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Mr. Nikhil Nayyar and
Mr. Pritha SriKumar for R-10

JUDGMENT

MR. RAKESH NATH, TECHNICAL MEMBER

1. This Appeal has been filed by Allain Duhangan Hydro Power Ltd against order dated 1.6.2011 passed by the Central Electricity Regulatory Commission (“Central Commission”) in petition no. 259 of 2010 directing the

- Appellant to provide connectivity on its dedicated transmission line to Everest Power Pvt. Ltd, the Respondent no. 1 herein, and deciding the procedure for coordinated operation and control of the generating stations and the transmission assets including the terms and conditions for charges to be borne by the Respondent no. 1.
2. The Appellant is a generating company which has established a 192 MW Allain Duhangan Hydro Electric Project in district Kullu of Himachal Pradesh on Build Own Operate and Transfer basis.
 3. M/s. Everest Power Pvt. Ltd. is the 1st Respondent which is a generating company and has executed the 100 MW Malana – II Hydro Electric Project in Kullu district of Himachal Pradesh.
 4. The Ministry of Power, Government of Himachal Pradesh and H.P. Power Transmission Corporation Ltd. are the

Respondents 6 and 8 respectively. The Central Commission is the Respondent no. 10.

5. The brief facts of the case are as under:-

5.1 On 20.8.2002 the Central Electricity Authority (hereinafter referred to as "CEA") accorded techno-economic clearance to the Allain Duhangan Hydro Electric Project. The clearance included cost of 220 kV Allain Duhangan – Nalagarh double circuit line for evacuation of power from the Appellant's project. However, the clearance *inter alia* stipulated that Power Grid Corporation, the Central Transmission Utility and the transmission licensee, after the route survey would confirm the adequacy of land after construction of Parbati pooling point and, accordingly, the decision of taking the line from Allain Duhangan to Parbati pooling point instead of Allain Duhangan to Nalagarh would be reviewed.

5.2 On 18.7.2005 the Appellant made an application seeking long term open access to Power Grid, the CTU. On 1.8.2005, Power Grid informed the Appellant that the commissioning of Parbati Pooling Station would not coincide with the commissioning of the Appellant's generating station. Pursuant to the said letter, the Appellant approached CEA. Thereafter on 14.8.2006, CEA informed the Appellant that Power Grid had been requested that if there was any delay in commissioning of the Parbati Pooling Station, then connectivity should be granted to the Appellant at Nalagarh sub-station of Power Grid. After various deliberations and meetings between CEA, Power Grid and the Appellant, Power Grid agreed to grant connectivity to the Appellant at Nalagarh. On 26.4.2007 Power Grid granted connectivity to the Appellant at Nalagarh and long term open access on its inter-State transmission system.

5.3 On 25.6.2007, the Appellant approached the Ministry of Power for their approval under Section 68 of the Act to construct 220 KV Allain Duhangan-Nalagarh 220 KV double circuit line.

5.4 Ministry of Power sought comments of the CEA on the above proposal of the Appellant. On 31.7.2007, CEA informed the Ministry of Power that it did not have any objection to the approval of the Allain Duhangan – Nalagarh line under Section 68 of the Act provided that out of 400 MW transmission capacity of the transmission line, the Appellant would utilise 192 MW for evacuation of power from Allain Duhangan and the balance spare transmission capacity of the line would be made available for evacuation of power from other projects in Parbati/Beas Valley, viz., Malana – II (100 MW) and Sainj (100 MW)

5.5 On 21.8.2007, the Ministry of Power accorded the approval for construction of Allain Duhangan -Nalagarh

220 KV double circuit line as the Associated Transmission System of Allain Duhangan HEP.

5.6 On 10.4.2008 CEA convened a meeting to discuss the evacuation arrangement for Malana – II Hydro-Electric Project of the Respondent no.1. It was agreed in the meeting which was attended by the representative of the Appellant that Malana-II should proceed to tie up evacuation of power through 220 KV Allain Duhangan - Nalagarh line and the Appellant and the Respondent no. 1 would mutually decide the modalities for sharing of the cost and Operation and Maintenance charges for evacuation of power of Malana-II and in case no agreement could be reached CEA would try to resolve the issue.

5.7 On 17.6.2008, Ministry of Power granted prior approval under Section 68 of the Act to the Respondent no. 1 for construction of 132 KV line for evacuation of power of Malana-II Project of the Respondent no. 1 and its inter-

connection with 220 KV Allain Duhangan -Nalagarh line of the Appellant by constructing a 132/220 KV Sub-station as the dedicated transmission system of the Respondent no. 1. Subsequently on 14.7.2008, the Power Grid granted long term open access on its inter-State transmission system to the Respondent no.1 for power injection by Malana-II at Nalagarh for onward supply to Punjab State Electricity Board.

5.8 On 18.6.2008, the Appellant informed the Ministry of Power its no objection to the Respondent no. 1 establishing the 132/220 KV Sub-station and loop-in-loop-out of one circuit of Allain Duhangan-Nalagarh line at the 132/220 kV sub-station of the Respondent no. 1, subject to certain conditions.

5.9 On 14.8.2008 the Appellant and the Respondent no. 1 had a meeting where the Appellant informed that it had no objection to evacuate power of Malana-II HEP subject to commercial settlement and approval of the Central

Commission and that the control of the 132/220 KV Sub-station should rest with the Appellant.

5.10 Subsequently a number of meetings took place between the Appellant and the Respondent no. 1 to resolve the commercial and operational issues regarding sharing of the dedicated line of the Appellant by the Respondent no.1. However, agreement could not be reached between the parties.

5.11 In September, 2010 the Respondent no. 1 filed a petition before the Central Commission alleging abuse of dominance and seeking the directions against the Appellant.

5.12 On 1.6.2011 the Central Commission passed the impugned order which is being challenged by the Appellant in this Appeal.

6. On 10.6.2011 this Tribunal after hearing the parties passed an interim order as under:-

- “i) The Appellant will allow connectivity in compliance with the applicable laws to Respondent no.1 on 220 KV Allain Duhangan – Nalagarh transmission line by loop in loop out of one of the circuits at 220/132 KV Chhuar sub-station of Respondent no.1.***
- ii) In the interim period, the transmission charges will be worked out on the capital cost of the transmission line as per the audited accounts of the Appellant on the basis of norms of Central Commission’s Tariff Regulations, 2009 and will be shared by the Respondent no.1 in proportion to the rated capacity of the unit commissioned, on pro-rata basis.***
- iii) The first Respondent will share the transmission loss @ 4.75 % of the energy injected by Malana II Power Station at the tapping of 220 KV at Allain Duhangan – Nalagarh circuit at Chhuar Sub-Station of Respondent no.1.***
- iv) The Northern Region Load Despatch Centre will schedule and dispatch the power generation and prepare UI accounts and energy accounts for both Allain Duhangan Hydro Power Station of the Appellant and Malana- II Power Station of Respondent No.1 and will control the switching operations at 220/132 KV at Chhuar sub-station of the Respondent no.1.”***

7. Accordingly, the Appellant provided connectivity to Malana II HEP of the Respondent no.1 on its dedicated transmission line by loop-in-loop-out of one of the circuits of Allain Duhangan – Nalagarh line at 220/132 KV Chhaur Sub-station of the Respondent no.1. The Appellant and the Respondent no.1 also entered into an Interim Power Transmission Agreement for sharing of the transmission charges and transmission losses by the Respondent no. 1, as per the directions of this Tribunal.

8. In our order dated 3.5.2012 we noted that the issue has arisen due to optimization in transmission planning adopted by the Central and State Planning Agencies to save the area required in transmission corridor due to right of way problem in the hilly terrain. In the circumstances of the case, there was no alternative but to evacuate the power of both Allain Duhangan and Malana II Hydro Electric Projects through the 220 KV Allain Duhangan - Nalagarh line owned by the Appellant.

The Ld. Counsel for the Appellant also felt that there was no alternative in the present case but to allow evacuation of Malana II HEP through the dedicated transmission line of the Appellant. We felt that it was in the interest of both the parties to amicably settle the matter. We also recorded the issues flagged by the Appellant and the Respondent no. 1 which were required to be resolved and gave time to the parties to discuss and report settlement to us. The issues raised by both the parties were: verification of capital cost, return on equity on investment, sharing of transmission line losses, priority in case of outage of a circuit and control of Chhaur sub-station of the Respondent no.1.

9. However, despite giving adequate time to the Appellant and the Respondent no. 1 to resolve the issue, settlement could not be reached between them. Thereafter, we posted the matter for hearing.

10. One of the issues raised by the Appellant was that the impugned order was passed by the Central Commission against the Principle of Natural Justice as the Appellant was denied an opportunity of filing its reply and addressing the Commission on merits. The Appellant had filed its reply on the issue of maintainability of the petition and the jurisdiction of the Central Commission and argued the matter on the aforesaid preliminary issues. The arguments were heard on 7.12.2010 on the issue of maintainability and jurisdiction and the orders were reserved. However, subsequently on 21.2.2011, the Respondent no. 1 filed two interim applications seeking amendment to petition and directions against the Appellant to permit transmission of electricity. The Central Commission heard the parties and granted time to file reply/rejoinder. Accordingly, the Appellant filed the reply. Thus, according to the Appellant they only filed submissions limited to maintainability.

11. On the other hand the Respondent no. 1 submitted that the Appellant was heard extensively on merits of the case besides the issue of maintainability. The Appellant had never sought any permission for filing short reply nor filed any application before the Central Commission seeking any leave to file a detailed reply on merits of the case. Having participated in extensive arguments as made by the Appellant on merits before the Central Commission, the Appellant could not complain against the exercise of jurisdiction by the Central Commission under Section 79 of the Electricity Act.

