

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

**APPEAL No. 19 of 2016**

Dated : 14<sup>th</sup> November, 2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**Indian Sucrose Limited**

G.T. Road Mukerian (ISL)

Having its Registered Office at

5A, 2<sup>nd</sup> Floor, 18 Poorvi Marg,

Vasant Vihar, New Delhi – 110057

Through Shri Balwant Singh Garewal,

Chief General Manager (W)

...Appellant

*Versus*

**1. Punjab State Electricity Regulatory Commission (PSERC)**

Through its Secretary,

Having office at SCO No. 220-21,

Sector-34A, Chandigarh

(Referred here in as Ld. State Commission) - 160022

**2. Punjab State Power Corporation Limited (PSPCL)**

Through its Chairman-cum-Managing Director,

Having office at the Mall, Patiala – 147001

...Respondents

Counsel for the Appellant(s)

:

Aditya Grover

Arjun Grover for App. 1

Counsel for the Respondent(s) : Sakesh Kumar for Res. 1

Anand K. Ganesan  
Swapna Seshadri for Res. 2

## **JUDGMENT**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. Order dated 2<sup>nd</sup> December, 2015 passed by 1<sup>st</sup> Respondent – Punjab State Electricity Regulatory Commission (hereinafter referred to as “Commission”) in Petition No. 44 of 2015 filed by the Appellant herein has been assailed in this appeal.
2. It appears that an electric connection with Account No. LS-2 having contract demand of 750 KVA was allotted to one company namely M/s Oswal Sugar Limited on 29<sup>th</sup> October, 1993 at 11 KV. The company was managed by Oswal Group which was also running a paper mill adjacent to the Oswal Sugar Mill and known as Mukerian Paper Limited. The Paper mill was having a contract demand of 3500 KVA. On 25<sup>th</sup> November, 1993 additional demand of 6500 KVA was sought by the paper mill and accordingly feasibility clearance for release of the same on 66 KV line was rendered by the 2<sup>nd</sup> Respondent – Punjab State Power Corporation Limited (PSPCL) on 28<sup>th</sup> March, 1995. A high tension 66 KV bay along with line from Unchi Bassi Grid to Mukerian Paper Mill was erected and an amount of

Rs.78 lacs towards cost of the line and bay was deposited by the Company Mukerian Paper Ltd. in accordance with the conditions stated in the feasibility clearance. The electricity connection of both the entities i.e. Oswal Sugar Limited and Mukerian Paper Ltd. was clubbed by the 2<sup>nd</sup> Respondent on 26<sup>th</sup> February, 1998 in the name of Mukerian Paper Mill with total contract demand of 10750 KV (10,000 KV of paper mill + 750 KVA of sugar mill) as both were adjacent to each other and being managed by same Oswal Group.

3. In the year 2000, M/s. Oswal Sugar Ltd. was taken over by Yadu Group and accordingly the name of M/s Oswal Sugar Ltd. Was changed to Indian Sucrose Limited i.e. the Appellant herein w.e.f. 4<sup>th</sup> December, 2003.

4. The electricity connection in the name of Mukerian Paper Mill (LS-III) was permanently disconnected by the 2<sup>nd</sup> Respondent – PSPCL on 7<sup>th</sup> May, 2005 on account of its persistent default in making payment of electricity bills. However, the 66 KV line and bay feeding the clubbed connection in the name of Mukerian Paper Ltd. was not dismantled.

5. On 20<sup>th</sup> September, 2006, the 2<sup>nd</sup> Respondent- PSPCL filed a Civil Suit before the Ld. Civil Judge Mukerian, against Mukerian Paper

Mill seeking recovery of Rs.1,74,35,424/- along with interest @18% per annum towards unpaid electricity bills. The suit came to be decreed in favour of PSPCL vide judgement dated 17<sup>th</sup> January, 2013 passed by Additional Civil Judge (Sr. Division) Mukerian.

6. Meanwhile, Industrial Finance Corporation of India Ltd. (IFCI) initiated action under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SRFAESI Act) against Mukerian Paper Ltd. and took over the assets of the company on account of outstanding amount towards creditor financial institutions. Thereafter, the assets of Mukerian Paper Ltd. were put to auction by IFCI in order to recover the said outstanding amount payable by the Company and the Appellant being a successful bidder purchased the assets of the Company on 17<sup>th</sup> February, 2010.

