

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 111 of 2018 &
APPEAL No. 112 of 2018

Dated: 13th February, 2025

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

In the matter of:

APPEAL No. 111 of 2018

1. **Jaipur Vidyut Vitran Nigam Ltd.**
Vidyut Bhawan, Jyoti Nagar,
Jaipur – 302005
2. **Jodhpur Vidyut Vitran Nigam Ltd.**
New Power House, Industrial Estates,
Jodhpur – 342003
3. **Ajmer Vidyut Vitran Nigam Ltd.**
400 kv GSS Building, Ajmer Road,
Heerapura, Jaipur – 302024 ...Appellants

Versus

1. **Central Electricity Regulatory Commission**
Through Secretary, CERC,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi - 110001
2. **M/s National Engineering Industries Ltd.**
Through Managing Director,
Khatipura Road, Jaipur – 302006
3. **State Load Despatch Centre**

Through The Chief Engineer,
Rajasthan Vidyut Prasaran Nigam Ltd,
Vidyut Bhawan, Jyoti Nagar,
Jaipur - 302005

4. **The State Power Committee**

Through Chief Engineer/SLDC as Member-Secretary,
Rajasthan Vidyut Prasaran Nigam Ltd,
Vidyut Bhawan, Jyoti Nagar,
Jaipur - 302005

5. **Rajasthan Vidyut Prasaran Nigam Ltd,**

Through Managing Director,
Vidyut Bhawan, Jyoti Nagar,
Jaipur – 302005

... Respondents

Counsel on record for the Appellant(s) : S.K. Agarwal for App. 1
S.K. Agarwal for App. 2
S.K. Agarwal for App. 3

Counsel on record for the Respondent(s) : Pritha Srikumar Iyer
Sulabh Rewari
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Arunima Kedia
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Arun Sri Kumar
Neha Mathen for Res.1

Anand K. Ganesan for Res.2

Poorva Saigal
Shubham Arya
Ravi Nair
Nipun Dave for Res. 3

Poorva Saigal
Shubham Arya
Ravi Nair
Nipun Dave for Res. 4

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Shubham Arya
Ravi Nair
Nipun Dave for Res. 5

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. These two appeals have been filed by the three Distribution Companies/Licensees operating in the State of Rajasthan against the two identical but separate orders dated 29th September, 2017 passed by 1st Respondent – Central Electricity Regulatory Commission (hereinafter referred to as “Central Commission”) in Petition Nos. 15/MP/2016 & 186/MP/2016 filed by 2nd Respondent – M/s Rajasthan Steel Chambers, thereby, affirming its jurisdiction to adjudicate the dispute between the parties related to settlement of UI accounts.

2. It appears that the Commission had first decided the petition No. 15/MP/2016 vide order dated 29th September, 2017 (assailed in Appeal No. 111 of 2018) and then on the basis of the said order decided the another petition bearing No. 186/MP/2016 on the same date vide separate order, which has been assailed in Appeal No. 112 of 2018.

3. As noted herein above, the Appellants are the Distribution Licensees/Companies operating in the State of Rajasthan.

4. The 2nd Respondent is an association of steel industries in the State of Rajasthan. Third Respondent is State Load Despatch Centre (SLDC) vested with the responsibilities to discharge functions as invested under the Electricity Act, 2003. The 4th Respondent – State Power Committee is the Committee set up under the Rajasthan Electricity Grid Code Regulations, and the 5th Respondent – Rajasthan Vidyut Prasaran Nigam Ltd. (in short RVPNL) is the State Transmission Utility of Rajasthan.

5. The 2nd Respondent had, in the representative capacity, filed the above noted two miscellaneous petitions before the Central Commission seeking relief inter-alia with a direction to compile and provide UI charges from March, 2012 till January, 2016, direction to pay for under draws , computation of UI charges on the basis of energy accounted in terms of Inter-State Regulations, 2008 etc.