12. The Ld. Counsel for the State Commission has also submitted that the matter was argued at length before the Central Commission on both issues of maintainability as well as merits.

13. Even though the impugned order records the terms and conditions of the Transmission Supply Agreement sought

by the Appellant it does not show whether the Appellant was heard on these issues on merits. However, we do not want to go into the issue of Principle of Natural Justice, as we decided to hear the parties on the issue of maintainability as well as merits as we thought that no useful purpose will be served in remanding the matter back to the Central Commission for reconsideration without hearing the matter on merits as the connectivity has already been provided to Malana II on the Appellant's dedicated transmission line and the arrangement could not be reversed as agreed by both the parties. The Ld. Counsel for the parties also felt that instead of remanding the matter back to the Central Commission for reconsideration, the Tribunal could hear the matter on merits and decide the ratio.

14. The Appellant has made the following submissions:

14.1 The impugned order is without jurisdiction and the petition filed by the Respondent no. 1 was not maintainable before the Central Commission.

14.2 Section 79(1) (f) of the Act envisages the adjudication of a dispute involving generating companies or the transmission licensees in regard to regulation of tariff of generating companies owned or controlled by the Central Government and for such generating companies who have a composite scheme for generation and sale of electricity in more than one State, regulation of inter-State transmission of electricity and determination of tariff for inter-State transmission of electricity. Thus, the precondition for invocation of provisions of Section 79(1)(f) are that there have to be generating companies or the transmission licensee in the dispute between two generating companies on the issue of generation or one generating company and a transmission licensee on an issue of transmission or two transmission licensees on an issue of transmission.

14.3 Even though the Respondent no. 1 had raised the issues relating of transmission of electricity, the main ingredient that one of the parties has to be a transmission licensee is missing. As such, the petition filed by the Respondent no.1 before the Central Commission did not fall within the provisions of Section 79 of the Act. The Central Commission has failed to appreciate that the Appellant is not a transmission licensee under the Act and as such the provisions of Section 79(1)(f) are not attracted. It is a settled law that a statutory authority cannot go beyond the jurisdiction conferred by the Statute under which it is constituted and derives its power from and cannot confer itself with jurisdiction. A statutory authority cannot confer the jurisdiction on the basis of secondary sources and/or on the basis of documents/minutes of meetings. Jurisdiction to a statutory authority also cannot be conferred by an agreement or consent of the parties.

14.4. The Central Commission has incorrectly assumed the jurisdiction on the basis of minutes of meetings of CEA, wrong interpretation of Section 2(36) of the Act defining inter-State transmission system, CEA's recommendation to the Ministry of Power while granting approval to the Appellant under Section 68 of the Act for construction of Allain Duhangan - Nalagarh line and the Section 68 approval for the dedicated transmission system of the Respondent no.1.

14.5 The Central Commission has ignored the fact that the approval granted to the Appellant by Government of India, Ministry of Power under Section 68 does not contain any condition with regard to wheeling of power of the Respondent no.1. Despite the recommendations of CEA that the spare transmission capacity of the Appellant's dedicated transmission line would be made available to other projects, no such condition has been imposed by the Ministry of Power in the approval accorded under Section 68 of the Act to the Appellant.

14.6 The Central Commission has erred to treat the permission to Respondent no.1 for sanction under Section 68 to use the transmission line of the Appellant as deemed to be the sanction letter of the Appellant.

14.7 The Central Commission also could not have fixed the commercial terms and conditions for utilisation of the dedicated transmission line of the Appellant by the Respondent no.1.

14.8 No basis for dominant position under Section 60 has been made out by the Respondent no.1 in its petition before the Central Commission. The Appellant is not a transmission licensee so the precondition for invocation of Section 60 of the Act is not met.

14.9 Ld. Counsel for the Appellant also submitted detailed reasons for higher capital cost incurred in construction of 220 kV Allain Duhangan – Nalagarh line. He submitted that the Appellant is also entitled to claim higher return on equity. He also stated that due to injection of power by

Malana-II the transmission losses on the Allain Duhangan – Nalagarh circuits have increased. Therefore, the Respondent no.1 is liable to bear incremental transmission losses on the line section instead of average transmission losses. Further, the control of 220/132 kV Chhaur sub-station should also rest with the Appellant for its efficient operation. In case of outage of one of the circuits, the Appellant's generation should get priority over the generation of the Respondent no.1 as the line is owned by the Appellant and is the dedicated transmission system of its power project.

15. The Respondent no.1 has made the following submissions:-

15.1 The Respondent no.1 had entered into an agreement for sale of power from its Malana II project with PTC India Ltd., a power trader, in July 2005. On 21.2.2006, PTC was granted long term open access for evacuation of power from the Malana II project through Parbati Pooling Station. Since Parbati Pooling Station and associated

transmission system of Power Grid was getting delayed, the CEA and Power Grid planned evacuation of Malana II through 220 KV Allain Duhangan – Nalagarh transmission system of the Appellant utilizing its spare capacity. The Appellant had also given its consent to this arrangement.

15.2 The approval granted by the Ministry of Power, Government of India under Section 68 of the Act on 17.6.2008 to the Respondent no. 1 also provided for construction of 132 KV line for evacuation of power of Malana II and its interconnection with 220 kV Allain Duhangan – Nalagarh line by constructing a 132/220 KV sub-station as its dedicated transmission system. Accordingly, the dedicated transmission system was constructed by the Respondent no.1. The forest clearance granted to the Appellant for Allain Duhangan – Nalagarh line was also accorded on the condition that the Appellant would also carry/transmit on its transmission line the power generated by Malana II. Subsequently in a

number of meeting taken by Ministry of Power, CEA, Power Grid and Himachal Pradesh Power Transmission Corporation, the State Transmission Utility, the Appellant had consented to evacuate power of various projects coming up in Parbati Basin including Malana II. In the circumstances of the case and peculiar facts, the 220 KV Allain Duhangan – Nalagarh line has lost its dedicated nature and is now to be considered as a main transmission line which is performing the function of inter-State transmission system and thus amenable of being regulated by the Central Commission.

15.3 Prior approval granted to the Respondent no.1 by the Government under Section 68 by letter dated 17.6.2008 is the statutory approval to evacuate the power generated by the Respondent no.1 at Malana II through 220 kV Allain Duhangan – Nalagarh transmission line of the Appellant. Thus, under the law, a statutory right has been created by the Government in favour of the Respondent no.1 which cannot be under the law be

rejected by the Appellant by putting unreasonable conditions and by demanding exemplary charges for transmission of such energy, against the Regulations of the Central Commission.

15.4 Filing of the petition by the Respondent no.1 before the Central Commission for amendment of petition no. 259 of 2010 to include 79 (1) (c), (d) and (f) of the Electricity Act did not prejudice the rights of the Appellant.

15.5 The Central Commission has the jurisdiction to adjudicate the petition under Section 79(1)(f) of the 2003 Act as 220 KV Allain Duhangan – Nalagarh line is a inter-State line within the meaning of Section 2 (36)(ii) of the Electricity Act, 2003.

15.6 In view of the Appellant agreeing to evacuate the power of Malana II and other hydro projects on Allain Duhangan - Nalagarh line, it has lost its dedicated nature and since

the Appellant is now engaged in the business of evacuation of energy granted from the various projects, the Appellant should be directed to obtain a transmission licence in terms of the provisions of the Act.

15.7 CEA had specifically recommended that out of 400 MW capacity of 220 KV Allain Duhangan – Nalagarh line, the Appellant would utilize 192 MW for evacuation of Allain Duhangan power and the balance spare capacity of the line would be made available to Malana II and Sainj Hydro-Electric projects. The above recommendation of CEA has to be read along with the approval under Section 68 granted by the Ministry of Power dated 17.6.2008 which specifically stated that the power generated by Malana II would be transmitted through the 220 kV Allain Duhangan – Nalagarh transmission system of the Appellant.

15.8 Perusal of various correspondence exchanged between the parties/authorities, including the plan envisaged by

CEA for evacuation of power generated in the region would make it clear that Allain Duhangan – Nalagarh transmission system is to be treated as a dedicated transmission system for the entire corridor through which the energy generated from other hydro electric projects coming up in the region would be transmitted and the Appellant shall be required to abide by the regulatory framework.

15.9 The capital cost indicated by the Appellant for its transmission system is very high considering the cost incurred by the Power Grid and other transmission licensees. He also supported the findings of the Central Commission regarding transmission losses and priority in case of outage of line. According to him the Appellant could not claim ROE higher than that allowed to a transmission licensee under the Central Commission's regulations.

16. Himachal Pradesh Power Transmission Corporation, the Respondent no. 8 herein, in their reply have informed

that the Chief Secretary to Government of Himachal Pradesh had taken a meeting on 19.11.2008 on the issue of large number of transmission lines coming up on the Beas Basin including the transmission line of the Appellant with a view to optimize the transmission corridors and to reduce the number of transmission lines in the valley and carry higher load of power on fewer lines. After detailed discussion to pool and reduce the transmission corridors in the Beas Basin it was inter alia decided the Appellant shall also carry/transmit on its transmission line the power generated by the Respondent no. 1 on mutually agreed terms and conditions. Subsequently, the Respondent no.8 convened meetings on 22.3.2010 and 30.4.2010 with the officials of the Appellant and the Respondent no.1 with a view to resolve the issues in finalizing the Transmission Service Agreement between the Appellant and the Respondent no.1. The Respondent no. 8 has also informed about the notification dated 15.9.2010 of the State Government amending the Hydro Power Policy, 2006 of the State

Government to the extent that the Respondent no. 8 which is also the State Transmission Utility would co-ordinate to ensure optimum utilisation of the transmission system including the dedicated transmission system in the State. The Respondent no. 8 has also informed about a meeting taken by Principal Secretary (Power), Government of Himachal Pradesh with the representatives of the Appellant and the Respondent no. 1 on 2.8.2010 wherein it was agreed that the transmission losses and the transmission charges would be as per the prevailing regulations.

