

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

APPEAL No. 371 of 2018

Dated: 02.07.2025

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

IN THE MATTER OF:

Madhya Pradesh Power Management Company Ltd,
Through its Officer-In-Charge,
Sh. Rajeev Kumar Gupta,
Senior General Manager (Regulatory)
Having its office at,
Shakti Bhawan, Rampur,
Jabalpur-482002, Madhya Pradesh.

...Appellant

Versus

- 1) Central Electricity Regulatory Commission,
Through its Secretary,
Fourth Floor, Chanderlok Building,
Janpath, New Delhi - 110001.
- 2) NTPC Limited,
NTPC Bhawan, Scope Complex Institutional Area,
Lodhi Road,
New-Delhi -110003.
- 3) Power Grid Corporation of India Ltd,
Saudamini, Plot No. 2 Sector-29,
Near IFFCO Chowk,
Gurgaon- 122001, Haryana.
- 4) Mahan Energen Ltd.
Through its Managing Director
Having its office at,
Lower Ground Floor,

Hotel Conclave Boutique,
A-20, Kailash Colony,
New Delhi – 110048.

- 5) National Load Despatch Centre,
B-9, Qutub Institutional Area,
Katwaria Sarai,
New-Delhi – 110 016.
- 6) Western Region Power Committee,
F- 3, MIDC Area, Marol,
Opp. SEEPZ, Central Road,
Andheri (E), Mumbai- 400 093
Maharashtra
- 7) Essar Steel India Ltd,
27th KM, Surat-Hazira Road,
Hazira- 394 270,
Dist: Surat, Gujarat
- 8) Essar Power Transmission Company Ltd,
Tower-2, 5th Floor, Equinox Business Park,
Off Bandra-Kurla Complex,
LBS Marg, Kurla (W),
Mumbai- 400 007, Maharashtra

...Respondent(s)

Counsel for the Appellant(s) : Mr. Paramhans Sahani
Mr. Aashish Anand Bernard

Counsel for the Respondent(s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Samir Malik
Ms. Nikita Choukse
Mr. Mahip Singh Sikarwar
Mr. Tushar Mathur
Ms. Himani Yadav for R-4

Mr. Buddy A. Ranganadhan, Sr. Adv.
Ms. Shefali Tripathi
Mr. Rishi
Mr. Mahesh Agarwal
Mr. Rohan Talwar

Mr. Shashwat Singh for R-8

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. M/s. Madhya Pradesh Power Management Company Ltd. filed the captioned appeal challenging the Order dated 15.06.2016 (in short "Impugned Order") passed by Central Electricity Regulatory Commission (in short "CERC" or Commission") in Petition No. 173/TT/2013 and Petition No. 111/TT/2015 and Order dated 30.1.2018 (in short "Review Order") dismissing the Review Petition No. RP/55/2016.

Description of Parties

2. Appellant, M.P. Power Management Company Ltd., is a holding company of the State of Madhya Pradesh entrusted with the purchase of power for the Discoms of M.P., inter alia, is a beneficiary of Respondent No. 8.

3. Respondent No. 1 is the Central Electricity Regulatory Commission, which is a statutory body functioning vested with the functions and powers by the Electricity Act 2003 (in short "Act").

4. Respondent No. 2, NTPC Limited, is a Government Company engaged in the business of generation of electricity, inter alia owning the Gandhar Gas-based Power Project.

5. Respondent No. 3, Power Grid Corporation of India Limited (in short “PGCIL”), is a deemed Inter-State Transmission Licensee and was mandated to undertake functions of Central Transmission Utility (in short “CTU”) under Section 38 (1) of the Electricity Act, 2003, for transmission of power, before bifurcating into two entities, namely PGCIL and CTUIL.

6. Respondent No. 4, Mahan Energen Limited, is a generating company formerly known as M/s Essar Power M.P. Ltd. (in short “EPMPL”).

7. Respondents Nos. 5 and 6, National Load Despatch Centre (in short “NLDC”), and Western Region Power Committee (in short “WRPC”) are the Statutory authority constituted under the Act.

8. Respondent No. 7, Essar Steel India Ltd., is a group company of Essar Group engaged in the business of steel manufacturing.

9. Appellant No. 8, Essar Power Transmission Company Ltd. (in short “EPTCL”), was granted a transmission licence by the Commission on 29.04.2008, effective from 08.04.2008, to develop specific transmission lines and substations.