6. The Appellants had challenged the jurisdiction of Central Commission on the ground that members of 2nd Respondent (Petitioner before the Commission) were embedded customers of the State and were scheduling power through Rajasthan SLDC in accordance with the Rajasthan Electricity Regulatory Commission

(Terms and Conditions for open Access) Regulations, 2004 (in short “RERC Open Access Regulations”) by way of collective transactions and, therefore, the Rajasthan Electricity Regulatory Commission, in short (RERC) had exclusive jurisdiction to decide the dispute which related to Intra-State Transmission System.

7. Upon considering the provisions of Central Electricity Regulation Commission (Open Access in Inter-State Transmission) Regulations, 2008, RERC Open Access Regulations, 2004 and RERC (Intra-State ABT) Regulations, 2006, the Central Commission has affirmed that it has jurisdiction to adjudicate upon the disputes brought before it.

8. Even though, the Commission has given certain findings on the merits of the petitions also in the impugned orders, the Appellants have assailed the orders only on the aspect of jurisdiction on the contention that the Central Commission has erred in entertaining as well as adjudicating the petitions as it lacked jurisdiction to do so and the jurisdiction to adjudicate upon the petitions was exclusively with the Rajasthan Electricity Regulatory Commission.

9. We have heard the Learned Counsel for the Appellants and the Learned Counsels appearing for Respondent Nos. 1, 3, 4 & 5.

None appeared to contest the appeals on behalf of Respondent No.

2. We have also perused the impugned orders as well as the written submissions filed by the Learned Counsels.

10. The reasoning upon which the Central Commission has assumed jurisdiction to adjudicate upon dispute between the parties can be found in paragraph Nos. 20 to 27, and 32 to 38 of the impugned order passed in Petition No. 15/MP/2017 and the same are extracted herein below:-

“20. In terms of the Section 2(36) of the Electricity Act, conveyance of electricity across the territory of a State and conveyance of electricity within the State which is incidental to inter-State transmission of electricity is covered under the definition of ISTS. Therefore, where a transaction involves conveyance of electricity within the State which is incidental to inter-State transmission of electricity shall be covered under the definition of ISTS and by virtue of the power vested in the Commission under section 79(1)(c) of the Electricity Act,2003 read with section 79(1)(f), any dispute concerning regulation of inter-State transmission of electricity shall fall within the jurisdiction of the

Central Commission. Further, Section 2(47) of the Electricity Act defines the “open access” as under:

“(47) “open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;”

21. As per the above provision, this Commission has been vested with power to specify the regulations for providing non-discriminatory open access for use of inter-State transmission lines by any licensee or consumer or generator. This Commission has specified the Open Access Regulations for Short Term Open Access to ISTS which caters to both bilateral transactions and collective transactions at the Power Exchanges. Therefore, any instance of violation or non-compliance with the provisions of Open Access Regulations shall be subject to adjudication in terms of Section 79(1)(c) and (f) of the Electricity Act. Moreover, Open Access Regulations also contain the provisions for adjudication of disputes arising out of implementation of the said regulations.

22. In case of inter-State transaction of electricity by availing inter-State open access, an inter-State Open Access Customer who is a consumer and an embedded entity in a State is required to wheel power through the inter-State transmission lines, intra-State transmission lines and the distribution system of the serving distribution companies. For the purpose of inter-State transactions, all the transmission systems or distribution systems which are to be used for conveyance of electricity shall be considered as ISTS in

terms of Section 2(36)(ii) of the Electricity Act as the conveyance of electricity within the State which is incidental to inter-State transmission of electricity are considered as ISTS. For this purpose, the Open Access Regulations provide that where the intra-State system is involved for availing inter-State open access, the inter-State Open Access Customer shall be required to obtain a No Objection Certificate or Standing Clearance from the SLDC concerned.