17. The State Government of Himachal Pradesh adopted the reply filed by the Respondent no.8.
18. We have heard the Ld. Counsel for the Appellant, the Respondent no. 1 and the Central Commission and the representative of Respondent no. 6 and 8. Ld. Counsel for the Appellant has already accepted that the dedicated transmission line constructed by the Appellant could be

used for evacuation of power of the Respondent no.1 on the mutually agreed terms and conditions. However, the terms and conditions offered by the Appellant are not acceptable to the Respondent no.1 as according to them they are not reasonable and not in line with the Central Commission's Regulations. According to the Respondent no.1, the capital cost of the transmission line claimed by the Appellant is very much on the higher side. On the other hand, the Appellant wants the Transmission Service Agreement to be entered into at its own terms and conditions.

19. In view of the submissions made by the Ld. Counsel for the parties, the following questions would arise for our consideration.

- i) Whether the Central Commission has the jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no. 1 relating to sharing of transmission charges, transmission losses by the Respondent no.1 and

- other functional and operational issues involving Allain Duhangan-Nalagarh 220 kV double circuit line of the Appellant on providing interconnection to the dedicated transmission system of Malana-II Hydro Project of the Respondent no. 1?
- ii) In the circumstances of the present case when the Appellant has agreed to allow evacuation of power of the Malana II HEP of the Respondent no.1 on its dedicated transmission system, whether the transmission of electricity by the power plant of the Respondent no. 1 on Allain Duhangan – Malana line could be considered as inter-State transmission of electricity?
 - iii) In case we come to the conclusion that the Central Commission has no jurisdiction to arbitrate upon the dispute then how the issues relating to sharing of Allain Duhangan - Nalagarh transmission line between the Appellant and the Respondent no.1 could be resolved?
 - iv) If the answer to the first question is in positive whether the Central Commission has correctly decided the issues

relating to sharing of the 220 kV Allain Duhangan – Nalagarh line by the Respondent no.1?

20. Since the first three issues are interrelated we shall be taking them up together.

21. Let us first examine the findings of the Central Commission in the impugned order. The relevant extracts are as under:-

“14. On consideration of the factual matrix of the case and submissions of both petitioner and Respondent No.1, it emerges that the transmission lines of Power Grid were planned to extend till Panarsa pooling station in order to meet the evacuation requirements of the generating stations coming up in the Kullu valley of the State of Himachal Pradesh. EPPL was granted open access by CTU for injecting power in the pooling station of Power Grid at Panarsa. On account of the delay in the commissioning of Parbati HEP, the construction of the transmission lines by CTU was delayed. When ADHPL applied for LTOA to Power Grid, it was informed that the pooling station at Panarsa would be delayed. After a joint meeting with Power Grid and CEA, with regard to the evacuation plan, CEA recommended to the Ministry of Power to grant approval under Section 68 of the Act to ADHPL for construction of its dedicated transmission line till Nalagarh. Central Electricity Authority being fully aware of the corridor constraints in the region and the need for a back-up evacuation plan for all generators in the region who are likely to be affected by the delay in construction

of the transmission lines by CTU, while recommending the case of ADHPL for sanction under section 68 of the Act to construct its dedicated transmission line till Panarsa, had advised Ministry of Power as under:

“(i) While finalizing the corridor of the proposed Allain Duhangan – Nalagarh 220 kV D/C line, ADHPL should ensure that their corridor is appropriately coordinated with respect to the corridor identified by POWERGRID for the 400 kV transmission lines in the area planned for the evacuation of power from Parbati II, Parbati III and Koldam HEPs.

(ii) Out of the total 400 MW transmission capacity of the 220 kV D/C line, ADHPL would utilize 192 MW for evacuation for ADHPL power and the balance spare transmission capacity of the line would be made available for evacuation of power from other projects in the Parbati/Beas valley viz, Malana – II (100 MW) and Sainj (100 MW)”.

Thus, the dedicated transmission line has been constructed by one generator in place of the development of the inter-state transmission line by Power Grid till Panarsa as planned earlier. All generators in the region whose requirements were taken into account by CEA at the time of planning the inter-State transmission line till Panarsa have been tied up with the dedicated transmission line of Respondent No.1 to evacuate power from their generating stations. Though the 220 kV D/C Allain Duhangan Hydro Electric Project (ADHEP)- Nalagarh transmission line has been developed by Respondent No.1, the main purpose of the line is to evacuate power of all generating stations in the region till Nalagarh where it is connected to the transmission system of CTU.”

“16. We have considered the submissions of the petitioner and Respondent No.1. There is no doubt that as per the Master Plan envisaged by the Central Electricity Authority,

the transmission line is required to wheel the power of other generators in the region till the Nalagarh sub-station of Power Grid. Since, the petitioner has been permitted by Ministry of Power, Government of India in its sanction letter under section 68 of the Act to wheel its power by LILO of one circuit of Allain Duhangan – Nalagarh transmission line till the Nalagarh sub-station of Power Grid, the portion of the transmission line to be used by EPPL becomes a part of the inter-State transmission system as “inter-State transmission system” under 2(36) of the 2003 Act which includes conveyance within the State which is incidental to inter-State transmission of electricity. Moreover, permission to EPPL in the sanction letter under section 68 of the Act to use the transmission line of ADHPL is deemed to be read into the sanction letter to ADHPL under section 68 of the Act and such permission to ADHPL is conditional to wheeling the power of other generators in the region whose generating stations were included in the planning process of CTU and CEA. Since the subject transmission line has been planned to evacuate power from the region for injection into the sub-station of Power Grid at Nalagarh, the transmission line is incidental to inter-State transmission system. The Commission which has been vested with the responsibility to regulate inter-State transmission has the jurisdiction to issue directions under section 79(1)(c) of the Act to regulate transmission on the subject transmission line.

17. *The learned counsel for Respondent No.1 argued during the hearing of 29.3.2011 that ADHPL has created a redundancy to wheel its own power during outage and it can share this redundancy with others on its own terms. We are not in agreement with the submission of the Respondent No.1 for the reason that the redundancy sanctioned in the Techno-economic clearance stands superceded as per the latest Master Plan of CEA which envisaged that the transmission line will be used for other generators in the region. Therefore, Respondent No. 1 has a liability to carry the power generated by other generators*

in the region. Besides EPPL, there are other generators who would require this line for wheeling their power. Therefore, the Commission being vested with the power of regulation of inter-State transmission of electricity is under a statutory obligation to regulate and facilitate inter-State transmission of power and in discharge of the said function, the Commission is of the view that the applicant has made substantial investment for setting up the generating station which is ready for commercial operation on the basis of the LTOA granted by CTU. Now the liability for making available the transmission line by CTU has been shifted to the Respondent No.1 in terms of the approval under section 68 of the Act to the applicant. The power from the generating station of EPPL will ultimately go to PSEB and the end consumers of Punjab apart from 12% free power to the State of Himachal Pradesh. Non-scheduling of power from the generating station on account of the dispute between applicant and Respondent No. 1 will be a huge national loss especially in the present shortage of electricity. The Commission has been vested with the power to regulate inter-State transmission of electricity which means that the Commission is required to ensue free flow of electricity on the inter-State transmission system and for that purpose, the Commission can issue appropriate directions even in respect of dedicated transmission lines which are planned and developed for inter-State transmission of power.

- 18. In view of our finding in the preceding paragraph with regard to Commission's jurisdiction to deal with the matter under section 79(1)(c) of the Act and in the facts and circumstances of this case, we do not consider it necessary invoke our jurisdiction under Section 60 of the Act.*
- 19. The next question therefore arises as to what directions could be issued by the Commission under the facts and circumstance of the case to ensure that inter-State transmission of electricity on the subject transmission line*

does not suffer on account of persistent difference between Petitioner and the Respondent No. 1 with regard to the terms and conditions of the Transmission Service Agreement (TSA). The Petitioner and Respondent No.1 are not ad idem on the terms and conditions of the – TSA on the following aspects:

- (i) Return on Equity : 3% higher than CERC norms.*
- (ii) Cost of 220 kV ADHEP-Nalagarh line: Rs. 2.2 crores per km.*
- (iii) Absolute control of 132/220 kV Chhaur substation established by EPPL to remain with ADHPL.*
- (iv) Priority to be with ADHPL in case of outage of one circuit of ADHEP-Nalagarh line.*
- (v) Scheduling & dispatch of Malana-II HEP by ADHPL.*
- (vi) 4% additional loss to be deducted from generation of MALANA II HEP.*

20. In view of the peculiar nature of the case where refusal of connectivity by Respondent No.1 (ADHPL) to the petitioner (EPPL) may result in bottling of power of Malana-II HEP, the Commission after detailed deliberation hereby directs the parties to follow the following procedure for coordinated operation and control of generating stations and transmission assets:”

The Central Commission has also given directions regarding the procedure to be followed by the parties for coordinated operation and control of generating stations and transmission assets, including the principles for determination of transmission charges and transmission

losses for use of Allain Duhangan – Nalagarh line by the Respondent no.1.

22. The findings of the Central Commission are summarized as under:

22.1 Power Grid had planned construction of Panarasa Pooling Station (Parbati Pooling Station) in order to meet the evacuation requirements of the generating stations coming up in Kullu valley of Himachal Pradesh. The Respondent no.1 was also granted open access by Power Grid by injecting power at the Pooling Station at Panarasa. On account of delay in construction of Parbati Hydro Electric Project, the construction of the Panarasa Pooling Station was delayed.

