

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

REVIEW PETITION NO.2 OF 2025

Dated: 29.05.2025

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

In the matter of:

Jindal Power Limited

Through its General Manager

Registered Office at:

Tamnar, Distt. Raigarh – 496107

Chhattisgarh

Email: info@jindalpower.com

...Petitioner

Versus

1. Central Electricity Regulatory Commission

Through its Secretary

3rd & 4th Floor, Chanderlok Building,

36, Janpath, New Delhi – 110001

Email: secy@cercind.gov.in

2. Chhattisgarh State Power Distribution Co. Ltd.

Through its Additional Chief Engineer (RAC)

Vidyut Seva Bhavan, Danganiya,

Raipur – 492013, Chhattisgarh

Email: ce.project@cspc.co.in

3. Jindal Steel & Power Ltd.

Through its Managing Director

G.E. Road, P.O. Mandir Hasoud,

Distt. Raipur – 492001 Chhattisgarh

Email: info@jindalpower.com

4. Power Grid Corporation of India Limited

Through its Managing Director
Western Region – I, Sampriti Nagar,
Nari Ring Road, P.O. Uppalwadi,
Nagpur – 440026, Maharashtra
Email: cmd@powergrid.in

...Respondent (s)

Counsel for the Petitioner(s) : Sanjay Sen, Sr. Counsel
Sanjeev K. Kapoor
Divya Chaturvedi
Srishti Rai
Jai Dhanani
Saransh Shaw

Counsel for the Respondent(s) : Apoorv Kurup, Sr. Counsel
Akhil Hasija for Res. 2

ORDER

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. By way of this petition, the petitioner Jindal Power Limited (in short "JPL") has sought review of our common judgment dated 02.12.2024 passed in two appeals bearing no.210 of 2016 and 279 of 2016 with regards to certain directions passed by us in relation to appeal no.279 of 2016.

2. Both these appeals had been filed by Chhattisgarh State Power Distribution Company Limited (in short "CSPDCL") which is arrayed as respondent no.2 in this petition.

3. In appeal no.210 of 2016, the appellant CSPDCL has challenged the order dated 19.12.2015 passed by Central Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in petition no.06/MP/2014 whereby the Commission had refused to cancel the transmission license granted to the review petitioner JPL vide order dated 09.05.2011 passed in petition no.105 of 2010. Vide the judgment under review dated 02.12.2024 this tribunal dismissed the said appeal thereby upholding the grant of transmission license to the review petitioner JPL.

4. In appeal no.279 of 2016, the appellant CSPDCL had challenged the tariff order dated 18.12.2015 passed by the Central Commission whereby Final Annual Transmission Tariff for the period from financial year 2009-2014 in respect of 400KV JPL Tamnar-PGCIL Raipur D/C line was determined with respect to the transmission license dated 09.05.2011 granted by the Commission to JPL. This tribunal, vide the judgment under review dated 02.12.2024, partially allowed the appeal thereby holding CSPDCL liable to payment of transmission charges with effect from 20.12.2023 only, and not for the period prior thereto.

5. According to the review petitioner, the finding of this Tribunal that CSPDCL is liable for payment of transmission charges with effect from 20.12.2023 only has been rendered on the basis of inadvertent understanding that the petitioner JPL has not disputed the fact regarding use of the transmission line by CSPDCL from 20.10.2023. It is submitted that the said inadvertent error has occurred on account of fact that CSPDCL had averred so for the first time in its written submission copy of which was supplied to the petitioner JPL on 01.10.2024 whereas the petitioner had already filed its written submissions on 30.09.2024 and since the judgment had already been reserved on these two appeals by the tribunal, there was no occasion for JPL to controvert these contentions of CSPDCL.

6. It is argued by learned senior counsel appearing on behalf of the review petitioner that once grant of transmission license to JPL on 09.05.2011 is upheld by this tribunal vide judgment under review dated 02.12.2024, ISTS charges are automatically payable as per the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (in short CERC Sharing Regulations, 2010) from the date of grant of the transmission license. It is further pointed out that since the tariff order in question in appeal no.279 of

2016 was for the period from 09.05.2011 (i.e. from the date of grant of transmission license to JPL) up to 31.03.2014, CERC Sharing Regulations, 2010 are applicable and any reference to CERC Tariff Regulations, 2009 is erroneous. The learned senior counsel urged this tribunal to invoke powers of review under Order 47 Rule 1 of the Civil Procedure Code, 1908 to correct the said inadvertent patent error that has occurred in the judgment under review.