7. In order to increase the viability and to utilize the additional sugar cane of the area, the Appellant decided to increase the crushing capacity of the sugar mill and to utilize the available bagasse efficiently. It proposed to set up a new 12 MW back pressure TG set with boiler as per latest technology. As the Appellant required only 6 MW for the sugar mill leaving a surplus of balance 6 MW power, same

was proposed to be sold to erstwhile Punjab State Electricity Board (PSEB), the predecessor in interest of PSPCL. The power plant was finally erected by the Appellant in the year 2007. However, the same could not be connected to the grid for export of power due to pending feasibility clearance/connectivity with the then PSEB Grid.

8. Vide communication dated 21<sup>st</sup> June, 2011, the Appellant agreed to deduction of previous outstanding dues/defaulting amount in the name of Mukerian Paper Ltd. from its running bill of export of electricity in order to make the power plant operational. Vide letter dated 20<sup>th</sup> March, 2012, the 2<sup>nd</sup> Respondent – PSPCL rendered feasibility clearance to the project of the Appellant on the condition that the Appellant shall pay the total defaulting amount along with simple interest as well as the cost of line and bay at present rates. Vide letters dated 21<sup>st</sup> April, 2012 and 10<sup>th</sup> May, 2012, the Appellant requested PSPCL to waive off the cost and interest on the default amount but in vein.

9. On 26<sup>th</sup> July, 2012, Short-term Power Purchase Agreement (PPA) was executed between the Appellant and 2<sup>nd</sup> Respondent for sale of surplus power upto 6 MW by Appellant to 2<sup>nd</sup> Respondent in the crushing season @Rs.4.04 per unit. Subsequently, the approval to

synchronize the project with the grid of 2<sup>nd</sup> Respondent was granted on 16<sup>th</sup> November, 2012 after the Appellant had installed ABT meters as per the requirement of 2<sup>nd</sup> Respondent. The project was synchronized to the grid on 5<sup>th</sup> December, 2012 and export of power was started.

10. Thereafter, the Appellant submitted various representation to the 2<sup>nd</sup> Respondent with the request to waive off the cost of 66 KV line and bay on the ground that the same had been erected in the year 1994 at the cost of Mukerian Paper Ltd. which has been taken over by the Appellant, but to no avail.

11. In the year 2013, the Appellant preferred a Petition No. 48 of 2013 before the Commission for approval of sale of surplus power to PSPCL on long-term basis, grant of a generic /preferential tariff and refund of cost of 66 KV line and bay. Vide order dated 5<sup>th</sup> December, 2013 passed in the said petition, the Commission allowed the prayer of the Appellant to withdraw the claim for refund of cost of 66 KV line and bay with liberty to approach it again in this regard and also issued interim direction to the Respondents – PSPCL for connecting the Appellant's mill to the grid and accept the sale of power subject to the tariff grid to be determined in the petition. Accordingly, the Appellant's mill was connected to the grid of PSPCL on 12<sup>th</sup> December, 2013 for

accepting power from its power project. The Petition was disposed off vide order dated 24<sup>th</sup> March, 2014 in which the Commission, while determining tariff for sale of power, also directed the nodal agency i.e. Punjab Electricity Development Authority (PEDA) and Respondent PSPCL to sign Implementation Agreement as well as PPA respectively.

12. Consequently, an Implementation Agreement was signed between the Appellant and PEDA on 24<sup>th</sup> April, 2014. A PPA was also signed between the Appellant and the 2<sup>nd</sup> Respondent – PSPCL on 27<sup>th</sup> June, 2014. On 29<sup>th</sup> May, 2013, Appellant applied for 1196 KW load/1328 KVA-CD through single window system through existing 66KV line connecting the sugar mill with the PSPCL's grid. Accordingly, demand notice dated 17<sup>th</sup> December, 2013 was issued to the Appellant for depositing the cost of 66 KV line and bay to the tune of Rs.2,73,97,582/- by the Respondent – PSPCL. The applied load was released to the Appellant on 5<sup>th</sup> September, 2014 without insisting of deposit of the said cost of KV line and bay as well as the service connection charges.