22.2 In view of above, CEA recommended to the Ministry of Power to grant approval under Section 68 of the Act to the Appellant for construction of the dedicated line till Nalagarh and also make available the spare capacity of the line for evacuation of power from Malana II and Sainj.

22.3 Thus a dedicated line has been constructed by M/s. ADHPL in place of development of the inter-State transmission system by Power Grid as planned earlier. Though the line has been developed by the ADPHL (Appellant herein), the main purpose of the line is to evacuate the power of all generating stations in the region till Nalagarh.

22.4 As per the master plan envisaged by the CEA, the transmission line of ADHPL is required to wheel the power of other generators in the region till Nalagarh.

22.5 Since M/s EPPL (Respondent no.1 herein) has been permitted by the Government of India in the sanction under Section 68 of the Act to wheel its power through loop-in loop-out of one circuit of Allain Duhangan – Nalagarh line till Nalagarh sub-station, the portion of line to be used by M/s EPPL becomes a part of inter-State transmission system.

22.6 Permission to M/s. EPPL in the sanction letter under Section 68 of the Act to use the transmission line of M/s. ADHPL is deemed to be read into the sanction letter of ADHPL under Section 68 of the Act. As such, the permission to ADHPL is conditional to wheeling of power of other generators in the region.

22.7 The Central Commission has been vested with the responsibility to regulate inter-State transmission system and has jurisdiction to issue directions under Section 79(1)(c) of the Act to regulate the Allain Duhangan – Nalagarh transmission line.

22.8 M/s. EPPL have made substantial investment for setting up the generating station on the basis of Long Term Open Access granted by the CTU. The power from EPPL will ultimately be transmitted and consumed by the end consumers.

22.9 The liability for making available the transmission line by CTU has been shifted to M/s. ADHPL in terms of approval under Section 68 of the Act to M/s. EPPL.

22.10 The Commission has been vested with powers to regulate inter-State transmission of electricity and for ensuring free flow of electricity on the inter-State transmission system, the Commission can issue appropriate directions even in respect of the dedicated transmission lines which are planned and developed for inter-State transmission of power.

22.11 In view of the Commission's finding that it has the jurisdiction to deal with the matter under Section 79(1)(c) of the Act, the invocation of Commission's jurisdiction under Section 60 of Act is not considered.

23. Accordingly, the Central Commission has given the following directions to the parties for coordinated

operation of generating stations and transmission system.

- (a) Connectivity: M/s. ADHPL to provide connectivity to M/s. EPPL on 220 kV Allain Duhangan – Nalagarh line.
- (b) Capital cost: To be mutually decided by M/s. ADHPL and M/s. EPPL taking into consideration the approved project cost of the line, the audited expenditure and benchmark capital cost for similar line of CTU.
- (c) Return on Equity: As per Central Commission's Regulations, 2009, as amended from time to time.
- (d) O&M expenses: To be calculated as per actual and borne in proportion to use of the transmission line.
- (e) Control of 132/220 KV Chhuar Sub-station : Control of the sub-station with M/s. EPPL and M/s. ADHPL may

appoint its representative at the sub-station for coordination purpose.

- (f) Lead generator: ADHPL will be the lead generator.
- (g) Control area: Area comprising Allain Duhangan HEP, Malana II HEP, 220 KV Allain Duhangan – Nalagarh line, LILO of this line with Chhaur sub-station will form separate control area.
- (h) Formation of a coordination centre: Coordination centre to be managed jointly by ADHPL and EPPL.
- (i) Responsibility of the coordination Centre: As described in the impugned order.
- (j) Procedures: Scheduling, metering and accounting apportionment of transmission charges and transmission losses, etc., decided.

24. Let us now examine the relevant provisions of the Electricity Act.

24.1 The dedicated transmission line has been defined under Section 2(16) as:

“(16) Dedicated Transmission Lines ” means any electric supply line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations or the load centre, as the case may be;”

Thus a dedicated transmission line is for point to point transmission connecting the generating station to any transmission line or sub-station or generating station or the load centre.

24.2 Inter-State transmission system is defined under Section 2(36) as:

“(36) inter-State transmission system” includes –

(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;

(ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;

(iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by Central Transmission Utility.”

Thus the inter-state transmission system includes conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to inter-State transmission of electricity.

24.3 Intra-State transmission system has been defined under Section 2(37) as any system for transmission of electricity other than inter-State transmission system.

24.4 Section 3 of the Act provides for the CEA to notify the National Electricity Plan in accordance with the National Electricity Policy once in five years.

24.5 Part III of the Act provides for generation of electricity.

Section 7 enables a generating company to establish, operate and maintain a generating station without obtaining a licence if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of Section 73. Section 8, however, provides that a generating company intending to set up a hydro-generating station shall prepare and submit to the CEA for its concurrence, a scheme estimated to involve a capital cost exceeding such sum as may be fixed by the Central Government from time to time by notification. The CEA while concurring any hydel scheme shall examine the scheme with respect to optimum utilisation of water resources and dam design and safety.

24.6 Section 9 provides for captive generation. According to Section 9(i) a person may construct, maintain operate a captive generating plant and dedicated transmission lines. However, the supply of electricity from the captive

generating plant through the grid has to be regulated in the same manner as the generating station of a generating company.

24.7 Section 10 of the Act describes the duties of generating companies as under:

“Duties of generating companies

10. (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.

(3) Every generating company shall –

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.”

Thus, the duties of generating company includes establishment, operation and maintenance of dedicated transmission lines in accordance with the provisions of the Act or the rules or regulations made thereunder. The generating company may supply electricity either to any licensee i.e. a distribution licensee or a trading licensee, and to any consumer, subject to the provisions made in the Act. The generating company has also to coordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.

24.8 Part IV of the Act provides for licensing. Section 12 prohibits any person to transmit electricity or distribute electricity or undertake trading in electricity unless he is authorized to do so by a licence issued under Section 14, or is exempt under Section 13. There is no requirement of a licence for establishment and operation and maintenance of a generating station. Section 14 provides for grant of licence by the Appropriate Commission to any

person a) to transmit electricity as a transmission licensee or b) to distribute electricity as a distribution licensee or c) to undertake trading in electricity as an electricity trader in any area as may be specified in the licence.

24.9 Subsequently, the Electricity (Removal of Difficulty) Fifth Order, 2005 was notified as difficulties had arisen regarding the requirement of a transmission licence for establishing, operating and maintaining a dedicated transmission line for a captive power plant and generating station. The notification provide that the generating company shall not be required to obtain licence under the Act for establishing, operating or maintaining a dedicated transmission line provided such company complies with Grid Code and standards of grid connectivity, technical standards for construction of electrical lines, system operation of the dedicated line as per norms of system operation of the concerned State or Regional Load Dispatch Centre and directions of

concerned SLDC or RLDC regarding operation of the dedicated line. Thus even the dedicated line has follow the Grid Code Regulations of the Appropriate Commission and system operation norms and directions of SLDC or RLDC as the case may be regarding operation of the line.

24.10 Part V of the Act provides for transmission of Electricity. As per Section 38(1), the Central Government has to notify any Government company as the Central Transmission Utility (CTU). Accordingly, Power Grid has been the CTU. Section 38(2) *inter alia* provides for the CTU to undertake transmission of electricity through inter-State transmission system and to discharge all functions of planning and coordination relating to inter-State transmission system with the specified agencies including the generating companies. Section 40 describes the duties of a transmission licensee. It provides for the transmission licensee to build, maintain and operate an efficient, coordinated and economical inter-State

transmission system, as the case may be, comply with the directions of the RLDC or SLDC, as the case may be and to provide non-discriminatory open access to its transmission system for use by any licensee, or generating company on payment of transmission charges or any consumer as and when open access is provided by the State Commission under Section 42(2) on payment of transmission charges and surcharge thereon.

24.11 Part VI of the Act provides for distribution of electricity, Section 60 is covered in Part VI under provisions with respect to supply generally. Section 60 provides for market domination. Under this Section the Appropriate Commission may issue such directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry.

24.12 Part VII provides for tariff. Under Section 62 the Appropriate Commission is empowered to determine tariff in accordance with the provisions of the Act for a) supply of electricity by a generating company to a distribution licensee b) transmission of electricity c) wheeling of electricity and d) retail supply of tariff.

24.13 The approval of Appropriate Government for overhead lines under Section 68 is described under Part VIII of the Act under the heading “Works”. The relevant extracts are as under:

“68. Overhead lines- (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2)”.

“(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary”.

The Appropriate Government is defined under Section 2(5). The same is reproduced below:

“(5) “Appropriate Government” means, -

- (a) the Central Government, -*
- (i) in respect of a generating company wholly or partly owned by it;*
 - (ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;*
 - (iii) in respect of National Load Despatch Centre; and Regional Load Despatch Centre;*
 - (iv) in relation to any works or electric installation belonging to it or under its control ;*
- (b) in any other case, the State Government, having jurisdiction under this Act;”.*

In the present case, the Appellant and the Respondent no. 1 have obtained approval under Section 68 for construction of their respective dedicated transmission lines from the Central Government, as both them intended to transmit their power through inter-State transmission system outside the State of Himachal Pradesh.