23. The issue whether the transactions at the Power Exchanges are inter-State or intra-State in nature came in for consideration of the Appellate Tribunal in Appeal No. 168 of 2009 (CSEC vs CERC). The Appellate Tribunal in the judgment dated 4.3.2010 has decided the issues as under:

“28. Further, the impugned order specifically states that the fixation of the prices would be applicable to Inter-state transactions and bilateral markets. Admittedly, the power exchanges are all Inter-state transactions. The National power exchanges were granted permission to set up and operate under the guidelines issued by the Central commission. The by- laws, rules and Business rules of power are to be approved by the Central Commission. The prices discovery methodology has to be approved only by the Central Commission. The case of collective transactions in day ahead market on power exchange is double- sided closed bid option. Similarly, the power exchanges have to comply with the Central commission regulations. As per the regulation, any participant on power exchange which is a state utility for inter-state entity has to obtain a no objection from State Load dispatch Centre. It is due to the concurrence given by the SLDC that the State/ distribution network has the required transfer

capability for transfer of power from the state grid. This concurrence is given for the inter-state transactions”.

24. Therefore, the concurrence given by SLDC that the State/distribution network has the required transfer capability for transfer of power from the State grid is for the purpose of inter-State transactions.

25. The next question whether the State Commission will have jurisdiction in case of inter-State open access where the intra-State transmission system and the distribution systems are used. This issue was considered by the appellate Tribunal in Appeal No. 231/2015 and 251/2015 (UPPCL v UPERC &Ors) where the question was whether dispute arising out of denial of no objection by the SLDC for inter-State open access shall be subject to jurisdiction of the Central Commission or respective State Commission. The Appellate Tribunal in the judgment dated 28.7.2016 held that UPERC shall have the jurisdiction in case of disputes involving non-issuance of NOC by UPSLDC/ UPPTCL for use of Intra-State transmission system for open access transactions. The relevant portion of the judgment of the Tribunal is extracted as under:

“13. (r)....the current matter under consideration is consisting of two transactions, one where Inter-state open access was sought for supply of power from shree cement Rajasthan plant to Pali sub-station and the other where Intra-State open access is required for using UPPTCL transmission system. After considering all the relevant provisions of Electricity Act and the provisions of regulations of Central commission and the State Commission, we are of the considered view that the UPERC Open access regulations shall be

applicable for applying for open access for use of intra state transmission system and/ or the distribution system of licensees within the State, including, when such system is used in conjunction with inter-state transmission system. Hence any dispute arising due to non-issuance of NOC by UPSLDC/ UPPTCL for use of Intra- State transmission system for open access transactions has to be brought before the State Commission which in this case is UPERC. Hence on this issue of jurisdiction we hold that in the present case the UPERC"s jurisdiction is attracted."

26. The dispute in the above case pertains to congestion in the state network leading to non-issuance of NOC by UPSLDC and the jurisdiction of the State Commission in the said matter. It was in this context that the Appellate Tribunal decided that the UPERC Open Access Regulations would be applicable for use of intra-State transmission system and/or distribution system of licensees within the State, including system used in conjunction with Inter-state transmission system and the case would fall within the jurisdiction of UPERC.

27. As per the above judgement, any dispute due to non-issuance of NOC by SLDC for use of intra-State transmission system and distribution system including when such system is used in conjunction with inter-State transmission system would be adjudicated by the concerned State Commission. Except for the disputes with regard to intra-State transmission system and distribution system used for inter-State open access, this Commission will have jurisdiction in all aspects of inter-State open access."

...

