

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL NO. 272 OF 2019 &
IA No. 683 of 2019**

Dated: 29th August, 2024

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)

In the matter of:

JINDAL POLY FILMS LIMITED

Through its Authorised Representative
19th K.M. Hapur Bulandshahr Road,
P.O. Gulaothi, Distt. Bulandshahr,
245408 (U.P.) India

... Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION

Through its Secretary,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi - 110001

... Respondent (s)

Counsel on record for the Appellant(s):

**Matru Gupta Mishra
Shikha Ohri
Shourya Malhotra
Pratiksha Chaturvedi
Biju Mattam
Akanksha Kwatra**

Counsel on record for the Respondent(s):

**Sethu Ramalingam
S. Shivshankari for R.1**

JUDGMENT

(PER HON'BLE MRS. SEEMA GUPTA, TECHNICAL MEMBER)

1. The instant appeal has been filed assailing the order dated 07.09.2018 passed by the Central Electricity Regulatory Commission in Petition No. 134/MP/2018. By the impugned order, the Appellant was denied its relief qua downgrading of trading license from Category-I to Category-III with effect from 01.04.2018, and was instead allowed down-gradation from the date of the Impugned Order being 07.09.2018, while directing Appellant to pay the license fee for Category I License for the entire Financial Year 2018-19.

2. The Appellant, Jindal Poly Films Limited, is a company incorporated under the provisions of the Companies Act, 1956, and is engaged in the business of trading of electricity with the objective of establishing, operating and maintaining power generation station, tie lines, sub-stations and main transmission lines connected therewith and/or to carry on in India or elsewhere the business to generate, receive, produce, improve, sell, resell, acquire, use, transmit, accumulate, employ, distribute, develop, handle and protect electric power.

3. The Respondent No. 1, Central Electricity Regulatory Commission ("**CERC/ Central Commission**"), is a statutory commission constituted under the Electricity Regulatory Commissions Act, 1998 with the powers including the power to grant Inter-State Trading License to electricity trading companies.

4. The Appellant applied to Central Commission, under sub-section (1) of Section 15 of the Electricity Act, 2003 (hereinafter referred to as "the Act") read with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading License and other related matters) Regulations, 2009, for grant of Category I license for inter-State trading in electricity in whole of India on 06.06.2017, and Central Commission granted Category-I trading license to the Appellant vide its order dated 20.09.2017.

5. On 27.04.2018, the Appellant filed a Petition No 134/MP/2018 before the Central commission praying for downgrading its Category-I license to Category-III stating that the Appellant did not trade electricity under its Category-I trading License, and therefore its license may be downgraded with effect from 01.04.2018 and the license fee may also be charged for Category-III only for the FY 2018-19. Learned counsel for the Appellant submitted that CERC by its order dated 07.09.2018 has downgraded the Trading License of the Appellant to Category-III only from the date of the impugned order and asked to pay Category I License fee for the FY 2018-19. Aggrieved by the said order, the Appellant has approached this Tribunal challenging the same.

6. Learned counsel for the Appellant submitted that Central Commission has denied parity with the case of Reliance Energy Limited (REL), wherein the downgrading of REL's trading license from Category I to Category IV was allowed effective from 01.04.2015 vide Central Commission order dated 28.09.2015, despite the petition being filed on 09.04.2015 by REL, after the

commencement of FY 2015-16. Learned counsel for the Appellant submitted that the Appellant did not engage in trading activities under Category I license during FY 2018-19 and therefore, no benefit was accrued to them, the Appellant should not be held liable for the payment of the fees, as the fee constitutes a *quid pro quo* for the services rendered.

7. Learned counsel for the Appellant further asserted that in terms of Regulation 7(4) of the CERC (Payment of Fees) Regulations, 2012, since the annual license fee becomes due on or before 30th April of each year the Appellant filed a petition for downgrading its Category I licence before the Central Commission on 27.04.2018 i.e., three days before the payment deadline for the Category I license. Additionally, the learned counsel submitted that the only procedure prescribed with respect to down-gradation is 3rd Proviso to Regulation 7(b) of the CERC (Procedure, Terms, and Conditions for Grant of Trading License and Other Related Matters) Regulations, 2009, which in itself provides no such embargoes, in particular, filing of petitions prior to commencement of the financial year, a requirement which the Respondent Commission has applied selectively in the Appellant's case.