24.14 Part IX of the Act is on Central Electricity Authority.

The functions of the Central Electricity Authority under Section 73(f) provides that it has to advise the Central Government on matters relating to National Electricity

Policy and formulate short-term and perspective plans for development of electricity system and coordinate the activities of planning agencies for optimum utilization of resources in the interest of national economy and to provide reliable and affordable electricity for all consumers. Under Section 73(h), the CEA has to advise the Central Government and make recommendations to the Government on any matter that would help in improving the generation, transmission, trading, distribution and utilisation of electricity. Under Section 73(a), the CEA has to advise the licensees, generating companies, etc., on such matters which shall enable them to operate and maintain the electricity system under their ownership and control in an improved manner and where necessary, in coordination with any other Government, licensee or the generating company owning or having the control of another electricity system. Accordingly, the CEA in the present case has coordinated with the Power Grid, Central Government, the Appellant and the Respondent no.1 with a view to

plan transmission system optimally for evacuation of power from their hydro power projects.

24.15 Part X provides for Regulatory Commissions. The functions of the Central Commission relating to regulation of transmission of electricity and adjudications are given under Section 79(1) (c)(d) and (f). The relevant provisions are as under:

“79. Functions of Central Commission

(1) The Central Commission shall discharge the following functions, namely:-

- (a) to regulate the tariff of generating companies owned or controlled by the Central Government;*
- (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*
- (c) to regulate the inter-State transmission of electricity ;*
- (d) to determine tariff for inter-State transmission of electricity;*
- (e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations.*

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;”.

Thus, in terms of Section 79(1) (f) the Central Commission can adjudicate upto disputes involving generating companies in regard to matters concerning inter-State transmission of electricity. Thus, the Central Commission shall have jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1 only if it is established that transmission of power from the power station of the Respondent no.1 on Allain Duhangan – Nalagarh line involves inter-State transmission of electricity.

24.17 Section 178 of the 2003 Act empowers the Central Commission to make regulations by notifications, consistent with the provisions of the Act and the rules generally to carry out the provisions of the Act. Accordingly, the Central Commission has notified various

Regulations, viz., Tariff Regulations, 2009, Indian Electricity Grid Code Regulations, 2010, etc.

24.18 The provisions of the Act would indicate that the business of generation has been de-licensed. The generating company has been given full freedom to supply power to a licensee i.e. a distribution licensee or a trading licensing, and/or a consumer of its choice subject to certain conditions as specified in the Act. For point to point transmission of power, the generating company can also construct dedicated transmission system to facilitate transfer of its power to its destination of choice. By removal of difficulties notification, 2005, the need for obtaining licence for dedicated transmission system has also been dispensed with. The primary objective of delicensing generation is to give freedom to the generating company in respect of choice of site and investment, choice of buyer of power and freedom from tariff regulation when the generating company supplies power to a trader or directly to consumer. On the other

hand the transmission, distribution and trading are subject to grant of licence and are within the regulatory regime. The generating companies, however, despite delicensing do not enjoy monopoly status and are not free from all Regulations or issuance of directions. The regulatory regime of the Commissions can be enforced against the generating company if the condition precedent therefore becomes applicable. The Removal of Difficulties Notification (Fifth Orders), 2005, itself provides compliance of certain conditions by the generating company subject to which only no licence is required for the dedicated transmission system. For example, a generating station connected directly or through dedicated transmission system to inter-State transmission system has to abide by Indian Electricity Grid Code Regulations framed by the Central Commission under Section 178 (2) (g) of the 2003 Act.

24.19 It is perfectly legal for two generating companies to plan in coordination with CEA and Power Grid and construct

and operate & maintain their dedicated transmission systems together for optimal utilisation of the transmission corridor with a view to minimize cost of point to point transmission of electricity and minimize the requirement of transmission corridor as long as the dedicated transmission system is used exclusively for evacuation and point to point transmission of power of their generating stations.

24.20. In view of the above provisions of the Act, let us examine the questions raised by us regarding the jurisdiction of the Central Commission and the status of the dedicated transmission system of the Appellant after allowing interconnection to the dedicated transmission system of the Respondent no.1.

25. Now let us examine the approvals of the Central Government granted to the Appellant and the Respondent no. 1 under Section 68 of the Act.

25.1 The approval granted to the Appellant by the Ministry of Power, Government of India by letter 21.8.2007 is as under:

“I am directed to refer to AD Hydro Power Limited letter no. P-104/OG-2061 dated 25th June, 07 on the above subject and to convey prior approval of the Central Government under sub-section (1) of Section 68 of the Electricity Act, 2003 for 220 kV D/C Allain Duhangan – Nalagarh Transmission Line as Associated Transmission System (ATS) of 2x96 MW Allain Duhangan HEP in Himachal Pradesh.

The approval is subject to compliance of (a) the requirement of the relevant provisions of the Electricity Act, 2003, as amended from time to time and the rules and regulations framed there under and (b) the rules governing the overhead lines as specified in the Indian Electricity Rules, 1956 till they by corresponding rules framed under the Electricity Act, 2003 .

This approval is also subject to the following conditions:

- 1. The implementing agency will commence construction of the project within 3 years, unless this term is extended by the Ministry of Power.*
- 2. Ministry of Power may withdraw the approval before the expiry of the period of 3 years after giving a one-month notice.*
- 3. The implementing agency shall also abide by the provisions of Electricity Act, 2003 concerning electricity trade”.*

The above approval is not conditional to providing access to the Respondent no.1 on their dedicated system.

25.2 Before granting the above approval, the Ministry of Power had obtained the comments of the CEA on the proposal of the Appellant to construct the Allain Duhangan – Nalagarh line as part of associated transmission system for evacuation of power from their hydro electric project. CEA in its letter dated 31.7.2007 to the Ministry of Power communicated its no objection to the proposal subject to the following:

“ii) Out of the total 400 MW transmission capacity of the 220kV D/C line, ADHPL would utilize 192 MW for evacuation of ADHPL power and the balance spare transmission capacity of the line would be made available for evacuation of power from other projects in the Parbati/Beas valley viz. Malana-II (100 MW) and Sainj (100 MW)”.

Thus, CEA in order to optimize the transmission corridor recommended use of Allain Duhangan – Nalagarh line for evacuation of power from other Projects in Parbati valley including Malana-II project of the Respondent no. 1.

25.3 However, the Central Government did not include the condition proposed by the CEA in the approval under Section 68 granted to the Appellant.

25.4 Let us now examine the approval under Section 68 granted by the Central Government to the Respondent no.1 for transmission of power of Malana-II. The relevant extracts of letter dated 17.6.2008 from the Ministry of Power addressed to the Respondent no. 1 are as under:

“I am directed to refer to Everest Power Private Limited’s letter dated 8.5.08 on the above subject and to convey prior approval of the Central Government under sub-section (1) of Section 68 of the Electricity Act, 2003 for construction of 132 kV line for evacuation of power of Malana-II HEP and its interconnection with 220 kV D/C Allain Duhangan-Nalagarh line near tower no. 159 by constructing as 132/220 kV substation as discussed in a meeting taken by Chairman. CEA on 10.4.2008 wherein it was decided that Malana-II, should proceed to tie-up evacuation of their power through 220 kV ADHEP Nalagarh line of ADHPL. They would need to establish 220/132 kV substation at their own cost on one circuit of the 220 kV Allain Duhangan-Nalagarh line and 132 kV D/C line from Malana II HEP to the 220/132 kV substation on 220 kV D/C Allain Duhangan-Nalagarh line. The 220/132 kV substation as well as the 132 kV line would be the dedicated system of generating company”.

The Central Government by the above letter approved the dedicated transmission system of Malana-II of the Respondent no.1 and its inter connection to the dedicated transmission system of the Appellant considering the decision take in a meeting convened by Chairman, CEA on 10.4.2008 wherein it was decided that Malana-II should proceed to tie up evacuation of their power through 220 kV Allain Duhangan – Nalagarh line of the Appellant. Thus, the approval given to the Respondent no.1 under Section 68 is based on the understanding that power of the Respondent no.1 would be evacuated through the Allain Duhangan – Nalagarh transmission line of the Appellant, as agreed in a meeting taken by the Chairman, CEA. On 18.6.2008, the Appellant also communicated its consent to the Ministry of Power, Government of India to the above arrangement subject to modalities to be worked out by them.

25.5 It would also be relevant to examine the decisions taken in the meeting dated 10.4.2008 held in CEA which was

attended by the representatives of the Appellant and the Respondent no. 1. The relevant extracts are reproduced below:

“Director (Elect), ADHPL stated that Allain Duhangan HEP to Nalagarh 220 kv D/C line was being constructed as a dedicated line for evacuation of power from Allain Duhangan HEP and the spare capacity of the line could be utilized for evacuation of power from other projects subject to legal/regulatory approval as may be necessary for sharing of a dedicated line.

It was specifically decided as under:-

a. Malana II, without any further delay should proceed to tie up evacuation of their power through 220 kV ADHEP-Nalagarh line of ADHPL. They would need to establish 220/132 s/s at their own cost.

b. ADHPL and EPPL would have a joint meeting on 23rd April, 2008 to decide the modalities for agreement on the sharing of the cost for the 220 kV ADHEP – Nalagarh line and also its O&M charges for evacuation of the power of Malana-II HEP.

c. If ADHPL and EPPL arrive at an agreed proposal, the same should be sent to CEA and both the parties should proceed accordingly. However, if they were not able to agree on a proposal, both ADHPL and EPPL should send their individual proposal to CEA and a meeting could be held to resolve the issue. However, in any case, both the parties should proceed to ensure completion of evacuation system in the required time frame.

d. ADHPL would take up the issue with CERC regarding sharing of the 220 kV ADHEP-Nalagarh line with EPPL for evacuation of power from Malana II HEP as well. CEA

would extend all support to ADHPL to obtain the approval of CERC.”