13. The Appellant again approached the Commission with a Petition bearing No. 9 of 2015 seeking directions for refund of amount claiming

illegally by PSPCL on various counts as well as other reliefs. The petition was dismissed as withdrawn on 4<sup>th</sup> June, 2015 with liberty to the Appellant to file a fresh petition with better particulars.

14. Accordingly, the Appellant filed a fresh petition bearing No. 44 of 2015 before the Commission claiming following reliefs:-

- “(a) Direct the Respondent-PSPCL to refund the excess cost of 66 KV line and bay illegally and forcibly recovered from the Petitioner along with interest and to charge the depreciated / book value of line and bay being already in existence since 1995;*
- b) Direct the respondent PSPCL to refund the amount of Rs. 2,89,57,333 along with interest illegally / forcibly charged from the petitioner as the same were payable by Mukerian Paper Limited and not by the petitioner;*
- c) Direct the Respondent to implement the provisions of Supply Code 2014 in the case of the Petitioner from the date of passing of BOD resolution and direct the Respondent-PSPCL to refund the Service Connection Charges of Rs 29,21,600/- paid by Petitioner under protest thro bill of December 2014 for release of load along with interest;*
- d) Direct the Respondent-PSPCL to refund the Load Surcharge of Rs 9,18,000/- paid by us under protest thro bill of January 2015 under protest;*
- e) Direct the respondent PSPCL to pay interest on the aforesaid amounts from the date of actual payment till the date of actual realization;*
- f) Pass any such order in favour of the Petitioner as this Hon’ble Commission may be deemed and just proper in facts and circumstances of the case.”*

15. The petition has been disposed off by the Commission vide the impugned order dated 2<sup>nd</sup> December, 2015 vide which prayer at sl. Nos. (a) & (b) stated herein above were rejected whereas prayer at sl. Nos. (c) & (d) have been allowed.



16. Thus, in this appeal, the Appellant is aggrieved by the order of the Commission in refusing to :-

(i) Direct the 2<sup>nd</sup> Respondent – PSPCL to charge the depreciated book value of the line and bay and to refund the excess cost recovery from it along with the interest;

(ii) Direct the 2<sup>nd</sup> Respondent – PSPCL to refund an amount of Rs.2,89,57,333/- to the Appellant which was recovered from the Appellant as outstanding dues of Mukerian Paper Ltd. along with interest.

17. We have heard Learned Counsel for the Appellant as well as the Learned Counsel appearing for 2<sup>nd</sup> Respondent and have also gone through the impugned order as well as the written submissions filed by the Learned Counsels. The citations referred to by the Learned Counsel during the oral submissions have also been perused.

18. It is not in dispute that the connection in the name of Mukerian Paper Ltd. was permanently dis-connected on 7<sup>th</sup> May, 2005 due to non-payment of electricity dues. It is the case of the Appellant itself that in order to increase the viability and to utilize the additional sugarcane of the area, it decided to set up a new 12 MW back pressure TG set boiler as per latest technology and to sell the surplus

power upto 6 MW to erstwhile PSEB. Accordingly, the Appellant sought approval of PSEB for installation and operation of 12 MW power project vide letter dated 31<sup>st</sup> July, 2007. Vide subsequent letter dated 21<sup>st</sup> June, 2011 addressed to 2<sup>nd</sup> Respondent – PSPCL the Appellant agreed to deduction of previous dues in the name of Mukerian Paper Ltd. as mentioned in the letter of PSPCL dated 15<sup>th</sup> September, 2008, from its running bill of export of electricity. The entire contents of the said letter are material and are extracted herein below :-

*“In continuation of your Letter No. 1313 dt. 27.05.2011, as explained in our letter No. 275 dt. 01.06.2011, the subject liabilities is of M/s Mukerian Papers Ltd. not the M/s Indian Sucrose Ltd. However, we are agree to deduct the dues, as mentioned in your Letter No. 4045 dt. 15.09.2008, from our running bill of export of electricity, if the existing electricity line & other systems may be allowed for export of electricity.*

*Therefore you are requested to kindly release the necessary permission/approval for Power Purchase Agreement, repair & maintenance of existing idle 66 KVA line of Electricity Board & other existing available systems. The subject dues may be deducted from our monthly bills of power export, if the approval is granted to export the electricity through existing lines etc.”*

*(Emphasis supplied)*

19. A bare reading of the contents of this letter makes it clear that the Appellant did not object to deduction of previous dues in the name of Mukerian Paper Limited, as mentioned in the letter dated

15<sup>th</sup> September, 2008 of PSPCL, from the running bills of export of electricity from its power project and in fact agreed to such deduction.