Factual Matrix of the Case
(as submitted by the Appellant)

10. The instant appeal is filed against the order dated 30.1.2018 and 15.06.2016 by which the CERC has held that the Gandhar Hazira 400 KV line, along with its associated bays and transmission system developed by the Essar Power

Transmission Company Ltd (EPTCL) is an Inter-State Transmission system and therefore charges are to be paid for the entire transmission system by the parties including the present Appellant.

11. The CERC, while dismissing the Review Petition No. 55/RP/2016 vide order dated 30.1.2018, has held that the Appellant and Respondent No. 2 are seeking a review of the order dated 10.4.2008 by which the EPTCL was granted an Inter-State Transmission licence by CERC.

12. It is submitted that the Inter-State Transmission licence granted vide order dated 10.4.2008 was subject to the terms and conditions of the Electricity Act, 2003, and the rules and regulations made thereunder.

13. Appellant and Respondent No. 2 in the Review Petition No. 55/RP/2016 submitted that the Gandhar Hazira 400 KV line along-with its associated bays and transmission system developed by the EPTCL is a dedicated transmission line and therefore the charges for the same cannot be burdened onto the beneficiaries as the same is contrary to the provisions of the Electricity Act, 2003 and the rules and regulations made thereunder.

14. However, the CERC has held that the review petition is seeking to review the order dated 10.4.2008, which granted the inter-state transmission licence, and therefore, the same was dismissed.

15. It is submitted that the CERC has dismissed the review petition and submissions of the Appellant and Respondent No. 2 on mere technicality and has failed to consider, examine and appreciate that the EPTCL has constructed a

dedicated transmission line in violation of the inter-state transmission licence and is charging the cost of the same to the beneficiaries which is completely in violation of the Electricity Act, 2003, the rules and regulations made thereunder and also against public interest and consumer interest.

16. Accordingly, the Appellant filed the captioned Appeal.

Submissions, Observations and Conclusions

Submissions of the Appellant

17. It is submitted that, Essar Power Ltd. (hereinafter, "EPL") through its subsidiary company, namely, Essar Power MP Ltd. is/was setting up the Mahan Thermal Power Project in District Singrauli in the State of Madhya Pradesh (hereinafter, the "Mahan TPS") with a capacity of 2x600 MW in the first phase and ultimate capacity of 1800 MW-2000 MW. It is an admitted fact that out of the power generated from the project, 700 MW power is proposed to be transmitted to the steel plant of Essar Steel Ltd. and Essar Steel (Hazira) Ltd., Hazira in the State of Gujarat. For the purpose of evacuating and transmitting power from Mahan TPS, Essar Power M.P Ltd (Respondent No.4 applied to the Central Transmission Utility (CTU-Respondent No.3 herein) for availing long term access wherein 400 MW was to be transmitted to Madhya Pradesh and 700 MW was to be transferred to Essar Steel Ltd., Hazira in Gujarat.

18. In the 9th Meeting of Western Region constituents regarding long-term open access held at Indore on 30.07.2007, Respondent No.4 informed that its objective was to use the CTU's transmission system only so far as displacement of 700 MW

power was concerned for drawal at Hazira. For facilitating such drawal, a new 400/220 kV substation at Hazira (Essar Steel) interconnected with the Jhanor Gandhar Gas Power Station of the Petitioner (hereinafter, the "Gandhar GPS") was considered. The transmission company in Gujarat informed in the said Meeting that interconnection at Hazira (Essar Steel) with Western Region grid was to be on a stand-alone basis i.e. on radial mode and was not to be connected to the 220 KV network at any point. Respondent No.4 (Essar MP Power Ltd) confirmed that there was to be no interconnection at 220 KV level between Hazira (Essar Steel) and Gujarat network i.e. interconnection at proposed 400/220 KV Hazira (Essar Steel) substation with the Western Region grid was to be on radial mode.

19. That, after detailed deliberations in the aforesaid Meeting, it emerged that the following transmission system strengthening was required for transfer of power from Mahan TPS to its beneficiaries:

- a) Establishment of 400/765 kV 3x1500 MVA WR Pooling Station (near Sipat) by LILO of 765 kV Sipat-Sioni 2xS/c.
- b) WR Pooling Statino - Mahan TPS 400 kV D/c (Triple)
- c) WR Pooling Station- Seoni 765 kV3rd S/c
- d) Installation of 3x1500 MVA 765/400 kV transformers at Wardha to charge Seoni - Wardha 2xS/c line at 765 kV level.
- e) Gandhar (NTPC)-Hazira (Essar Steel) 400 kV D/c
- f) Establishment of 400/220 kV, 3x500 MVA substation at Hazira (Essar Steel).

