

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 138 of 2017

Dated : 26th March, 2025

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

In the matter of:

Kerala State Electricity Board Ltd.

Vydyuthi Bhavanam
Thiruvananthapuram,
Kerala - 695004

... Appellant

Versus

- 1. Central Electricity Regulatory Commission**
Represented through its Secretary
4th Floor, Chanderlok Building, 36, Janpath,
New Delhi – 110 001
- 2. M/s Neyveli Lignite Corporation Limited**
Represented through its AGM (Commercial)
Neyveli House,
135, EVR Periyar Road,
Kilpauk, Chennai – 600010
- 3. Tamil Nadu Generation & Distribution Company**
Represented through its Chairman & Managing Director
800, Anna Salai
Chennai – 600002
Tamil Nadu
- 4. Puducherry Electricity Department**
Represented through its Chairman & Managing Director

Ranjitha Ramachandran
Poorva Saigal
Anushree Bardhan
Shubham Arya
Arvind Kumar Dubey for Res.

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Anusha Nagarajan
S. Vallinayagam for Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant, Kerala State Electricity Board (in short KSEB) is aggrieved by the order dated 5th September, 2016 passed by 1st Respondent – Central Electricity Regulation Commission (hereinafter referred to as “Commission”) in Petition No. 02/MP/2014 filed by 2nd Respondent – M/s Neyveli Lignite Corporation Limited (in short NLC).
2. The 2nd Respondent – NLC is a power generating company owned and controlled by the Central Government. It has established the power generating stations including Thermal Power Station-II (TPS-II) and Thermal Power Station-I Expansion (TPS-I Expansion Project”) whose beneficiaries are the States in the Southern Region. The Appellant Board is one of the beneficiaries of NLC TPS-I Expansion (2x210 MW). The Appellant has an allocation of 14% of the capacity from the said project.

3. The 1st Unit of TPS-1 Expansion project of NLC was commissioned on 9th May, 2003 and the last unit was commissioned on 5th September, 2003. It, thus, started commercial operations w.e.f. 5th September, 2003. In addition to the allocation from the said TPS-I Expansion project, the Appellant also has an allocation of about 10% (153 MW) from NLC-TPS-II State-1 (630 MW) and NLC TPS II Stage-2 (840 MW) projects together.

4. Being Central Government owned power utility, the tariff of the NLC's generating stations are being determined by the Central Commission based on the tariff regulations notified by the Commission from time to time. Since the commercial operation date (COD) of NLC's TPS-I Expansion project was declared during the Financial Year 2003-04, the tariff of the station for the period between 1st April, 2004 to 31st March, 2009 was determined by the Commission in terms of the provisions of CERC (Terms and Conditions of Tariff) Regulations, 2004.

5. Since the NLC's TPS-I expansion project was a new station, an obligation was cast on the 2nd Respondent NLC by virtue of Regulation 7 of 2004 tariff Regulations to claim the benefits of tax holiday as per the provisions of Income Tax, 1961 particularly Section 80-1A.

6. It appears that vide Debit note No. 02/Commercial/CERC/Revision/ 2007 dated 30th June, 2007, NLC claimed Rs.46.12 crores as income tax dues from the Appellant for TPS-1 Expansion Project for the financial years 2004-05, 2005-06 and 2006-07. Thereafter NLC started claiming an advance of income tax every quarter and thus claimed a total of Rs.15.96 crores for the three quarters of Financial Year 2007-08. Accordingly, total income tax reimbursement of Rs.62.08 crores was claimed by NLC for the said TPS-1 Expansion project during the period 2003-04 to 2007-08.

7. Disputes arose between the Appellant and the 2nd Respondent on the issue of income-tax reimbursement sought by NLC.

8. Accordingly, NLC filed the petition bearing No. 15 of 2010 before the Commission seeking direction from the Commission to the Appellant Board to reimburse the out-standing dues towards income tax amounting to Rs.119.09 crores as on 31st March, 2009. The Commission disposed off the petition vide order dated 20th September, 2012 with the following observations :-

"16. NLC has claimed that it availed of the benefit of tax holiday under Section 80 IA of the IT Act with effect from the year 2007-08 and passed on the benefit to KSEB as mandated by the regulations. In view of this claim of NLC, no income-tax liability accrues on KSEB for the years 2007-08 and

2008-09. Therefore, the question of recovery of income-tax dues for these two years also does not-arise. We conclude our findings by stating that income-tax liability in respect of TPS-I Expansion did not accrue for the years 2003-04, 2004-05, 2005-06 and 2006-07 for want of taxable income and for the years 2007-08 and 2008-09 because of availing the tax holiday benefit. In view of these findings, the question whether NLC was obligated to avail the benefit of Section 80 IA from the date of commissioning of TPS-I Expansion does not survive for our examination.