20. It is after such no objection/agreement communicated by Appellant vide said letter dated 21<sup>st</sup> June, 2011 that the PSPCL granted feasibility clearance for installation of 12 MW TGSET vide a communication dated 20<sup>th</sup> March, 2012. The feasibility clearance was granted subject to certain conditions enumerated in the said letter which are reproduced herein below :-

*"It has been decided that the feasibility clearance shall be allowed subject to the following conditions:*

- 1. As the disconnection is for more than 6 months, therefore as per ESIM clause 31.4, the old agreement with PSPCL stands terminated and firm will have to deposit charges as if new connection is being released which shall be as per 9.1.1 © of Annexure of EISM. The total defaulting amount recoverable shall be as per recovery suit along with simple interest as applicable from time to time on the principal amount.*
- 2. Cost of 66 KV line as per 9.1.1 © of Annexure of ESIM is recoverable since the connection stands disconnected and the old agreement stands terminated therefore the cost of 66 KV line at present rate is recoverable from the firm.*
- 3. The cost of 66 KV bay at the injection 66 KV S/Stn. Of the PSPCL is to be borne by the firm.*
- 4. The cost of 66 KV bay at the firm's premises will be borne by the firm.*
- 5. All the clearances required for erection, testing & commissioning of line shall be taken by the firm from the concerned departments including those from such as Chief Electrical Inspector, Forest Deptt. Pollution Board, fire fighting Dept. etc.*
- 6. PSPCL will not be responsible for any loss of power during conversion of system from 11 KV to 66 KV.*
- 7. All relevant drawings i.e., single line diagram and Protection scheme etc. shall be got approved from CE/Transmission System & Protection Wing of PSPCL.*
- 8. The firm will submit necessary documents as per prevailing commercial and technical instructions of PSPCL."*

21. First four conditions put forth in the said letter dated 20<sup>th</sup> March, 2012 by PSPCL as noted herein above, are very important. These envisaged that the total defaulting amount along with simple interest is recoverable from the Appellant and the Appellant is also liable to bear the cost of 66 KV line and bay.

22. In response to the said letter dated 20<sup>th</sup> March, 2012 of PSPCL, the Appellant sent communication dated 21<sup>st</sup> April, 2012 requesting PSPCL to waive off the line cost as well as the interest of defaulting amount. We find it apposite to extract the contents of this letter hereunder :-

*"This is to bring to your kind notice that we have obtained the Feasibility Clearance vide Memo No. 1726/FC-437/10 dated 20.03.2012 from Chief Engineer/Planning, Punjab State Power Corporation Ltd., Patiala for installation & operation of 12 MW TG Set and cleared by the Feasibility Clearance Committee in its meeting held on dated 16.02.2012 under the Chairmanship of Director (Distribution), PSPCL at Patiala subject to some conditions.*

*In this regards, we are submitting as under:-*

1. *As per clause No. 1 of Feasibility Clearance, The Board has decided to pay defaulting amount along with simple interest as applicable from time to time. In this regards we submit our consent through our letter No. 578 dated 23.07.2011 for the payment that defaulting amount can be deducted from our billing against sale of power to PSPCL. Hence, we request your goodself to kindly waive of the interest on defaulting amount.*
2. *As per clause No. 2 of Feasibility Clearance, we have to pay cost of 66 KV line. In this regards, we are submitting that the Board has treated us a new consumer, so that they want 66 KV Line cost from us as per new rates. But, this is to bring to your kind notice that Indian Sucrose Ltd (formally known as Oswal Sugars Ltd) is not a new*

consumer of PSPCL, the reason being is that Indian Sucrose Ltd was a old consumer of PSPCL, because ISL has used this line from 1995 to 2005 & continuously till the time of disconnection, of this line. We have already deposited the 66 KV Line cost through letter No 373 dt 30.03.1994 & PSPCL deposits confirmation letter dt 18.04.1994 & 24.10.1994 treating independent feeder connection.”