8. It is further submitted that under Regulation 15(3) of the CERC (Procedure, Terms, and Conditions for Grant of Trading License and Other Related Matters) Regulations, 2020, the Respondent Commission explicitly permits applications for down-gradation to be made at any time (Regulation 15(3)(a)). Additionally, Regulation 15(3)(c) stipulates that the applicant is only required to pay for the license category in which down-gradation is being sought. Although these provisions are made effective through 2020

regulations and are not directly applicable, they reflect the Respondent Commission's intent to ensure uniformity and fairness, serving as a reference point, since the 2009 regulations lack a specific procedure for down-gradation applications.

9. Learned counsel for the Appellant also contended that alternatively, at most, the Appellant can only be liable for 27 days, from 01.04.2018 to 27.04.2018, for holding the Category I license, and not for the entire FY 2018-19 as determined by the Commission in the Impugned Order. Learned counsel also relies on Clause 7 of the License dated 03.10.2017, issued by the Respondent Commission, which also provides for pro-rata payment of the license fee for part of the year.

10. Per Contra, learned counsel for the Central Commission submitted that the Appellant has categorically admitted in the Appeal that Petition No. 134/MP/2018 was filed on 27.04.2018, which was after the commencement of the Financial Year 2018-19. However, there were some deficiencies in e-filing and the Appellant herein was directed to cure the deficiencies and after curing of defects, the petition was refiled on e-filing portal on 04.05.2018. Learned counsel for Respondent Commission also submitted that though the system of e-filing was introduced by it in the year 2016, it did not dispense with the need for filing hard copy by the petitioners as is evident from the 'Notice' issued at the time of launching the e-filing portal as well as subsequent 'Public Notice' dated 28.02.2018 issued by the Respondent Commission, thus the system of filing of hard copies of the petition, continued even beyond August, 2018. The hard copy of Petition, complete in all respect, was filed by Appellant before commission only on 04.05.2018.

Given that the Appellant holds a Category I license and enjoying the same for part of the year, they cannot claim a downgrade of their license effective from 01.04.2018. The fact that the Appellant did not engage in any trading activities before or after filing the Petition is irrelevant. Further, the Appellant had the capability to trade an unlimited amount of electricity during that part of the financial year. If the Appellant's argument were to be accepted, it would lead to allowing any licensee who did not trade during the respective financial year to request for its license down-gradation retrospectively from the start of the year. Additionally, the Appellant has failed to provide any relevant statutory provisions/ case laws applicable during that period.

11. Learned counsel for the Respondent No.1 further submitted that the contention of the Appellant that the Petition was filed by them within the time limit for payment of the license fee (i.e., by 30.04.2018) is irrelevant. Despite the one-month grace period allowed for the payment of the annual license fee, the Appellant was in a position to trade an unlimited quantum of electricity from 01.04.2018 under the Category I license, which was in their possession.

12. Regarding Appellant's claim of parity with the case of M/s. RETL as its petition was also filed after the commencement of Financial year 2015-16 on 09.04.2015 and not on 13.03.2015 citing web loading details, Learned Counsel for the Respondent No.1, asserted that the Central Commission vide its Affidavit dated 15th May 2024 before this Tribunal has provided sufficient documentation, including file noting's, to demonstrate that RETL's request for downgrading was received by the Commission on 13.03.2015. It was further submitted that web-based e-filing portal was proposed to be

launched by the Respondent Commission with effect from 04.04.2016 as evident from Notice dated 04.04.2016 issued by then Secretary, Central Commission; while the exact date of launching of the Portal and the circumstances for uploading the pending Petition in the web-portal cannot be ascertained after eight years, there is no dispute that the web-portal was launched well after Petition No. 94/MP/2015 for downgrading of trading licence was filed by RETL and there are irrefutable evidence that RETL filed petition No 94/MP/2015 in March 2015.

13. Learned counsel for the Respondent Commission submitted that the Appellant has failed to demonstrate any infringement of its rights, non-compliance with statutory provisions, violation of principles of natural justice, or any improper or mala fide exercise of power by the Respondent Commission and therefore, it is prayed that the appeal be dismissed.

Discussion and Analysis

14. We have heard learned counsel on both sides and gone through the submissions made by them. The two issues which emerge for our consideration are 1) what are the applicable provisions in relevant Regulations for downgrading the trading license; and 2) the issue of Appellant's claim of parity with RETL, regarding the filing date of application by RETL seeking for downgrading of Trading License. We would confine ourselves to the Regulations that are applicable to the present case i.e. Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulation 2009, (in short "**Trading Licence Regulation 2009**") and not on any subsequent Regulation on account of its non-applicability.