17. During the course of hearing it was submitted on behalf of NLC that even though the tax benefit has already been passed on by NLC to the beneficiaries, the assessing officer in his assessment order dated 28.12.2010 has disallowed its claim for tax benefit under Section 80 IA in respect of TPS-I Expansion for the financial year 2007-08 on the ground that the generating station was only an expansion of the then existing capacity and could not be considered as a separate undertaking as provided under Section 80 IA (4) (iv) of the IT Act. In case, NLC becomes liable to pay income-tax on account of unavailability of benefit under Section 80 IA, it shall be entitled to recover from KSEB the income-tax along surcharge, interest etc. paid to the Income-tax Department.

18. We have held that NLC is not entitled to recovery of income-tax dues in respect of TPS-I Expansion up to 31.3.2009. In view of this, there is justifiably no reason for KSEB to withhold income-tax dues for TPS-IL NLC has alleged that KSEB has been withholding income-tax dues in respect of TPS-II amounting to ` 57.00 crore included in the total amount of ` 119.0935 crore. We direct that KSEB shall release such withheld income-tax dues amounting to `57.00 crore pertaining to TPS-II along with interest at the rate of 9% per annum from June 2007 within 30 days upon NLC furnishing the claim, duly supported by the statutory auditors' certificate."

9. The Commission, thus, held NLC not entitled to recovery of income-tax dues in respect of TPS-I project up to 31st March, 2009.

10. Aggrieved by the said order dated 20th September, 2012, NLC filed Appeal No. 250 of 2012 before this Tribunal which was dismissed by this Tribunal vide judgement dated 3rd July, 2013, thereby confirming the findings/observations of the Commission. The relevant portion of the judgement is extracted hereinbelow :-

“19. Even if the Appellant has availed tax benefit under Section 80-I A in respect of TPS-I Expansion from FY 2007-08, there was no taxable income for TPS-I Expansion during 2004-05 to 2006-07. Thus, the tax paid by the Appellant during these years as generating company could not be distributed to TPS-I Expansion for recovery from the beneficiaries of TPS-I Expansion as per the Tariff Regulations.

20. The Appellant might have set off the profit of its other generating station during the period 2004-05 to 2006-07 for computing its tax liability under the Income Tax Act for payment of tax as a generating company, but the total tax has to be distributed amongst the various generating stations as per the Tariff Regulations i.e. as per the station-wise profit before tax. Since there was no profit in TPS-I Expansion in the years from 2003-04 to 2006-07 in view of the huge accumulated loss in FY 2003-04, there is no question of any income tax being apportioned to TPS-I Expansion during this period.”

11. It further appears that in pursuance to the said judgement dated 3rd July, 2014 of this Tribunal, NLC reworked the amount of income-tax to

be reimbursed by the beneficiaries in respect of TPS-I Expansion project and communicated the same to the beneficiaries, including the Appellant - KSEB vide letter dated 28th November, 2013. However, KSEB vide letter dated 7th December, 2013 disputed the claim of NLC for dues amounting to Rs.20.31 crore on the contention that the said claim of NLC amounting to non-compliance of the order of the Commission dated 20th September, 2012 which has been confirmed by this Tribunal vide judgement dated 3rd July, 2013.

12. Accordingly, the 2nd Respondent -NLC again approached the Commission by way of Petition No. 02/MP/2014 seeking implementation of the Commission's order dated 20th September, 2012 as upheld by this Tribunal vide judgement dated 3rd July, 2013 in Appeal No. 250 of 2012.