(Emphasis supplied)

23. As per the contents of the above noted letter, the Appellant had again agreed for payment of previous defaulting amount by deducting it from the bills against the sale of power from its power project PSPCL. The Appellant only objected to charging of interest on the defaulting amount as well as recovery of the cost of 66 KV line. This was followed by another communication dated 10<sup>th</sup> May, 2012 of the Appellant with similar request.

24. Subsequently, a PPA dated 26<sup>th</sup> July, 2012, was executed between the Appellant and the 2<sup>nd</sup> Respondent. Clause 4.0 of the PPA is material and extracted herein below :-

“4.0. Firm has given under taking that payment against their bill energy injected/sold to PSPCL may be made only after the total amount mentioned in following paras has been realized by PSPCL.

- 1) Defaulting amount Rs 2,89,57333/-,
- 2) Estimated cost of bay is Rs 49.23 Lac,
- 3) Cost of 66 KV line is 2,24,74,582/-.”

25. Thus, in the said PPA also, the Appellant has agreed that the payment against the bills for energy injected/sold by it to PSPCL may

be made only after deduction of the total defaulting amount as well as the cost of 66 KV line and bay.

26. It was vehemently argued by Learned Counsel for the Appellant that the Commission has failed to appreciate the fact that the Appellant being under duress, was forced to deposit the cost of new line and bay in lieu of old line and bay already in existence since the year 1994 and the Appellant had no other option except to accede to such condition of the PSPCL without which feasibility clearance would not have been granted. He argued that the 2<sup>nd</sup> Respondent being a dominant/monopolistic position, forced the Appellant to pay the defaulting amount payable by Mukerian Paper Limited along with interest despite the fact that 2<sup>nd</sup> Respondent was already pressing the Civil Suit in this regard before the Civil Court at Mukerian. He argued that the conduct of the Respondent is per se apparent from the fact that feasibility clearance was granted only subject to acceptance to illegal/unwarranted levies of the undue amount from the Appellant. Referring to Section 46 of the electricity Act, 2003, the Learned Counsels submitted that PSPCL could have charged only reasonable expenses for laying of of 66 KV line from the Appellant. But to the contrary, PSPCL has charged exorbitant amount from the Appellant

as per its whims and fancies without explaining the reasonableness of the same. To buttress his submissions, the Learned Counsel relied upon the judgement of this Tribunal in Punjab State Power Corporation Ltd. Vs. Nabha Power Ltd. &Anr., Appeal No. 75 of 2014 decided on 10<sup>th</sup> April, 2015 and the judgements of Hon'ble Supreme Court in LIC of India & Anr. Vs. Consumer Education and Research Centre &Ors., 1995 SCC (5) 482 and Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly & Anr. 1986 (2) SCR 278.

27. Learned Counsel for 2<sup>nd</sup> Respondent, PSPCL vehemently refuted the submissions of Appellant's counsel. He submitted that the Appellant had willingly signed the PPA by way of which it had agreed to clear the previous defaulting amount/pending dues and cannot now unilaterally seek to withdraw from the terms of the agreement. He argued that the plea of duress has neither been specifically pleaded nor proved. He pointed out that the feasibility clearance was granted to the Appellant vide letter dated 28<sup>th</sup> March, 2012 and the PPA was signed on 26<sup>th</sup> July, 2012 which indicated that there was ample time for the Appellant to assail the conditions put forth in the letter dated 28<sup>th</sup> March, 2012 but it deliberately chose not to do so. He further argued that in terms of Regulation 33.1 of the PSERC (Electricity Supply Code

and related matters) Regulations, 2014, PSPCL was authorized to terminate the connection agreement on account of pendency of electricity dues beyond a period of 6 months and to dismantle assets. However, the assets may be retained in case there is likelihood for other consumers to use the same in future or for retaining the right of way. He referred to Regulation 9 also to canvass that all new connections face certain charges which are payable. It is his submission that once the connection in the name of Mukerian Paper Mills was disconnected, connection in the name of the Appellant was a new connection and the Appellant was required in law to pay all the charges leviable in case of a new connection. In support of his submissions, Learned Counsel cited the judgement of the Hon'ble Supreme Court in Gujrat Urja Vikas Nigam Limited and Ors. Vs. Renew Wind Energy Pvt. Ltd. and Ors. (2023) SCC Online SC 411, Paschimanchal Vidyut Vitran Nigam Ltd. and Ors. Vs. DVS Steels and Alloys Ltd. and Ors. (2009) 1 SCC 210 and K.C. Ninan Vs. Kerala State Electricity Board and Ors. 2023 SCC Online SC 663.