20. The Minutes of the Meeting recorded that out of the above scope, works at Sl. No. (b), (e) and (f) being a part of the dedicated system, were to be carried out by Respondent No.4 at its own cost. Remaining works were to be implemented as Western Region system strengthening scheme and Respondent No.4 was to share the transmission charges proportionately as one of the beneficiaries of Western Region grid.

21. It is further submitted that, subsequently, EPL constituted a subsidiary company, namely, Essar Power Transmission Company Ltd. (Respondent No.8 herein) for undertaking transmission of power generated from Mahan TPS and setting up Associated Transmission System for the same. Respondent No.8 (EPTCL) then proceeded to obtain a transmission licence from the Commission for developing the transmission system associated with Mahan TPS. The said license was granted vide Order dated 10.04.2008 passed in Petition No. 157/2007.

22. It is submitted that the Commission in order dated 10.04.2008 for granting licence has held that It is further made clear that the Commission does not propose to treat the transmission system as a “dedicated” transmission system, for construction, maintenance and operation of which licence is not needed by the generating company, since the system may be utilized in future for carrying power other than that for which it is being proposed to be constructed presently.

23. The Bulk Power Transmission Agreement (BPTA) dated 7.2.2009, signed between EPL and PGCIL, clearly defines the status of the Gandhar Hazira transmission line as dedicated transmission system. In the BPTA, it is also Page 5 of 10 Order in Review Petition No.55/RP/2016 specified that this line will operate in radial mode till Essar Steel Hazira end and that it will never become a part of

the meshed network and will not be connected in future with the transmission system of GETCO at 220 kV level at Hazira end.

24. It is submitted that the CERC has while dismissing the Review Petition no. 55/RP/2016 vide order dated 30.1.2018 has erroneously held that the Appellant and Respondent no. 2 are seeking a review of the order dated 10.4.2008 by virtue of which the EPTCL was granted an Inter-State Transmission licence by CERC. It is submitted that the Inter-State Transmission licence granted vide order dated 10.4.2008 was subject to the terms and conditions of the Electricity Act, 2003 and the rules and regulations made thereunder. It is submitted that it was the specific submission of the Appellant and Respondent no.2 in the Review Petition no. 55/RP/2016 that the Gandhar Hazira 400 KV line along-with its associated bays transmission system developed by the EPTCL is a dedicated transmission line and therefore the charges for the same cannot be burdened onto the beneficiaries as the same is contrary to the provisions of the Electricity Act, 2003 and the rules and regulations made thereunder.

25. However, the Commission has held incorrectly that the review petition is seeking to review the order dated 10.4.2008, which granted the inter-state transmission licence and therefore the same was dismissed. It is submitted at the outset that the Commission has dismissed the review petition and submissions of the Appellant and Respondent no.2 on mere technicality and has failed to consider, examine and appreciate that the EPTCL has constructed a dedicated transmission line in violation of the inter-state transmission licence and is illegally charging the cost of the same to the beneficiaries which is completely in violation of the Electricity Act, 2003, the rules and regulations made thereunder and also against public interest and consumer interest.

26. It is therefore submitted that in light of the submissions made herein above, this Tribunal may be pleased to allow the Appeal and set aside the impugned orders passed by the Commission.

Submissions of the EPTCL

27. The CERC had issued an Order dated 10.04.2008 (the “Licence Order”) granting a transmission license to EPTCL for three elements of its transmission system, the relevant one for this case being the 400 kV D/C (twin conductor) transmission line from Gandhar NTPC switchyard to Hazira along with sub-stations and associated bays (“Stage I Line”). Para 13 of the Licence Order is extracted herein below:-

“13...the Commission does not propose to treat the transmission system as a dedicated transmission system for construction, maintenance and operation of which licences is not needed by the generating company, since the system may be utilised in future for carrying power other than that for which it is being proposed to be constructed presently.”

28. The License Order @ Para 13 specifically states that EPTCL’s transmission system shall not be treated as dedicated. Moreover, the License Order has not been challenged by any party (including MPPMCL) and has now achieved finality.

29. Barred by law from challenging the License Order, MPPMCL is now indirectly trying to challenge the same through the present proceedings. This approach is

contrary to the principle of '*quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*' or whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance. [Ref: Para 21, **Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336**]

30. The present proceedings are nothing more than an attempt to indirectly challenge the License Order, which is impermissible in law. The Review Order holds:

*“Accordingly transmission tariff was granted to the Associated Transmission System of Mahan TPS in order dated 15.6.2010 considering the same as ISTS. **The order granting transmission license to EPTCL has not been challenged and has attained finality. Therefore, the grounds raised by NTPC and MPPMCL with regard to the nature of the transmission lines lack merit and cannot be considered in review.***

10. As regards the contention of NTPC and MPPMCL that the transmission charges of the two bays at Gandhar Switchyard should not be included in the PoC charges, it is clarified that the two bays formed part of the license granted to EPTCL and therefore are considered ISTS. Therefore, the tariff shall be reimbursed in accordance with the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (2010 Sharing regulations).”