NLC had made following prayers in the petition :-

- a. *Entertain the petition and adjudicate upon the disputes raised by KSEB, Respondent No. 1 herein in regard to the implementation of the Orders passed by this Hon'ble Commission dated 20.9.2012 in Petition No. 15 of 2010 and upheld by the Appellate Tribunal for Electricity vide Order dated 3.7.2013 in Appeal No. 250 of 2012;*
- b. *Declare that KSEB and other Respondents are entitled to the adjustment of an amount of `5829.27 lakhs and in the proportion as contained in the statement attached and KSEB and other Respondents are not entitled to any further or other amounts, as claimed by KSEB or otherwise;*

- c. *pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

13. The KSEB vehemently opposed the petition. In the counter affidavit filed by it before the Commission, KSEB stated as under :-

- (a) *The said orders having attained it's finality in law, the present petition is not maintainable and therefore deserves to be dismissed at threshold.*
- (b) *The present claim of NLC is that the tax holiday to which it is entitled under the provisions of Income Tax Act does not extend to its mining activities. Assuming without conceding that this stand of NLC in the present petition is to be accepted, then NLC is not entitled to seek reimbursement from its beneficiaries, income tax, if any which it has paid in respect of mines under the terms of CERC Regulation; Mining is not core business which is defined as regulated activity.*
- (c) *It is most pertinent to mention that NLC has not provided any supporting evidence or expert opinion of the tax consultant that tax holiday benefit under section 80 IA is not available for mines.*
- (d) *It may not be out of place to mention that NLC has not been claiming fixed charges in respect of Mines like the fixed charges claimed for power plants. The cost of mining is being charged from beneficiaries in the form of energy charge. More precisely, Hon'ble Commission has been approving the transfer price of lignite based on the norms approved by Ministry of Coal.*
- (e) *It was the specific case of NLC that the tax on income from TPS I Expansion*

inclusive of it's mine was a pass through component to be recovered from KSEB; it is settled case and now NLC cannot be allowed to re open the issue.

- (f) The present claim of NLC is that as per the orders of CERC and APTEL, the tax holiday benefits admissible under sec 80 IA has been allowed only for the component of TPSI Expansion and it does not extend to the mining operation connected with the power station. Accordingly, NLC had again revised the Income Tax payable by KSEB and other beneficiaries of NLC TPS I Expansion.*
- (g) The generating company was bound to avail tax holiday benefits for NLC Mines; the contention of the petitioner that there can be no tax holiday on tax on income from mining operations is bereft of merits.*
- (h) KSEB had objected to the quantum of credit of **Rs.20.31 Cr** due to the above revised computation of IT reimbursement dues pertaining to TPS I Expansion IT dues removal and sought for the entire amount of **Rs.62.09Cr.** and hence this petition was filed by the petitioner on the quantum of adjustments to be given by NLC to various beneficiaries of TPS I Expansion for adjudication under the provisions of Section 79(1) (f) of the Electricity Act 2003.*
- (i) NLC has to provide certificates of their statutory auditors for settling IT liabilities, but NLC has failed to furnish the same.*

14. The said petition was disposed off by the Commission vide order dated 5th September, 2016 which has been impugned by KSEB in this appeal.

15. We have heard Learned Counsel for the Appellant as well as Learned Senior Counsel appearing on behalf of the 2nd Respondent. the arguments advanced by the Learned Senior Counsel were adopted by the Learned Counsel appearing for Respondent No. 3. We have also perused the impugned order and have gone through the written submissions of the Learned Counsels.

16. First and foremost ground of challenge to the impugned order raised by the Appellant – KSEB, is that the impugned order being unreasoned and non speaking, is liable to be set aside on this score only.

17. Perusal of the impugned order would reveal that the Commission took note of the contentions raised by the NLC (petitioner therein) as well as those raised on behalf of the beneficiaries TANGEDCO, KSEB and the Karnataka Discom. After adverting to the contentions of the parties, the Commission has stated under the heading “Analysis of the case” as below:-