28. We have considered the rival submissions of the Learned Counsels and perused the impugned order.



29. The Appellant has been saddled with the liability to pay Rs.2,89,57,383 along with the interest by way of condition put forth by the PSPCL while granting feasibility clearance for its 12 MW power project vide letter dated 20<sup>th</sup> March, 2012 as the said amount had remained unpaid in respect of the electricity bills raised in the name of Mukerian Paper Ltd. before the electricity connection in the name of Mukerian Paper Ltd. was disconnected on 7<sup>th</sup> May, 2005. At the time when these unpaid electricity bills were raised by PSPCL in the name of Mukerian Paper Ltd. and at the time of disconnection of the electricity connection on 7<sup>th</sup> May, 2005, Appellant had no concern with Mukerian Paper Ltd. It is not in dispute that the Appellant purchased the assets of Mukerian Paper Ltd. on 17<sup>th</sup> February, 2010 when these had been put to auction by IFCI in order to recover its outstanding amount payable by the said auction.

30. Interest on unpaid amount is levied from the person/entity who deliberately neglects/avoids to pay the outstanding amount. In this case, we note that the electricity bills had remained unpaid by Mukerian Paper Ltd. with which the Appellant had no relation at that time and, therefore, the Appellant cannot be held guilty for non-payment of those electricity dues. In these circumstances, we do not find it justified to

held the Appellant liable to pay interest also on such unpaid electricity dues.

31. So far as the cost of 66 KV line and bay, which also has been recovered by PSPCL from the Appellant, is concerned, we may note that concededly PSPCL had not erected any fresh 66 KV line and bay for export of power from the Appellant's power project to its grid. PSPCL had put to use in this regard a line and bay which had already been erected in the year 1994 at the cost of Mukerian Paper Ltd. and which had been in use continuously from 1995 upto the year 2005 when the electricity connection in the name of Mukerian Paper Ltd. was permanently disconnected. Therefore, we feel that the condition put forth at the time of granting feasibility clearance for Appellant's power project vide letter 20<sup>th</sup> March, 2012 to the effect that cost of 66 KV line and bay shall be borne by the appellant, was absolutely unjustified and malafide. Since the cost of said line had already been covered by PSPCL at the time of initial commissioning of the line, it cannot be permitted to claim such cost again from the Appellant.

32. It is true that the Appellant in its communication dated 21<sup>st</sup> June, 2011 addressed to the PSPCL as well as in the PPA dated 26<sup>th</sup> July, 2012 had agreed to pay the cost of 66 KV line and bay to PSPCL. The

contention of the Appellant is that it had agreed to make such payment to PSPCL under duress as it has no other option and had it not acceded to make such payment, feasibility clearance would not have been granted for its power project and its entire investment on the same would have gone waste.

33. We are conscious of the legal proposition that a bald plea of coercion, duress or undue inference is not enough and the party setting up such plea must prima facie establish the same by placing on record proper material in support thereof. On this aspect, learned Counsel for the 2<sup>nd</sup> Respondent- PSPCL had placed heavy reliance upon the judgement of the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Ltd. and ors. (supra) to contend that plea of duress taken by the Appellant cannot be entertained in the absence of cogent material, it being an allegation only. We are unable to accept these submissions of the Learned Counsel for PSPCL. We note that in response to communication dated 20<sup>th</sup> March, 2012 of PSPCL vide which feasibility clearance was granted to Appellant's power project upon certain conditions inter alia to bear the cost of 66 KV line and bay, the Appellant had sent two letters dated 21<sup>st</sup> April, 2012 and 10<sup>th</sup> May, 2012 thereby bringing to the notice of PSPCL that the said 66 KV line