“30. Two of the important conditions to be checked by SLDC while granting no objection certificate or standing clearance for inter-State open access including collective transactions at the Power Exchange are that there is adequate transmission capacity available in the State system and there is infrastructure in existence necessary for time-block-wise energy metering and accounting in accordance with the provisions of the grid code in force. In the present case, the Members of the Petitioner Association have been granted the standing clearance/no objection certificate by SLDC, Rajasthan for drawal of electricity from the Power Exchange. Therefore, SLDC Rajasthan was expected to have complied with the requirements of Regulation 8 of the Open Access Regulations and satisfied itself that necessary infrastructure for energy metering and energy accounting are in existence. The SLDC, Rajasthan in its reply dated 18.5.2016 has stated that the final settlement of UI accounts could be done by SLDC after installation and commissioning of infrastructure namely ABT meters along with Central Billing Station by STU. In our view, the SLDC, before granting concurrence, was required to ensure the existence of infrastructure for energy metering and time block wise accounting in terms of Regulation 8 (3) of the Open Access Regulations and the provisions of the Grid Code. SLDC Rajasthan has clearly failed to comply with the requirements of Regulation 8(3) of the Open Access Regulations.

31. Regulation 20 of the Open Access Regulations deals with the procedure of accounting of transactions by the State utilities and the intra-State entities and the manner of settlement of deviation in

respect of such entities in the course of availing Inter-State short term open access. Regulation 20 provides as under:

20. *Unscheduled Inter-change (UI) Charges*

(1) All transactions for State utilities and for intra-State entities scheduled by the nodal agency under these regulations, shall be accounted for and included in the respective day-ahead net interchange schedules of the concerned regional entity issued by the Regional Load Despatch Centre; . (2) Based on net metering on the periphery of each regional entity, composite UI accounts shall be issued for each regional entity on weekly cycle and transaction wise UI accounting, and UI accounting for intrastate entities shall not be carried out at the regional level (3) The State utility designated for the purpose of collection / disbursement of UI charges from / to intra-State entities shall be responsible for timely payment of the State's composite dues to the regional UI pool account. (4) Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection .points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme. (5) Unless specified otherwise by the concerned State Commission, UI rate for intra-State entity shall be 105% (for over-drawals or under generation) and 95% (for under-drawals or over generation) of UI rate at the periphery of regional entity. (6) No charges, other than those specified under these regulations shall be payable by any person granted short-term open access under these regulation.

32. It is clear from Regulation 20 of the Open Access Regulations that the concerned RLDC shall account for and include all

transactions by the State utilities and intra-State entities in the day ahead net interchange schedule of concerned regional entity. Based on the net metering at the regional periphery, RPC shall issue a composite UI account to each regional entity on weekly basis and transaction wise UI accounting. According to Regulation 20(4), any mismatch between the scheduled and actual drawal at drawal point and scheduled and actual injection at injection point for the Intra-State entity shall be determined by SLDC and covered in the intra State accounting scheme. In the absence of intra-State ABT or any specific scheme by the State Commission to handle the mismatch, Regulation 20(5) shall step in, which provides for default mechanism in the form of UI rate for Intra-state entity at 105% for over drawals or under injection and 95% for under drawal or over injection of the UI rate at the periphery of the regional entity.

33. The Petitioner has submitted that in terms of Regulation 20(4) and (5) of the Open Access Regulations as well as Regulation 4.2 of the RERC Regulations, 2008 (Rajasthan Electricity Grid Code) as amended on 10.6.2011, it is the responsibility of the SLDC to undertake and maintain the energy accounts for the intra-State entities. It has further submitted that the members of the Petitioner association being connected to the network of the state utility and scheduling and despatch being notified to the SLDC, the responsibility for maintaining proper energy and UI accounts and providing the same to the Members of the Petitioner association is that of the Respondent No.1, SLDC, Rajasthan. The Petitioner has also submitted that the schedule drawal is communicated to SLDC by way of Form PX-IV and the actual drawl with frequency stamping is available with the SLDC by way of meter readings taken by the discoms JVVNL and conveyed to SLDC as per Regulation 17(5)