The Director of the Appellant in the above meeting stated that the spare capacity of their dedicated line could be utilized for evacuation of power from other projects subject to legal/regulatory approval as may be necessary for sharing of a dedicated line. Accordingly, it was decided that the Appellant and the Respondent no.1 would decide the modalities of sharing of cost and operation and maintenance charges for evacuation of power of the Respondent no.1. It was also decided that the Appellant would take up with the Central Commission regarding sharing of their Allain Duhangan – Nalagarh line for evacuation of power from the Malana II project of the Respondent no.1.

26. The examination of all the relevant records would show that Allain Duhangan – Nalagarh 220 kV double circuit line was granted approval by the Central Government as a dedicated transmission line. However, the Appellant

has agreed in the various meeting carried out by the Planning Agencies viz., CEA, CTU, STU, Government of Himachal Pradesh and Ministry of Power, Government of India to permit utilisation of the spare capacity of its line for evacuation of Malana-II HEP of the Respondent no. 1. The permission to the Appellant for diversion of forest land for laying the Allain Duhangan – Nalagarh line granted by the Department of Forest, Government of Himachal Pradesh is also subject to the condition that the Appellant shall carry/transmit on its line power generated by Malana-II on mutually agreed terms and conditions.

27. We find that the whole issue has arisen due to circumstances created by delay in execution of Parbati Pooling Station by Power Grid, constraints in providing right of way for laying transmission line in hilly terrain and forest area and need for optimizing the transmission corridor in the forest and hilly area in view of scarce availability of land and environmental consideration.

28. We notice from the records of the case that earlier it was planned that both Allain Duhangan and Malana – II Hydel Projects would construct their respective dedicated lines to Parbati Pooling Station from where power would be transmitted through the Inter-State transmission network of Power Grid to the destination of choice of the respective generating companies. On that understanding the Appellant and the Respondent no.1 started execution of their projects. Respondent no.1 also got long term open access for supply to Punjab State Electricity Board from Parbati Pooling Station of Power Grid. However, due to delay in execution of the Parbati Pooling Station changes were made in the point of injection of power. The Appellant was first to get the approval under Section 68 for execution of its dedicated transmission line to Nalagarh sub-Station of Power Grid, as its hydel project was ahead of the project of the Respondent no.1. When Respondent no.1 approached the CTU/Power Grid and CEA for alternative transmission arrangements in view of

delay in execution of Parbati Pooling Station, they were asked to tie up with the Appellant and utilize the spare capacity of the Appellant's transmission line to transmit its power upto Nalagarh.

29. According to the Electricity Act, the CTU has to do planning and coordination relating to inter-State transmission system with the generating companies and other agencies. CEA also has the responsibility under the plan for optimum utilisation of the resources and also coordinate with the planning agencies and the generating companies, etc. Accordingly, CEA and POWERGRID coordinated with the Appellant and the Respondent no.1 to devise a system of interconnecting the dedicated transmission system of the Respondent no.1 with the dedicated transmission system of the Appellant and evacuation of power of the former through the latter's transmission system upto Nalagarh with the consent of the parties.

30. In the above circumstances, the Respondent no.1 was left with no other alternative but to evacuate its power

through the dedicated transmission system of the Appellant. In the various meetings taken by the CEA, Power Grid and also Government of Himachal Pradesh and Ministry of Power, Government of India which were attended by the representatives of the Appellant and the Respondent no.1 it was decided that the Appellant and the Respondent no.1 would mutually decide the commercial issues of sharing the Allain Duhangan – Nalagarh line. At no time the Appellant opposed giving access to the Respondent no.1 on its transmission system. In fact they communicated to the Ministry of Power, Government of India vide their letter dated 18.6.2008 their no objection to Malana II establishing their 220/132 kV sub-station and loop-in-loop-out of one circuits of Allain Duhangan – Nalagarh at the sub-station of the Respondent no.1. However, despite meetings held between the parties, the settlement could not be reached as the Appellant wanted the settlement at its own terms and conditions. We feel that when the Appellant has accepted to provide access on its dedicated transmission

system to the Respondent no.1 and the latter having no other alternative, the Respondent no.1 could not be left remediless. Electricity Act, 2003 is a complete code and within the provisions of the Act we have to find remedy to the issues raised in this Appeal.

31. Now let us examine the nature of transmission of power on Allain Duhangan – Nalagarh line after loop-in-loop-out of one circuit at Chhaur.

32. The dedicated transmission line of the Appellant before interconnection with the dedicated transmission of Malana II at 132/220 kV Chhaur sub-station of the Respondent no.1 comprised point to point connection from the generating station of the Appellant with the sub-station of Power Grid at Nalagarh. However, loop-in loop-out of one of the circuits of Allain Duhangan - Nalagarh line at Chhaur has resulted in dividing that circuit into two line segments viz. 220 kV Allain Duhangan – Chhaur line and 220 kV Chhaur – Nalagarh line. In normal

operating conditions, the entire power output of Malana II will be evacuated through 220 kV Chhaur – Nalagarh line. Thus, with change in the configuration of the circuit, the 220 kV Chhaur – Nalagarh line does not remain the point to point transmission system for Allain Duhangan as it carries the power of both Allain Duhangan and Malana II and emanates from Chhaur and not Allain Duhangan. The transmission system beyond Nalagarh is the inter-State transmission system which is used for inter-State transmission of power from Malana II to Punjab as the Respondent no.1 has tied up for supply of its power to Punjab State Electricity Board besides some percentage of free power committed to be supplied to Himachal Pradesh and has obtained open access for the inter-State transmission system for its power injected at Nalagarh. Thus, under normal operating conditions, the line section of Allain Duhangan - Nalagarh circuit between Chhaur and Nalagarh is used for conveyance of electricity across the territory of the

State/within the State which is incidental to inter-State transmission of electricity from Malana II.

33. Under condition of outage of Chhaur - Nalagarh circuit, the output of Malana-II would be evacuated through 220 kV Chhaur – Allain Duhangan and Allain Duhangan – Nalagarh direct circuit. Thus, under such outage condition also Chhaur - Allain Duhangan - Nalagarh section is used for conveyance of electricity incidental to inter-State transmission of electricity of Malana II. Similarly, under outage condition of Allain Duhangan – Chhaur section of line, the output of Allain Duhangan – Nalagarh direct circuit would transmit the output of Allain Duhangan HEP and Chhaur – Nalagarh section would evacuate the power output of Malana-II. Thus, one circuit of Allain Duhangan line would carry exclusive power of Allain Duhangan and the other circuit would be carry output of only Malana II. Under such outage condition also Chhaur - Nalagarh circuit even though a part of the dedicated transmission system of the

Appellant is used for conveyance of electricity across the territory/within the State which is incidental to inter-State transmission of electricity from Malana II.

34. Thus, it is clear that even though Allain Duhangan – Nalagarh line was a dedicated line of the Appellant some part of the line after loop-in loop-out of one circuit at Chhaur sub-station of the Respondent no. 1 is used as a system incidental to inter-State transmission of electricity from the power plant of the Respondent no.1.

35. The definition of the inter-state transmission system under Section 2(36)(ii) includes the conveyance of electricity across the territory of an intervening State as well as within the State which is incidental to such inter-State transmission of electricity. In the present case as discussed in the pervious paragraphs, Allain Duhangan – Nalagarh line after loop-in-loop-out at Chhuar sub-station of the Respondent no.1 becomes the system incidental to inter-State transmission of electricity from

Malana II station of the Respondent no.1. Therefore, the Central Commission shall have jurisdiction to regulate the transmission of electricity on Allain Duhangan – Nalagarh line after loop-in-loop-out of one of the circuits at Chhaur sub-station.

36. Admittedly, the Appellant has in the various meetings taken by the Ministry of Power, CEA, POWERGRID and the State Government has consented to permit the Respondent no.1 to utilize its dedicated line for evacuation of power. On that basis, the Central Government also granted approval to the Respondent no.1 to construct its dedicated transmission system comprising 132 kV transmission line and 220/132 kV sub-station and its interconnection to one of the circuits of the dedicated line of the Appellant. Once the Appellant has agreed to utilisation of part capacity on its dedicated line by the Respondent, it is not open to the Appellant to dictate its own terms and conditions regarding transmission charges and transmission losses to be

borne by the Respondent no.1 and other operational norms. We feel that these have to be regulated by the Central Commission as per its Regulations. As long as the dedicated transmission line of the Appellant is used for its own use, the Central Commission will not have jurisdiction to regulate it but if it is used for conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to inter-State transmission of electricity of another generating company on payment of transmission charges such transmission has to be regulated by the Central Commission.

37. Transmission of electricity is a regulated business according to the Electricity Act, 2003. A dedicated transmission system is out of the regulatory control of the Commission so far as no licence is required for the construction, operation and maintenance of dedicated transmission system and that there is no need for the Commission to regulate transmission of electricity as

long as it is used for point to point transmission of power output of generating company. However, if the generating company allows its dedicated transmission system for use for evacuation of power output to another generating company with a view to optimally utilize the transmission corridor and the transmission system capacity as has been the case in the present appeal on payment of transmission charges, the Central Commission would have jurisdiction to regulate transmission of electricity on the dedicated line, for such transmission as is incidental to inter-State transmission of electricity.

38. According to Section 79(1)(f) of the Act, the Central Commission has powers to adjudicate upon disputes involving generating companies in regard to matters concerning with clause a) to d) of the Section 79(1). Clause c) pertains to regulation of inter-State transmission of electricity. According to the Appellant Section 79(1)(f) is not applicable in the present case as

the Appellant is not a transmission licensee. The present case is typical where there is a dispute between two generating companies relating to use of the dedicated transmission system owned by one of the generating companies which has been used for conveyance of electricity which is incidental to the inter-State transmission of electricity from the other generating station. In our opinion Section 79(1)(f) would also cover the present dispute between the two generating companies as it relates to inter-State transmission of electricity, which is regulated by the Central Commission under Section 79(1)(c). Therefore, even if the Appellant is not a transmission licensee, the present dispute will fall under the Section 79(1) (f) of the Act. Accordingly the Central Commission has jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1.