7. The petition is vehemently opposed on behalf of the 2nd respondent CSPDCL. Learned counsel for CSPDCL submitted that the fact that CSPDCL in utilizing the transmission line in question was brought to the notice of this tribunal during the hearing held on 06.09.2024 and only the date of commissioning of utilization of the said line by CSPDCL was mentioned in the written submissions dated 27.09.2024 filed before this tribunal. It is argued that the assertion of the review petitioner that CSPDCL had not disclosed the factum of the utilization of transmission line in question prior to filing of its written submissions is incorrect and misleading. The learned counsel also referred to section 2(l) of CERC Sharing Regulations, 2010 to contend that liability to share transmission charges for an ISTS line arises only in respect of users of any segment/element of the line and since

CSPDCL was not a user of transmission line in question prior to 20.10.2023, this Tribunal has rightly held CSPDCL liable to pay transmission charge for the said line with effect from 20.10.2023 and therefore, no error (patent or otherwise) can be said to have occurred in the judgment under review. It is argued that even under POC regime, in order to determine and allocate transmission charges under Regulation 7 of CERC Sharing Regulations, 2010, it is first necessary to hold that the designated ISTS customer is actually a user of the relevant segment/element of the line in question and in the instant case, such condition was satisfied on 20.10.2023 when CSPDCL commenced utilization of the transmission line.

8. Thus, according to the CSPDCL, the judgment under review does not suffer from any error apparent on the face of record and therefore, no case for its review had been made out.

9. We have considered the rival submissions of the learned counsels and have perused the judgment under review dated 02.12.2024 as well as the written submissions that had been filed by the parties in support of their contentions in the two appeals.

10. Concededly, it was nowhere disclosed by CSPDCL in the pleadings of the two appeals before this tribunal that it has commenced utilization of the transmission line and switchyard in question. As per the contentions of CSPDCL itself, this fact was brought to the notice of this tribunal for the first time during the hearing held on 06.09.2024. However, it is manifest that the exact date when CSPDCL commenced utilization of the said transmission line, was not communicated to the tribunal on the said date i.e. 06.09.2024 and accordingly no such date had been recorded in the proceedings of that date. It is in the written submissions dated 27.09.2024 filed by CSPDCL that the date of commencement of utilization of the transmission line in question has been disclosed for the first time as 20.10.2023. Admittedly, copy of these written submissions filed on behalf of CSPDCL had been supplied to JPL on 01.10.2024. However, JPL had already filed its written submissions on 30.09.2024. Therefore, we feel in agreement with the submissions made on behalf of JPL that there was no occasion for it to controvert the factual statement made by CSPDCL in its written submissions for the first time for the reason that the hearing of the appeals had already been concluded and judgment had been reserved.

11. In the judgment under review dated 02.12.2024, we have observed with regards to appeal no.279 of 2016:-

“27. It is not disputed on behalf of the 2nd Respondent and 3rd Respondent that the Appellant has been using the transmission line in question w.e.f. 20th October, 2023 only. No justification has been given on behalf of the Respondents as to why the Appellant should be burdened with transmission charges for the said transmission line for any period prior to 20th October, 2023. We also feel it justified and equitable to hold the Appellant liable for payment of transmission charges in regard of the said transmission line & switchyard w.e.f. from the said date i.e. 20th October, 2023 only.

28. Hence, the Appeal No. 279 of 2016 deserves to be partly allowed to the above extent.”

12. It is evident that we had proceeded on the assumption that the contention of CSPDCL to the effect that it has been using the transmission line in question with effect from 20.10.2023 has remained undisputed on

behalf of review petitioner JPL. However, it now appears that this assumption was mistaken for reason that there was no occasion for JPL to dispute the statement of CSPDCL to the effect that it has commenced use of transmission line in question on 20.10.2023 only in view of the circumstances noted hereinabove. Therefore, we find it expedient in the interest of justice to correct the said inadvertent patent error that has occurred in the judgment under review.

13. Hence, we allow the review petition and direct that the paragraph nos.27 to 30 of the judgment dated 02.12.2024 passed in the two appeals bearing nos.210 of 2016 and 279 of 2016 shall be read as under: -

“27. Even though it is contended on behalf of the appellant that it has been using the transmission line with effect from 20.10.2023, no material has been produced in support of such contention. Therefore, we are unable to accept the submission of the appellant that it should be held liable for transmission charges for the same only from the said date i.e. 20.10.2023 and

not for any prior period. It would be in the fitness and fairness of things to direct that the liability of the appellant for transmission charges for the transmission line in question shall be determined in terms of the provisions of CERC Sharing Regulations, 2010.

28. Hence, appeal no. 279 of 2016 is disposed off in these terms.

Conclusion:

29. We do not find any ground to interfere with order dated 09.12.2015 of the Commission passed in petition No. 6/MP/2014 and accordingly, the Appeal No. 210 of 2016 is hereby dismissed.

30. Appeal no.279 of 2016 is disposed off with the direction that the transmission charges for the transmission line and switchyard in question shall be

levied on the appellant in terms of the provisions of
CERC Sharing Regulations, 2010.”

Pronounced in the open court on this the 29th day May of 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

tp/nr