of RERC Open Access Regulations, 2004. The Petitioner has further submitted that SLDC was required to determine underdrawal and draw up the UI accounts (in terms of energy) based on which accounting of the UI charges are to be applied and paid. The Petitioner has stated that the entire energy contracted at Power Exchange and due at delivery point after accounting for intra-State losses, has not been considered by Respondents and no details of difference have been supplied or made available to the Members of the Petitioner Association. In response, the SLDC, Rajasthan in its reply dated 18.5.2016 has agreed with Regulation 20 (4) of the Open Access Regulations, subject to fulfilling the requirement of intra-State UI accounting scheme by all concerned i.e. the supplier end distribution licensee and consumer end distribution licensee. The SLDC has also while accepting the provisions of Regulation 20 (1) and 20 (2) as regards issuance of composite accounts for each regional entity disputed the obligation of SLDC to determine the mismatch between the schedule and actual drawal of the Petitioner. SLDC has submitted that since the open access consumers are embedded consumers of discoms, it is responsibility of respective discoms to further adjust accounts at their end and send provisional accounts to SLDC in compliance with the intra-State ABT Regulations, 2006 for finalization. SLDC has further clarified that it has no intention not to prepare the UI account. In fact, the SLDC has taken up the matter with discoms to provide provisional UI account/data and has advised to provide 15 minutes in 96 block data to SLDC for finalization of UI account but was not provided by the discoms. Accordingly, SLDC has stated that as and when the respective discoms will make compliance of Regulation 25 (6), 25 (7) and 25 (8) of the RERC Open Access Regulations, 2004, SLDC will

finalize UI accounts of Open access consumers for the period from March, 2012 (billing month).

34. It is noticed that SLDC, Rajasthan in its reply dated 18.5.2016 while accepting Regulation 20 (4) of the Open Access Regulations has stated that the same is subject to fulfilling the requirement for intra-State UI accounting scheme by all concerned, i.e. supplier end distribution licensee and consumer end distribution licensee in terms of the provisions of Regulation 25(6) to (8) of the RERC Open Access Regulations, 2004. In short, SLDC, Rajasthan has stated that the UI account could be finalized only after the data received from the State discoms in terms of the above said regulations of RERC, is examined. While the Petitioner has submitted that if there had been any specific provision regarding inter-State UI rate for collective transactions in the regulations of the State Commission, the Petitioner would have got the same, SLDC, Rajasthan in para 15 of its reply affidavit dated 18.5.2016 has clarified that in the absence of intra-State UI rate specified by the State Commission for collective transactions, the settlement of UI account of the intra-State entities is not possible. This submission of SLDC is devoid of merits. It is evident from Regulation 20 (2) of the RERC Open Access Regulations, 2004 that where the open access supplier is governed by the inter-State ABT, it will be governed by CERC (Inter State Open Access) Regulations, 2004. The said regulation is extracted as under:

20. *Unscheduled interchange pricing:*

(1) Mismatch payment of schedule and actual drawal will be governed by the RERC (Intra-state ABT) Regulations, 2006

(2) Where the open access supplier is governed by the Inter-State ABT, it will be governed by CERC (Inter State Open Access) Regulations, 2004. For intra state ABT, the permissible deviation of actual injection with regard to scheduled injection and actual drawal against scheduled drawal will be as under and will be settled at Intra state unscheduled interchange rate, as specified by RERC from time to time

- (a) Deviation at injection end (-) 100% to +5%*
- (b) Deviation at drawal end (-) 5% to +5%*

Any deviation in excess of 5% at injection end and lower than 5% at drawal end will be considered as inadvertent supply of the supplier end distribution licensee and to the consumer end distribution licensee respectively. Such supply will neither be payable nor bankable unless specifically provided in the RERC Regulations. However, a deviation in excess of 5% at drawal end by open access consumer will be governed by balancing the agreement for HT supply and / or standby supply.

35. CERC (Inter State Open Access) Regulations, 2004 has been repealed by Open Access Regulations. Therefore, SLDC, Rajasthan is required to deal with the mismatch in accordance with Regulation 20(5) of the Open Access Regulations. Admittedly, SLDC has not complied with the Regulation 20(4) and (5) of the Inter State Open Access Regulations, 2008, for which the Petition shall lie before this Commission.