39. Ld. Counsel for the Appellant in support of his arguments has referred to a number of judgments of the Hon'ble Supreme Court, High Courts and this Tribunal.
40. He has relied on the findings in the following cases to press the point that the Authority should decide the issue of maintainability before deciding the case on merits.
- (i) (2005)10 SCC 274: Securities & Exchange Board of India Vs. Mangalore Stock Exchange.
 - (ii) (2000)10 SCC 253 Manubhai J. Patel and Another Vs. Bank of Baroda & others.
 - (iii) (1999)6 SCC 632: T.K. Lathika Vs. Seth Karsandas Jamnadas
 - (iv) (2002)1 SCC 567 Union of India Vs. Adani Exports Ltd. & Another.

In the above three cases the courts passed the orders on merits without going into the issue of

maintainability/jurisdiction which was raised by one of the parties. The Hon'ble Supreme Court set aside the orders on the ground that the High Court did not decide the maintainability issue before deciding the case on merits. In the present case the Central Commission has dealt with the issue of maintainability and decided the matter on merits after coming to the conclusion that it had the jurisdiction. In this judgment also we have dealt with the issue of maintainability and decided the matter on merits after hearing the parties. Thus, the above referred cases will not be of any help to the Appellant.

41. Ld. Counsel for the Appellant has relied on the following judgments on the construction of statutes to press that the inter-State transmission system has to be interpreted in the context of the entire scheme of the Electricity Act, 2003, which among other things provides for delicensing of generation and dedicated transmission line.

i) (1984)4 SCC 450: O.P. Singla Vs. Union of India.

- ii) (1991)4 SCC 258: Krishna Kumar Vs. State of Rajasthan and others.
- iii) (1977) 1SCC 373: Sultana Begum Vs Premchand Jain.
- iv) (2000) 5 SCC 373: V.M. Salgaocar & Bros Pvt. Ltd. Vs. Commissioner of Income Tax.
- v) (1987)1 SCC 424 Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors.
- vi) AIR 2006 BOM 213: Reliance Industries Ltd & Anr. Vs. State of Maharashtra & Ors. Thus, the above referred cases will not be of any help to the Appellant.

We have interpreted the various sections of the Electricity Act harmoniously before coming to the final conclusion. The jurisdiction of the Central Commission to adjudicate on sharing of the dedicated transmission line of the Appellant and determination of transmission charges and transmission losses to be borne by the Respondent no.1 does not infringe on the freedom granted to the Appellant as generating company to have arrangements for supply power to the beneficiary of its choice and freedom from

obtaining licence for construction, operation and maintenance of its dedicated transmission line. The Appellant has itself consented to allow use of its dedicated transmission for evacuation of power of the Respondent no.1. Therefore, the above rulings will not be of any help to the Appellant.

42. Ld. Counsel for the Appellant has argued that the Central Government has been conferred the power to grant approval under Section 68 of the Act. The Central Commission cannot interdict the power of the Central Government to grant approval under Section 68. It is solely the discretion of the Central Government under the Act to improve such conditions as appears to it to be necessary. The Central Commission cannot usurp the powers of the Central Commission and import the conditions which were not incorporated by the Central Government in the Appellant's approval under Section 68 of the Act. Further the Section 68 approval has created vested right in the Appellant which can not be taken

away by the Central Commission by retrospective amendment. He has relied on the several judgments to support these points, some of which are given below:

- i) (1991)4 SCC 39: Amir Shad Khan and Another Vs. L. Hmingliana and others.
- ii) AIR 1992 AP 368
- iii) 1986 Supp SCC 584: T.R. Kapur Vs. State of Haryana
- iv) (1964) 6 SCR 870: Rafiquenessa Vs. Lal Bahadur Chetri
- v) (2009) 9 SCC 454: Anil Chandra Vs. Radha Krishna.

43. The Central Government in granting the approval to the Respondent no.1 for its dedicated transmission system and its interconnection to the dedicated transmission system of the Appellant has relied on the decision taken in the meeting held in the CEA where the Appellant committed to allow the connectivity to its dedicated transmission system and evacuate the power of the Respondent no.1 using the spare capacity on its line upto Nalagarh. The Respondent no.1 by the above approval of

the Central Government under Section 68 has also been vested with the right to construct its dedicated system as per the terms of its approval by the Central Government under Section 68. The Appellant is agreeable to allow access to its transmission system for evacuation of the power of the Respondent no.1 but on its own terms and conditions relating to transmission charges, transmission losses, etc. Transmission is a regulated business as per the provisions of the Act. We have already given detailed findings about the jurisdiction of the Central Commission to adjudicate upon the dispute between the Appellant and the Respondent. Thus the rulings relied upon by the Appellant will not of any use to him.

44. Ld. Counsel for the Appellant has referred to various judgments to press the point that the statutory tribunals are creation of statute that draw their powers from the statute and are authorities of limited jurisdiction and that no jurisdiction can be vested by consent of the parties. These judgments are of no use to the Appellant

as we have held the jurisdiction of the Central Commission in this case after harmonious interpretation of various sections of the Act.

45. Ld. Counsel for the Appellant has argued that the Respondent no.1 would not treat itself at par with the Appellant and deny right of first usage/priority to the Appellant over its own line. He has referred to (2003)6 SCC 659: Shiv Shakti Coop. Housing Society Vs. Suraj Developers and others and (2008) 4 SCC 755: Gujarat Urja Vikas Nigam Vs. Essar Power Ltd. to support his arguments wherein the finding of the Hon'ble Supreme Court is that while interpreting a provision the court can only interpret the law and cannot legislate it.

46. We have discussed in detail that once the dedicated transmission system of the Appellant is interconnected to the dedicated transmission system of the Respondent no.1, the transmission system of the Appellant is used for conveyance of electricity across the territory of a state

which is incidental to the inter-State transmission of electricity of the Respondent no.1. Therefore, the issue of usage of the transmission system under outage condition has to be as per the Regulations subject to certain conditions which are peculiar to this case. Normally the output of Malana II is evacuated on Chhaur – Nalagarh section only. Thus for about for 98 to 99% of total time the Respondent no.1 uses only Chhaur-Nalagarh section of the line. The Allain Duhangan – Nalagarh direct circuit and Allain Duhangan – Chhaur circuit of the dedicated transmission line is used by the Respondent no.1 only in the contingency of outage of Chhaur – Nalagarh line. As the Appellant is claiming proportionate transmission charges on the total investment incurred on the entire 220 kV Allain Duhangan – Nalagarh double circuit line from the Respondent no.1, it is not open to the Appellant to deny right for proportionate usage its transmission system to the Respondent no.1 in the contingency of outage of a section of line.

47. Learned counsel for the Appellant has also referred to the following cases to press his point that the generation as also the Dedicated Transmission Line have been kept beyond the purview of licencing and the regulatory measures could not be allowed to be imposed on the generating companies.

- i) 2009 ELR (SC) 246 Tata Power Co. Ltd. vs. Reliance Energy Ltd.
- ii) Appeal no. 87 and 107 of 2010 decided on 26.8.2011 in the matter of Tata Power Trading Co. Ltd. vs. MERC wherein the findings of the above mentioned 2009 ELR (SC) 246 were referred to.

In the case (i) above the generating company was directed by the Commission under Section 23 to supply power to a distribution licensee of the State. The Hon'ble Supreme held that the generating company had freedom to enter into contract for supply of power. In the case (ii) above the State Commission had given certain directions to the

generating company for ensuring supplies to the distribution licensees of Mumbai corresponding to the capacity contracted by them before power is supplied to other entities. The Tribunal set aside the directions of the State Commission relying on the above judgment of the Supreme Court. In our opinion, both these cases are not relevant in the present case where the Central Commission has adjudicated upon the dispute between the Appellant and the Respondent no.1 on the commercial terms and conditions for sharing of the dedicated transmission line of the Appellant by the Respondent no.1, where the Appellant has consented to provide access to the other generator. This in no way encroaches on the freedom from licencing requirement or freedom to supply electricity of the Appellant to the customer of its choice.

48. Learned counsel for the Appellant has argued that the transmission line was constructed by the Appellant for evacuation of its power from its generating station to Nalagarh for forward evacuation since there was a delay in

the construction of the transmission system of Power Grid. Any attempt on the part of the State Government, CEA and Central Commission to compel the Appellant who owns and operates a dedicated transmission line, to wheel power to the other generating plants at non negotiable and prescriptive rate and terms tantamounts unintended and unlawful, expropriation of Appellant's private property. According to him, it is trite law that the State in exercise of its power of eminent domain can deprive a person of his property only by enacting a law through state legislature or parliament and in the manner having force of law and the compensation paid to such a person who has been deprived of his property cannot be illusory. He referred to a number of judgments of the Hon'ble Supreme Court to press his point.

49. We feel that the above rulings are not applicable in the present case. The Appellant has all along in various meetings taken by CTU, STU, CEA, State Government and Ministry of Power, Government of India has been agreeing

to provide spare capacity in its dedicated transmission system for evacuation of power of the Respondent no. 1. Before this Tribunal also they have admitted that they have consented to the arrangement of using spare capacity of their dedicated line for evacuation of power from Malana II. It is now too late for the Appellant to say that he was compelled to provide access to the Respondent no. 1. On the basis of the agreement reached in meeting taken by Chairman, CEA which was attended by the representatives of the Appellant, the Ministry of Power granted approval under Section 68 to the Respondent no. 1 for construction of its dedicated transmission system and its inter-connection to the Appellant's dedicated transmission system. In the present case the Appellant is also not being deprived of his property. The arrangement of sharing of the transmission system of the Appellant will also benefit the Appellant by generation of additional revenue on account of transmission charges payable by the Respondent no. 1.