15. The Central commission vide its order dated 20.09.2017 in Petition No 154/TD/2017, approved the issuance of Category-I Inter-State Trading License, and accordingly issued the Trading License, dated 03.10.2017 to the Appellant. One of the important obligations under the said Licensee as per Regulation 7(b), is as follows:

“The Licensee shall not exceed the volume of Trading authorised under the License, but may, in exceptional circumstances, undertake trading in electricity up to the maximum of 120 per cent of the volume of trade authorised under the license granted to him.

Provided that the licensee, on exceeding the volume of trading authorized in a year under the license granted to him shall pay license fee applicable to the higher category for that particular year”

16. From a bare reading of the above provision, it is evident that the licensee should not exceed the volume of trading authorised under the license. In the event, if the Licensee exceeds the authorized trading volume, then the license fee corresponding to the higher category shall become applicable for that year.

17. The Appellant, on 27.04.2018 vide Petition No.134/MP/2018 applied for down-gradation of its Inter-State Trading License from Category I to category III to the Central Commission. While there is no annual trading volume limit, for intra-State Trading under the category I license, there is cap of 500 MUs that can be traded under Category III License in a year. The Appellant, while submitting the Petition to the Central Commission on

27.04.2018 requesting for downgrading its inter-State Trading license from Category I to Category III, has mentioned that *“Petitioner herein has not undertaken trading of Electricity till the date of filing this petition and also gives the undertaking that petitioner will not trade more than 500 Mus of electricity in FY 2018-19 as per Category III trading Licensee”*. Further, the Appellant in its affidavit dated 04.09.2018 filed before the Central Commission, has submitted as under:

“I further state that in view of stiff and tough competition in power market, petitioner company has prayed for down gradation of its trading license from Category I to Category III with effect from 01.04.2018 vide the Petition No. 134/MP/2018. Further, no trading has been done by the Petitioner from 01.04.2018 till the date of filing the present affidavit and also Petitioner is desirous not to trade more than 500 MUs in a year from 01.04.2018 as provided under Category III”.

18. Subsequently, the impugned order was passed by the Central commission on 07.09.2018, three days after filing of the said affidavit by the Appellant on 04.09.2018, which allowed down-gradation of Appellant’s trading license from Category I to Category III w.e.f 07.09.2018. It is not in dispute that the Appellant did not undertake any trading activity till 04.09.2018, and subsequent to passing of the impugned order, the Appellant was permitted to trade only upto 500 MUs in accordance with the conditions of the Category III license. As regards the question of parity with RETL on the timeline for Submission of the Petition by both RETL and the Appellant after the commencement of respective Financial Year seeking for down-gradation of Trading License, there is no doubt that RETL’s petition was submitted on 13.03.2015, before the commencement of FY 2015-16, which

is evident from the documentary proof submitted by Respondent No.1 vide Affidavit dated 15.05.2024, including: (i) the relevant entry dated 13.03.2015 for receipt of the Petition (diary No 535/13.03.2015); (ii) credit entry of filing fee in Commission's account on 02.03.2015 (iii) a copy of first page of the petition bearing the date stamp as 13.03.2015; (iv) an affidavit in Petition No 94/MP/2015, notarized on 13.03.2015; and (v) a noting sheet initiated by the dealing staff on 16.03.2015. Thus, the Appellant's contention that RETL petition was filed on 09.04.2015, based on data recorded on the Central commission's website, cannot be accepted. Additionally, learned counsel for the Central Commission has also submitted that web portal of the Commission was launched well after the Petition No 94/MP/2015 for downgrading of Trading License was filed by RETL, and the circumstances of uploading the pending petitions in the web-portal cannot be ascertained after eight years.

19. There is no dispute that though the Appellant e-filed its petition after the commencement of the FY 2018-19 i.e., on 27.04.2018 for down-Gradation of its Trading license from Category I to Category III, however, soft copy of the Petition was re-filed on 04.05.2018 along with hard copy. Therefore, in our view, the date of filing of the Petition by the Appellant is to be reckoned as 04.05.2018, when the hard copy of the Petition was filed, because as stated by learned counsel for the Respondent that this condition of filing hard copy has not been dispensed with after introduction of e-filing facilities of the petition. The Appellant's contention that the down-gradation of its Trading License should be considered from 01.04.2018 i.e. the start of FY 2018-19 claiming parity with RETL stating that the Appellant submitted its Petition before Central Commission seeking down-gradation prior to

trigger date of payment for category-I license i.e., three days prior on 27.04.2018 is without merit, since we have already held that the filing date of the Appellant's petition before the Central Commission is to be reckoned as 04.05.2018. Furthermore, we are also of the view that 30 days period granted for the payment of Licensee Fee after the commencement of the financial year is to be regarded merely as grace period for making payment, while the licensee can undertake trading immediately from the commencement of the Financial Year based on the category of license it possesses and cannot be linked to grace period for submitting application for up-gradation or down-gradation of Trading License.