36. Further, Regulation 26 of the Open Access Regulations provides for the dispute settlement mechanism as under:

“26. All disputes arising under these Regulations shall be decided by the Commission based on application made by the person aggrieved.”

37. As we have in this order decided that collective transactions on Power Exchange are Inter-State transactions, dispute with regard to non-settlement of the UI accounts of the members of the Petitioner Association in accordance with the provisions of Regulations 20 (4) and (5) of the Open Access Regulations shall be maintainable before this Commission in terms of Regulation 26 of the Open Access Regulations.

38. In view of above discussions, we hold that the Central Commission has the jurisdiction to deal with the issue in the present Petition.”

11. Thus the Central Commission has assumed jurisdiction to decide the petitions on the ground that collective transactions on Power Exchange are Inter-State Transactions and therefore, dispute with regards to the non-settlement of UI accounts of the members of the 2nd respondent Association is maintainable before it in view of the provisions of Regulations 20(4) and (5) read with Regulation 26 of Inter State Open Access Regulations, 2008.

12. Learned Counsel for the Appellant argued that in view of the provisions of Regulations 3 & 30 of RERC Regulations, 2016, the State Commission i.e. RERC has exclusive jurisdiction to decide disputes related to Intra-State Transmission system and /or the Distribution system of Licensees in the State including when such system is used in conjunction with Inter-State Transmission System. To buttress his arguments, Learned Counsel cited judgement of this Tribunal dated 28th July, 2016 in Appeal No. 231 of 2015 titled as “Uttar Pradesh Power Corporation Ltd. Vs.Uttar Pradesh Electricity Regulatory Commission & Anr.

13. On behalf of the 1st Respondent i.e. the Commission, it is submitted that even though the Members of 2nd Respondent – association are scheduling power through collective transactions from the power exchange, yet these collective transactions take place through anonymous as well as simultaneous competitive bidding by buyers and sellers and in view of such nature of these collective transactions, this Tribunal has already held in CESC Limited Vs. CERC (2010 SCC Online APTEL, 18) held that such transactions on the power exchange are deemed to be inter-state

transactions, which fall under the exclusive jurisdiction of Central Commission. It is argued that the grievance raised by the 2nd Respondent before the Commission related to non-compliance with Regulations 8 of the 20(5) of CERC Open Access Regulations and as such was within the jurisdiction of the Commission in view of Regulation 26 of the Regulations.

14. Considering the rival contentions of the parties and the submissions made by the Learned Counsels, the issue which arises for our determination in both the appeals is :

“Whether the Central Commission was right in assuming its jurisdiction to decide the dispute between the two Intra-State entities in the facts and circumstances as noted herein above”.

15. Section 79 of the Electricity Act, 2003 specifies the functions as well as jurisdiction of the Central Commission and is extracted herein below:-

“Section 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;*
- (g) to levy fees for the purposes of this Act;*
- (h) to specify Grid Code having regard to Grid Standards;*
- (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;*
- (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;*
- (k) to discharge such other functions as may be assigned under this Act.*

(2) The Central Commission shall advise the Central Government on all or any of the following matters, namely :-

- (i) formulation of National electricity Policy and tariff policy;*
- (ii) promotion of competition, efficiency and economy in*

activities of the electricity industry;

(iii) promotion of investment in electricity industry;

(iv) any other matter referred to the Central Commission by that Government.

(3) The Central Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.

16. Section 86 of the Act prescribes the functions as well as the jurisdiction of the State Electricity Commission and is extracted herein below:-

Section 86. (Functions of State Commission): --- (1) *The State Commission shall discharge the following functions, namely: -*

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case maybe, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

(k) discharge such other functions as may be assigned to it under this Act.

(2) The State Commission shall advise the State Government on all or any of the following matters, namely :-.

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State

Commission by that Government.

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.