and bay existed since the year 1994 and was erected at the cost of Mukerian Paper Ltd. which was subsequently purchased by the Appellant and, therefore, the cost of line and bay should not be recovered again from the Appellant. It appears that PSPCL chose not to respond to these letters of the Appellant and maintained a stoic silence. At the same time, PSPCL was not going to grant feasibility clearance to the Appellant's power project unless the payment as stated in letter dated 20<sup>th</sup> March, 2012 were made by the Appellant. By that time, the Appellant had already completed the power project and was awaiting feasibility clearance as well as synchronization approval to connect it with the grid of PSPCL. What is manifest is that in case the Appellant had not made the payment of 66 KV line and bay afresh as demanded by PSPCL, its power project would not have been synchronized as well as connected with the grid and would have remained idle thereby causing immense financial loss to the Appellant as it has incurred huge expenditure on the construction of the power project. In these circumstances, it cannot be said that the Appellant had not paid the cost of 66 KV line and bay afresh under duress and pressure on the part of PSPCL which was in a dominant and monopolistic position.

34. It cannot be gain said that a power purchase agreement is a commercial contract between power generator and Distribution Licensee i.e. power purchaser and is a sacrosanct document. However, it is equally true that at the time of executing the PPA, a power generator has very little bargaining power in contrast to the Distribution Licensee which has a dominant hand. A power generator spends huge amount of money, arranged from different sources, on the construction of the power project and has everything to lose in case it is unable to obtain synchronization approval to connect the power station with the grid to export power for sale to the Distribution Licensee. On the other hand, the Distribution Licensee has nothing to lose and has an upper hand as it can purchase power from any other Generator in the State or outside State. The Discom is capable of using its dominant position to exert pressure on the power generator to accept its demand even though the demands may, sometimes, be unjustified and unreasonable. Thus, both the power generator and Distribution Licensee, cannot be said to have an equal bargaining power. Once the court or Tribunal finds any unfair or unreasonable demand/term in a contract, it cannot keep its eyes closed and enforce the same. The Courts/Tribunals will certainly not enforce an unfair or un-reasonable clause in a contract

entered into between the parties who do not have equal bargaining power. In this regard, we are reminded of following observations of the Hon'ble Supreme Court in Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly&Anr. 1986 (2) SCR 278.

*"Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under 5 foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions*

on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent

to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

(Emphasis supplied)

35. Further, we also find it appropriate to refer to Section 46 of the Electricity Act, 2003 on this aspect which is quoted hereinbelow :-



*“Section 46.(Power to recover expenditure):*

*The State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”*

36. This legal provision envisages that a Distribution Licensee can be permitted to charge from a person requiring Supply of Electricity, only reasonable expenses incurred in providing any electric line or electric plant used for the purpose of giving that supply. Therefore, the Distribution Licensee is authorized to levy expenses from a person needing supply of electricity only in case it provides the electric line or electric plant and has incurred some amount on the same. In the instant case, admittedly, the 2<sup>nd</sup> Respondent PSPCL did not erect any fresh 66 KV line and bay for connecting the Appellant's power project with its grid and did not incur any expenses on the same. The 66 KV line and bay used for connecting the Appellant's power project to the grid was already in existence and had been built in the year 1994 at the cost of Mukerian Paper Ltd. which was subsequently purchased by the Appellant. Hence, the 2<sup>nd</sup> Respondent, PSPCL could not have charged the Appellant for the said line and bay.

37. The demand of PSPCL for the cost of 66 KV line and bay is otherwise also unreasonable and unjustified for the reason that on one hand the Appellant was asked to clear the liabilities of Mukerian Paper Ltd. towards unpaid electricity dues but at the same time is not given benefit of the cost incurred by Mukerian Paper Ltd. for construction of the said line and bay.

### **Conclusion**

38. In the light of the above discussion, we hold that the Appellant is not liable to pay interest on the amount of Rs.2,89,57,333/- charged from it towards clearance of the unpaid electricity dues of Mukerian Paper Ltd. We also direct the PSPCL to charge the Appellant for only the depreciated book value of 66 KV line and bay and to refund the excess amount to the Appellant forthwith.

39. Accordingly, the impugned order of the Commission stands set aside and the appeal stands allowed in the above terms.

Pronounced in the open court on this 14<sup>th</sup> day of November, 2024.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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