Analysis of the Case

“10. We have considered the submissions of the petitioner and the respondents. The petitioner has filed the present petition for adjudication of the disputes and differences between NLC and KSEB in regard to implementation of the Commission’s order dated 20.9.2010. The petitioner had filed Petition No. 15/2010 seeking direction to KSEB to reimburse the outstanding income tax

dues as on 31.3.2009. In that petition, KSEB contended that NLC had not availed the benefit of 80IA for TPS-I expansion from the years 2004 to 2009. Accordingly, KSEB retained the amount in respect of TPS-II to ensure that NLC availed the benefit of 80IA and to pass on that benefit to the consumers. The Commission, after considering the submission of the parties, vide order dated 20.9.2012 in Petition No. 15/2010, observed that since NLC has no tax liability during 2004-09, the claim of 80 IA benefit does not survive and directed KESB to refund the withheld amount of Rs. 57 crore in respect of TPS-II Expansion. Aggrieved by the Commission`s decision dated 20.9.2012, the petitioner filed an appeal before the Appellate Tribunal for Electricity. Appellate Tribunal vide its judgment dated 3.7.2013 in Appeal No. 250/2012 dismissed the appeal and upheld the Commission`s order dated 20.9.2012.”

11. The petitioner re-worked out the amount to be reimbursed in terms of the Commission`s order dated 20.9.2012 and judgment of Appellate Tribunal dated 3.7.2013 after taking out the TPS-I Expansion component. The petitioner vide its letter dated 20.11.2013 requested the respondents including KSEB to reimburse the amount to the extent the same related to TPS-I Expansion. The respondents disputed the claim of the petitioner and have stated that quantum of reimbursement are not supported with statutory auditor`s certificate. 12. The petitioner has placed on record the statutory auditor's certificate for the reimbursement of original claim and revised claim after taking out the IT reimbursement dues Page 9of 10 Order in Petition No.002/MP/2014 Order in Petition No.002/MP/2014 Page 10of 10 in respect of TPS-I Expansion. The

petitioner vide affidavit dated 12-11-2014 has submitted the original claim and revised claim as certified by the statutory auditors as under: (iii) Original IT reimbursement Claim (` in lakh) EB's * 2001-02 to 2005-06 2006-07 2007-08 2008-09 Total APTRANSCO 10200.39 - 2153.11 2979.09 15332.59 KARNATAKA 8689.13 2619.43 6441.57 3307.42 21057.55 KERALA 4951.57 2285.47 3355.19 1732.67 12324.90 TNEB 15350.11 13122.95 8938.87 6909.69 44321.62 PUDUCHERY 2261.90 - 1423.92 848.30 4534.12 TOTAL 41453.10 18027.85 22312.66 15777.17 97570.78 (iv) Revised IT reimbursement claim duly certified pursuant to order of the Commission and the Tribunal taking out TPSI Expansion component. (` in lakh) EB's *2001-02 to 2005-06 2006-07 2007-08 2008-09 Total APTRANSCO 10200.39 - 2153.11 2979.09 15332.59 KARNATAKA 12434.89 - 3239.71 3307.42 18982.02 KERALA 6796.30 - 1764.92 1732.67 10293.89 TNEB 24944.94 3350.16 7660.16 6909.69 42864.95 PUDUCHERY 2834.70 - 585.07 848.30 4268.07 TOTAL 57211.22 3350.16 15402.97 15777.17 91741.52 *Difference claim between CERC regulations and Bulk power supply agreement terms. 13. The difference between the original claim and the revised claim drawn up in compliance with the Commission's order and judgement of Appellate Tribunal, amounting to `5829.26 lakh (`97570.78 lakh-`91741.52 lakh) was appropriated between the beneficiaries according to their allocation of power. 14. In view of the above, in our opinion the points raised by KSEB and other respondents do not warrant any intervention as the same is in line with APTEL judgement dated 03.07.2013 in Appeal No. 250/2012 Accordingly, the parties should act in accordance with Revised IT

reimbursement claim duly certified by auditor as submitted by the petitioner.”

18. It is, therefore, evident that in the final analysis of the case, the Commission neither referred to the contentions raised by the beneficiaries including Appellant- KSEB nor discussed the same. It has, after reiterating the submissions of the NLC, merely stated in one line that in the opinion of the Commission, the points raised by the KSEB and other respondents do not warrant any intervention. We find that the objections raised by the Appellant – KSEB to the petition filed by NLC, which have already been noted herein above, required due consideration from the Commission. The Commission may have found those objections of KSEB baseless and sans any merit but it was bound to give reasons in detail for arriving at such conclusion. It is not appropriate for a quasi judicial authority like the Commission to pass such a cryptic and non-speaking order which is devoid of proper reasoning.