17. Thus, the pre-dominant function of the Central Commission specified under Section 79 (i) is to regulate the Inter-State Transmission of Electricity Act and to determine tariff for such transmission as also to regulate tariff for generating companies owned or controlled by Central Government or function as a composite scheme of generation/sales of electricity in more than one State. It is also empowered to adjudicate upon the disputes involving such generating companies and the transmission licensees with regard to these matters. On the other hand, the functions of the State Commissions specified under Section 86 of the Act involve facilitation of Intra-State Transmission/wheeling of Electricity, regulate the electricity purchase/procurement process of the Distribution Licensees within the State and to determine the tariff for generation/supply/transmission/wheeling etc. of electricity within the State.

18. Section 2(47) of the Electricity Act, 2003 defines “Open Access” as under :-

(47) “open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

19. In terms of the Electricity Act, 2003, the transmission of electricity is an activity which falls within the jurisdiction of both the Central as well as State Commissions. Open Access in transmission is also an incident falling under the respective jurisdictions of both Central Commission as well as State Commissions, as such, both are competent to frame Open Access Regulations within the respective areas of jurisdiction. Accordingly, the Central Commission has framed CERC (Open Access in Inter-State Transmission) Regulations, 2008 as amended from time to time and the RERC has framed Intra-State Open Access Regulations, 2006, as amended from time to time.

20. Section 2(36) of the Electricity Act, 2003 defines “Inter-State Transmission System (ISTS) as under :-

(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 a Central Transmission Utility.*

21. Hence, in terms of Section 2(36) of the Act, the conveyance of electricity across the territory of a State and conveyance of electricity within the State which is incidental to Inter-State transmission of Electricity is covered under the definition of ISTS. As per Section 2(37), any system for transmission of electricity other than ISTS falls within the definition of “Intra-State” transmission system”.

22. In the instant case, undisputedly the members of 2nd Respondent – association are the consumers of Distribution companies of the State of Rajasthan which are the Appellants in these two appeals, having contract demand arranging from 2750 KVA to 9740 KVA. In addition to these, the members of the association have been obtaining short-term open access to Inter-

State transmission system to procure power from the power exchange since February, 2011. The members of the association had approached the Central Commission by way of the two separate petitions being aggrieved on account of failure of 3rd Respondent to provide UI Accounts and to make payment of UI charges to them for under draws in terms of Open Access Regulations as applicable to intra-State entities.

23. The Central Commission in the impugned orders, has referred to judgement dated 4th March, 2010 of this Tribunal in Appeal No. 166 of 2009 CESC Limited vs. CERC in which it has been noted that transactions in the power exchange are inter-state transactions and has thus held that the dispute with regard to non-settlement of UI accounts of the members of 2nd Respondent Association is maintainable before it in view of the Regulations 20(4) and (5) of CERC Inter-State Open Access Regulations, 2008.

24. We find that the Central Commission has totally ignored the fact that the Members of the 2nd Respondent Association, who had approached it with their grievance were the embedded consumers of the Appellants. Their status as embedded consumers of the

Appellants would remain the same irrespective of the nature of their transaction at the power exchange whether bilateral or collective or Intra-State. Mere fact that they are getting electricity from power exchange through Open Access would not make it an Inter-State transaction falling within the jurisdiction of Central Commission. They shall continue to be bound by the RERC Open Access Regulations, 2006 in view of the provisions of Regulation 3 thereof which is quoted herein below :-

"3. Extent of Application

These Regulations shall apply to open access for use of intra-State transmission system and / or the distribution systems of licensees in the State, including when such system is used in conjunction with inter-State transmission system."

25. As per the provisions of said Regulation 3 of RERC Open Access Regulations, 2006, the members of 2nd Respondent Association are subject to these Regulations for the reason that they are availing Open Access through Inter-State Transmission system/distribution system of the Appellants which are the Distribution Licensees in the State of Rajasthan even when "using such system in conjunction with the Inter-State Transmission

system” for getting power from power exchange through Open Access.