50. In view of our findings about jurisdiction of the Central Commission to adjudicate upon the dispute between the Appellant and the Respondent no.1, the third issue raised by us becomes irrelevant. We are not going into the issue of market domination (Section 60) as the Central Commission in the impugned order has not dealt with the same.

51. Let us now examine the fourth issue on merits.

52. We find that the main dispute between the Appellant and the Respondent no.1 is relating to the following:

- i) Capital cost of Allain Duhangan – Nalagarh double circuit line.
- ii) Return on equity on investment.
- iii) Sharing of transmission losses.
- iv) Priority in case of outage of a circuit.
- v) Control of 132/220 kV Chhaur sub-station.

53. Let us now deal with the above issues one by one.

53.1 Capital Cost:- The Central Commission has directed that the capital cost of the transmission line shall be mutually decided by the Appellant and the Respondent no. 1 taking into consideration approved project cost of the transmission line and the audited expenditure of the transmission line, and the benchmark capital cost for similar line of CTU. We notice that the Central Commission's Tariff Regulations, 2009 provide that the capital cost would be determined on the basis of actual expenditure incurred on completion of the project, subject to prudence check by the Commission. When the capital cost for a transmission licensee is determined on these principles, the same may be made applicable for determining the transmission charges payable by the Respondent no.1 to the Appellant for use of the transmission system of the Appellant. The Appellant and the Respondent no.1 have not been to agree on the capital cost. Therefore, we direct the Central Commission

to determine the capital cost according to the Tariff Regulations, 2009, after hearing both the parties, which shall be the basis for determination of transmission charges payable by the Respondent no.1 to the Appellant.

53.2 Return on Equity ('ROE'):- The Central Commission decided that the ROE shall be on the basis of rate of return allowed under the Tariff Regulations, 2009 as amended from time to time and any subsequent amendment thereof. The Appellant has sought ROE 3% higher than that allowed in the Central Commission's Regulations. We feel that there is no justification in allowing a higher ROE to the Appellant. We are in agreement with the findings of the Central Commission. When a transmission licensee regulated by the Central Commission is allowed ROE as per the Central Commission's Tariff Regulations which are based on the commercial principles as per Section 61 of the Act, the Appellant could not claim a ROE higher than that specified in the Regulations for transmission business for

determining the transmission charges payable by the Respondent no.1. We find that the Central Commission has decided that the Operation and Maintenance charges have to be borne as per the actuals on prorata basis and not as per its Regulations. As the Appellant argued that they have not been heard on merits, we would give liberty to the Appellant to raise this issue before the Central Commission and the Central Commission shall consider the same afresh and decide the Operating and Maintenance charges to be borne by the Respondent no.1 after hearing the parties.

53.3 Sharing of transmission losses on Allain Duhangan – Nalagarh system:- The Appellant had sought 4% additional loss or loss based on incremental loss to be deducted from generation of Malana II HEP. The Central Commission has decided that the estimated percentage average transmission losses shall be applied to the respective schedules of the generating companies. The estimation shall be based on the previous week's actual

percentage average losses worked out through the actual meter readings. We are in agreement with the findings of the Central Commission that the transmission losses for Allain Duhangan – Nalagarh section to be borne by the Respondent no.1 should be on the basis of the average losses based on the actual meter readings on the sending and receiving ends of the lines. There is no basis for claim of 4% additional loss to be apportioned to Malana-II HEP. When the transmission charges are to be shared on a pro-rata basis on the respective installed capacity of the generating stations of the Appellant and the Respondent the same principle of sharing of losses on the basis of average losses in the line section has to be adopted. For the inter-State transmission of energy also the losses are apportioned on the average basis. The Appellant for inter-State transmission of its electricity has also to bear average losses on the inter-State transmission system.

53.4 Priority in case of a circuit: The Central Commission has decided that the outage handling and priorities shall be similar to the one enumerated in the concerned Grid Code and in accordance with Connectivity, Long Term Access, and Medium Term Open Access Regulation. We find that these Regulations do not have specific provisions for the present case. For the Allain Duhangan – Nalagarh system in view of peculiar situation we have to give specific findings to avoid any ambiguity. For example in case of outage of Allain Duhangan – Chhaur section, Allain Duhangan – Nalagarh direct line section will evacuate the power output of Allain Duhangan and Chhaur – Nalagarh section will evacuate the output of Malana – II. In that case the evacuation from the respective HEP will be as per the capacity of each line section. However, in case of outage of Allain Duhangan – Nalagarh direct line or Chhaur – Nalagarh line section, both Allain Duhangan and Malana II shall have to be allowed to send out power on the restricted capacity of the transmission system on pro-rata basis on their

respective installed capacities. According to Ld. Counsel for the Appellant, the Appellant's generating station should be give priority over the generation of the Respondent no.1. We have already explained in paragraph 46 above the reason for allowing proportionate use of the transmission system of the Appellant to the Respondent no.1 in case of outage of a line section in view of the Respondent no.1 bearing the proportionate transmission charges for the entire double circuit line of the Appellant. We direct the Central Commission to give detailed directions to the NRLDC on the above principles after hearing the parties.

53.5 Control of 132/220 kV Chhaur sub-station: The Central Commission has decided that the control of 132/220 kV Chhaur sub-station will be with the Respondent no.1 and the Appellant may appoint its representative at this sub-station for coordination purpose. We are in agreement with the findings of the Central Commission. The Appellant has sought absolute control of Chhaur sub-

station for efficient control. We notice that Chhaur sub-station is a part of dedicated transmission system of the Respondent no.1 as approved by the Ministry of Power in its approval under Section 68. The sub-station has been constructed and owned by the Respondent no.1. Therefore, there is no force in the argument of the Appellant that the Chhaur sub-station should be under their control. In view of our findings regarding the part of dedicated transmission system becoming the system incidental to inter-State transmission of electricity of Malana II, the operations at Chhaur sub-station for Nalagarh and Allain Duhangan sections have to be carried out under the control of the Northern Regional Load Dispatch Centre. When the operations at Chhaur have to be carried under the overall control of the NRLDC, the Appellant should not be prejudiced by the agency having physical control of the sub-station.

53.5 On the other operational issues decided by the Central Commission, as the Appellant has argued that they have

not been heard by the Central Commission on merits, we give liberty to the Appellant to raise the issue before the Central Commission and the Commission shall consider the same afresh and pass consequential orders after hearing the concerned parties.

54. A question has been raised by the Respondent no. 1 whether the Appellant would need to take a licence for transmission in view of the access allowed to the Respondent no. 1. We feel even though the Appellant is within its own right to obtain transmission licence if it wished so it is not necessary for the Appellant to take a transmission licence. The appellant has already constructed Allain Duhangan-Nalagarh line as its dedicated transmission system for which the Central Government has also granted permission under Section 68. In the new configuration after loop-in-loop-out of one circuit at Chhaur, part of the transmission line is used for conveyance of electricity across the territory of a State which is incidental to inter-State transmission of

electricity from Malana II for which we have only decided the principles for determination of the transmission charges, losses etc., to be borne by the Respondent no.1.

55. Conclusion

- i) The arrangement for interconnection of the dedicated transmission system of the hydro power project of the Respondent no.1 with the dedicated transmission system of the Appellant and the evacuation of the power of the Respondent no.1 through the dedicated transmission system of the Appellant upto the sub-station of Power Grid at Nalagarh has been planned and coordinated by the CEA and CTU in consultation with the parties. This has been necessitated by delay in construction of Parbati Pooling Station planned by the CTU earlier for evacuation of power from the hydro power stations of Parbati Basin and constraints in providing alternative transmission corridor in the hilly and forest area and environmental consideration.**

- ii) The Central Government granted permission to the Respondent no.1 under Section 68 to construct its dedicated transmission system comprising 132 kV transmission line and 220/132 kV sub-station to loop-in-loop-out one of the circuits of Allain Duhangan – Nalagarh 220 kV double circuit approval for which was earlier granted by the Central Government to the Appellant as its associated transmission system. The approval to the Respondent no.1 under Section 68 was granted with the understanding reached in a meeting taken in the CEA for the sharing arrangement with the consent of the Appellant and the Respondent no.1**
- iii) In view of the Loop-in-Loop-out of one of the Allain Duhangan – Nalagarh circuits at Chhaur, part of the line is used for conveyance of electricity across the territory of an intervening**

State/within the State which is incidental to inter-State transmission of electricity of Malana II of the Respondent no.1. Thus, the transmission of power on this line has to be regulated by the Central Commission. Thus, the Central Commission has the jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1 regarding sharing of transmission charges, losses, etc. by the Respondent no.1 as per Section 79(1)(f) of the Act. Thus, this issue is decided against the Appellant.

- iv) We have given specific findings about the various issues raised by the Appellant and the Respondent no.1 in determination of transmission charges and losses to be borne by the Respondent no.1 for usage of the transmission system of the Appellant, and other related issues in Paragraph 53 of the judgment. The Central**

Commission shall pass consequential order on the basis of our directions after hearing the concerned parties within 45 days of receipt of the copy of this judgment. However, till the passing of the consequential order by the Central Commission the interim arrangement for payment of transmission charges and transmission losses by the Respondent no.1 to the Appellant as per our interim order dated 10.6.2011 will continue.

56. The Appeal is dismissed with directions to the Central Commission to pass the consequential order.

No order as to costs.

57. Pronounced in open court on 2nd day of January, 2013.

**(Justice P.S. Datta)
Judicial Member**

**(Rakesh Nath)
Technical Member**

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