19. We may note that while exercising quasi judicial functions as an adjudicator, the Commission is bound to take note of every contention/objection raised before it by any of the parties and to give reasons for accepting or rejecting such contention/objections. Reasoned order is the hallmark of judicial system. A reasoned order provides a clear understanding of the decision making process and ensures

fairness, accountability and credibility. It reinforces fairness as well as rule of law and enables effective review/appeal process. It is the fundamental consideration in decision making process that the party or the parties must know why and on what grounds the order has been passed against him/them. A speaking order introduces fairness in the decision making and helps in minimizing arbitrariness. The purpose of recording reasons is also to serve wider aspect of principle of justice that justice must not only be done, it must also seem to be done. Reasons act as a bridge between the material facts on which conclusion is drawn and the actual order passed. Reasoning in a judicial order is necessary not only for the satisfaction of the parties but also for the appellate court/forum which must know the reasons for arriving at the decision assailed before it.

20. The Hon'ble Supreme Court has also emphasized in several cases, the importance of reasoned orders. The requirement of indicating reasons has been judicially recognized as imperative. In *Raj Kishore Jha Vs. State of Bihar* (2003) 11 SCC 519, the Apex Court held:-

“8. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made;....”

21. Similarly in Asstt. Commissioner, Commercial Tax Deptt. Vs. Shukla & Brother (2010) 4 SCC 785, it has been observed as under:-

“23. We are not venturing to comment upon the correctness or otherwise of the contentions of law raised before the High Court in the present petition, but it was certainly expected of the High Court to record some kind of reasons for rejecting the revision petition filed by the Department at the very threshold. A litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that a party would be in a position to challenge the order on appropriate grounds. Besides, this would be for the benefit of the higher or the appellate court. As arguments bring things hidden and obscure to the light of reasons, reasoned judgment where the law and factual matrix of the case is discussed, provides lucidity and foundation for conclusions or exercise of judicial discretion by the courts.

24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.

25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be

very correct in law to say, that there is a qualified duty imposed upon the Courts to record reasons.

26. Our procedural law and the established practice, in fact, imposes unqualified obligation upon the courts to record reasons. There is hardly any statutory provision under the [Income Tax Act](#) or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that the courts and tribunals are required to pass reasoned judgments/orders. In fact, Order 14 Rule 2 read with [Order 20 Rule 1 of the Code of Civil Procedure](#) requires that, the Court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the Court.

27. By practice adopted in all Courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In *Alexander Machinery (Dudley) Ltd.* there are apt observations in this regard to say "failure to give reasons amounts to denial of justice". Reasons are the real live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated hereinabove."

22. Thus, reason is the heartbeat of every conclusion and without the same, it becomes lifeless. Giving reason furthers the cause of justice and avoids arbitrariness as well as uncertainty. A litigant has a legitimate expectations of knowing the reasons for rejection of his claim/prayer.

23. In the instant case, we have already noted that the impugned order of the Commission is bereft of any reasons and thus a non-speaking order. We feel it immensely regrettable that the Commission while passing the impugned order has, for the reason best known to it, chosen not to refer to the objections raised by the Appellant – KSEB to the petition of NLC and to discuss the same while disposing off the petition. Such a cryptic order cannot be sustained. The absence of reasons has rendered it not sustainable. We are of the firm view that passing of such non-speaking orders by the State Electricity Commissions/Central Electricity Commissions like the present one needs to be deprecated so as to send a clear message to the Commissions that the orders passed by them need to be well-reasoned as well as speaking orders.

24. Hence, the impugned order of the Commission is hereby set aside. The Appeal stands allowed and the case is remanded back to the Commission with the direction to pass a fresh speaking/reasoned order after hearing the parties. The needful shall be done by the Commission within two months from the date of this order positively.

25. The Registrar/Dy. Registrar of this Tribunal is directed to transmit a copy of this order to all the State Electricity Commissions/Central Electricity Commission for their information and compliance.

Pronounced in the open court on this 26th day of March, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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