26. This Tribunal was confronted with identical issue in Appeal No. 70 of 2015 State Load Despatch Centre Vs. Gujarat Electricity Regulatory Commission. In that case also, the issue before this Tribunal was whether the State Commission of Gujarat has the jurisdiction in regard to transmission system if Gujarat Energy Transmission Corporation Ltd. had sought Open Access for power exchange transaction which was treated as collective and Inter-State Transaction. The appeal has been decided vide judgement dated 7th April, 2016 and it has been held as under :-

"9. After having gone through all the relevant aspects of the present Appeal as stated above, our observations are as under:-

(i) On perusal of letter dated 30.04.2014 of the Appellant No. 1 to the Respondent No. 2, It has been noted that the Appellants have dealt with the issue in accordance with clause 16(1) of the Intrastate Open Access Regulations, 2011 of the State Commission Issued by the State Commission.

(ii) The Respondent No. 2 is an embedded consumer of the Appellant No. 2. Any transaction whether bilateral or collective or Intrastate would not change the position of the Respondent No. 2 as an embedded consumer of the Appellant No. 2. Even If we consider that one to one relation of the buyer and seller of power In respect of the power exchange transaction of Respondent No. 2 is not known but the drawl point is known on the day one. Even uncertainty of the delivery point does not make it an Inter -State transmission case in light of the fact that drawal point is well known and the fact that the open access as sought by the Respondent No. 2 is for the use of transmission and

distribution system of the State located in the command area of the Appellant No. 2. If the dispute arises for users of Intra-State network in collective transaction, it would fall within the jurisdiction of the respective State Commission within whose Jurisdiction the Intra-State network falls

(III) Having regard to the provisions of Section 32 and 33 of the Electricity Act, 2003 pertaining to the functions of the State Load Despatch Centre and compliance of its directions, this case falls within the ambit of Appellant No. 1 and 2. We have further noted that as per the prevailing Regulations of the State Commission, any dispute arising due to non-Issuance of NOC by the Appellants has to be brought before the State Commission which in this case is GERC and for the same reason, the GERC's jurisdiction is attracted.

(iv) We are of the considered view that the State Commission was right in dealing with the present case. The State Commission has the jurisdiction in the present case."

27. We find that the facts and circumstances of the instant case are absolutely identical to the facts and circumstances appearing in the above noted Appeal No. 70 of 2015 before this Tribunal, and therefore, the findings given by this Tribunal in that case, extracted herein above, are squarely applicable to this case also. What has been held by the Tribunal in that case was patently with regards to the embedded customers in the State of Gujarat for a collective power exchange transmission system which is the case in the instant appeal also. Hence, the same would undoubtedly apply to the dispute between the members of the 2nd Respondent

Association and the Appellants/remaining Respondents, which form the subject matter of this appeal.

28. It appears that the said judgement of this Tribunal in Appeal No. 70 of 2015 did not come to the notice of Central Commission while passing the impugned orders.

29. Accordingly, we hold that the Central Commission erred in affirming its jurisdiction with regards to the dispute brought before it by the 2nd Respondent by way of two petitions noted herein above. It is amply clear in view of the legal provisions discussed herein above coupled with the previous judgement of this Tribunal dated 7th April, 2016 in Appeal No. 70 of 2015 (supra) that the dispute involved in the petitions before the Central Commission fell within the exclusive jurisdiction of the Rajasthan Electricity Regulatory Commission. The issue raised by us in paragraph No. 14 stands answered accordingly.

30. Hence, we are unable to sustain the impugned orders passed by the Central Commission as the same are erroneous. The impugned orders are hereby set aside. Appeals stand allowed.

31. The Petitions bearing No. 15/MP/2016 and 186/MP/2016 filed by 2nd Respondent before the Central Commission stand dismissed as being not maintainable before the Commission on account of lack of jurisdiction.

Pronounced in the open court on this 13th day of February, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / NON REPORTABLE

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