20. For down-gradation and upgradation of Trading license, Regulation 7 of Trading License Regulations 2009 specifies as under:

“7. Obligations of the Licensee

(b) The licensee shall not exceed the volume of trading authorized under the licence, but may, in exceptional circumstances, undertake trading in electricity up to the maximum of 120 per cent of the volume of trade authorized under the licence granted to him:

Provided that the licensee, on exceeding the volume of trading authorized in a year under the licence granted to him shall pay licence fee applicable to the higher category for that particular year:

Provided further that the licensee may with the prior approval of the Commission and on such terms and conditions as the Commission may decide, exceed the specified limit of 120% in a year.

[Provided also that a licensee may make an appropriate Application accompanied by prescribed fees for upgradation of its licence to a higher category or down gradation of its licence to a lower category if it fulfills the conditions of these regulations for grant of such

licence but it shall not be required to follow the procedure specified in Regulation 6 of these regulations:

Provided further that the licensee shall be heard by the Commission before taking a decision on the application.]

21. Thus, the applicable Trading License Regulations, 2009 though permit a licensee to make an application for down-gradation of its license to a lower category; however, are silent about the applicability of fees as well as timeline for submitting such an application. In the instant case, the Appellant has filed hard copy of the Petition, after curing defects, before the Central Commission on 04.05.2018, seeking for down-gradation of its Trading License from Category I to Category III accompanied by an undertaking stating that it has not traded any electricity up to the date of filing the petition and it will trade not more than 500 MUs for the year 2018-19, as permissible under category III Trading License. This position was reaffirmed by the Appellant before the Central Commission through an Affidavit dated 04.09.2018 stating that it has not traded any electricity till that date, which is a fact not disputed in the impugned order.

22. As deliberated herein above, the Trading License Regulations, 2009 are silent about the time line for applying for down-gradation of a license and the applicable license fee for the respective category. The requirement to submit an application for such down-gradation before the commencement of the Financial Year so as to have license fee pertaining to downgraded category of license, is not covered under extent Regulations, therefore, we are of the considered view that the claim of the Appellant as regards its parity with RETL case of down-gradation of license, vide the Central Commission

order dated 28.09.2015 in Petition no 94/MP/2015, has merit. In the RETL case, though the Central commission order was passed on 28.09.2015, down-gradation of License from Category I to Category IV was permitted w.e.f from 01.04.2015 presumably based on the undertaking that RETL shall restrict its trading for the year 2015-2016 to what is permitted under category IV license. When similar undertaking was given by the Appellant while filing the petition as well in the affidavit dated 04.09.2018 that it has not traded any electricity up to the date and shall restrict trading of electricity up to 500 MUs equivalent to what is permissible under category III license for the FY 2018-19, we find no rational in the impugned order in permitting down- gradation of license of the Appellant to Category III from the date of impugned order i.e., 07.09.2018 and directing the Appellant to pay the Category I license fee for the financial year 2018-2019.

23. We also note the following provision from condition 3(7) of the License of the Appellant regarding pro rata fee payment:

“Unless otherwise specified by the commission, the Licensee shall pay annual license fee of Rs 40 lakh (Rupees forty lakh only) and license fee for part of the year shall be paid on pro rata basis, rounded off to the nearest hundred rupees”

24. Thus, pro rata payment of license fee is an option and it is not that license fee pertaining to a category of license is to be paid for the entire year. In the absence of requisite provisions in the Trading License Regulations 2009, we would like to place reliance on RETL case. Drawing parity with RETL case, it is reasonable and logical to allow down-gradation of the Trading License of the Appellant from Category I to Category III w.e.f. 05.05.2018 (from the next day on which hard copy of the petition was filed,

before the Commission), and hold that the Appellant shall be liable to pay License fee for category I License upto 04.05.2018, and for Category III license w.e.f 05.05.2018 rounded off to nearest hundred for Financial Year 2018-19

25. In view of the above discussion and deliberation, we set aside the impugned order dated 07.09.2018 passed by the Central Commission and permit down-gradation of Trading License of the Appellant from Category I to category III w.e.f 05.05.2018 and License fee be paid accordingly. The Appeal is, accordingly, allowed. All the pending IAs shall stand disposed of.

Pronounced in the open court on this 29th August, 2024.

**(Seema Gupta)
Technical Member (Electricity)**

**(Justice Ramesh Ranganathan)
Chairperson**

REPORTABLE / NON-REPORTABLE

ts/dk/ag