The Appellant nowhere denied the power that has been purchased by the first Respondent has not flown into the system except making the bald statement, the said purchase of power not as per the procedure prescribed under the relevant regulation but they have failed to produce any iota of documentary evidence to substantiate their submissions. Therefore, we are of the considered view that in the findings recorded in the paragraph nos. 21 & 22 of the impugned Order passed by the State Regulatory Commission, we do not find any error, illegality, infirmity or perversity in passing the impugned Order. Further, we are of the considered opinion that having regard to the facts and circumstances of the case in hand, the State Regulatory Commission has rightly justified in giving equitable relief to the Appellant and the first Respondent which is just and proper and also rightly justified by issuing direction to

the Appellant to give credit for the actual energy charges paid by the first Respondent to the power exchange for purchase of energy during the disputed period.

43. It is significant to note that the State Regulatory Commission has, further, rightly justified in directing the first Respondent to submit the documentary evidence to the Appellant that it has bought the energy through power exchange and paid for it. In case it fails to produce the document as evidence, within the time allowed, then no credit shall be allowed thereafter by the Appellant. The said observation made is just and proper. We do not find any error or arbitrariness in the findings recorded and direction issued by the State Regulatory Commission in paragraph nos. 21 & 22 of the impugned Order. Therefore, on this ground also interference by this Court does not call for.

44. Further, it is the case of the Appellant that the State Regulatory Commission has failed to appreciate that the principles of quantum merit in terms of Section 70 of the Contract Act also does not apply to the electricity transactions. This is because the electricity transactions are on real time basis. The Appellant not in the knowledge of schedule is not aware of

real time basis for injection of electricity and, further, there is no opportunity to the Appellant to reject the electricity. Therefore, the State Regulatory Commission has erred in granting any money on alleged equitable grounds. It is significant to note that it is not the case of the first Respondent nor they sought any relief to pay the compensation under Section 70 of the Contract Act and when the same is not for consideration nor the pleadings to that effect before the State Regulatory Commission, the question of consideration by the State Regulatory Commission does not arise and, further, the reliance placed by the learned counsel appearing for the Appellant, as stated supra, the judgments of the Hon'ble Supreme Court and this Appellate Tribunal is not applicable to the facts and circumstances of the case in hand. Therefore, on this ground also, the Appellant has failed to make out any case to consider the relief sought in this Appeal. Hence, the instant Appeal is liable to be dismissed on this ground also.

45. Taking all these relevant facts into consideration, as stated supra, we are of the considered view that the instant Appeal filed by the Appellant is deserved to be dismissed as devoid of merits.

ORDER

We are of the considered opinion that the issue raised in the instant Appeal, being Appeal No. 197 of 2017, on the file of the Appellate Tribunal for Electricity, New Delhi, has no merit, as stated supra. Appeal is dismissed.

The Impugned Order dated 17.04.2017 passed in Petition No. RERC-1090/17 on the file of the Rajasthan Electricity Regulatory Commission, Jaipur is hereby upheld.

IA NO. 501 OF 2017

In view of the Appeal No. 197 of 2017 on the file of the Appellant Tribunal for Electricity, New Delhi being dismissed, the relief sought in the IA, being IA No. 501 of 2017, does not survive for consideration.

No order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 07TH DAY OF MAY, 2018.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

√ **REPORTABLE/ NON-REPORTABLE**

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