31. In the present case, the Stage 1 Line (including the bays) is part of the License Order and, more importantly, is part of the ISTS network. It is well settled

that once a transmission line asset becomes part of the ISTS, it cannot be treated as dedicated.

32. The judgments of this Tribunal in ***Kanchanjunga Power Company Pvt. Ltd. v. CERC & Ors, App. 450/2019*** and ***Odisha Power Generation Corporation Limited v CERC & Ors, App. 16/2020*** (“OPGCL”) makes it clear that once a transmission asset becomes a part of the ISTS, it cannot be treated as dedicated. In the present case, the license granted to EPTCL under the License Order makes it clear that it is part of the ISTS and therefore cannot be treated as dedicated in nature.

33. Even assuming for the purpose of argument that, at the very highest, MPPMCL’s argument that the asset was a “dedicated asset” were to be accepted, Regulation 7(c) of the CERC Sharing Regulation, 2010 provides that *“The dedicated transmission lines constructed, owned and operated by the ISTS Licensees shall be considered to be a part of the Basic Network. Dedicated lines constructed, owned and operated by the generator shall not be considered as a part of the Basic Network. In the latter case, the generator will be deemed to be connected directly to the ISTS”*. In this regard, it is submitted that: -

- (a) Even if it were assumed that the subject asset was a part of a dedicated transmission system, the recovery of the costs of such “dedicated transmission system” is only to be from the PoC.
- (b) There can be no doubt that EPTCL’s Stage I line fulfils the criteria to be included in the basic network of an ISTS, for the purpose of including the same under the PoC mechanism.
- (c) Since EPTCL’s Stage-I line is operated by a transmission licensee and connected to the ISTS network, it becomes part of

the ISTS network and fulfils the criteria to be a part of the common commercial pool.

- (d) Since the EPTCL's Stage-I line is a part of ISTS. Therefore, the transmission tariff *inter-alia* the transmission charges are required to be determined in accordance with the CERC Sharing Regulations, 2010, which lays down the mechanism for such determination under through Point of Charge (PoC) methodology for the levy and collection of such transmission charges, which in turn is shared amongst all the users of ISTS.

34. MPPMCL's arguments appear to stem from a misunderstanding of the "dedicated transmission line" defined under Section 2(16) of the Electricity Act, 2003 with a "dedicated transmission system" under Regulation 7(c) of the CERC Sharing Regulations, 2010. The former belongs to a Generating Company (not to a transmission licensee) and the latter belongs to a transmission licensee. It is undisputed that the subject asset belongs to a transmission licensee. Even if it were assumed to be dedicated to certain beneficiaries, the Sharing Regulations provide that the recovery of the cost of such dedicated transmission asset be from the PoC and not from the so-called identified beneficiaries.

35. In view of the foregoing, EPTCL respectfully prays that the present appeal be dismissed.

Observations and Conclusions

36. Before we proceed and decide the matter, the identical issue has been considered and decided by this Tribunal in Appeal No. 106 of 2020 filed by two

Appellants, namely, Mahan Energen Ltd. and EPTCL, the Respondent Nos. 4 and 8 in the captioned appeal.

37. All the contentions put forth by the Appellant, MPPMCL, and Respondent, EPTCL, in this Appeal have been dealt with in detail in the Appeal No. 106 of 2020.

38. After considering the earlier judgments of this Tribunal in **Kanchanjunga Power Company Pvt. Ltd. v. CERC & Ors, App. 450/2019** and **Odisha Power Generation Corporation Limited v CERC & Ors, App. 16/2020**, and examining the arguments made there in, this Tribunal decided as under:

*“86. The only issue which emerges out after hearing the learned counsels on behalf of the Appellants and the Respondents and also examining the various documents placed before us including the past judgments/ orders, is **Whether an asset developed by a transmission licensee under an ISTS licence can be treated as a dedicated transmission line built by a generating station, inter alia, whether the liability to pay transmission charges can continued to be in accordance with the provisions of the Sharing Regulations.***

*92. The Central Commission, vide order dated 10.04.2008 in Petition No. 157/2007, granted EPTCL an ISTS licence covering several transmission elements, including the asset under dispute, i.e., **LIL O of one circuit of the 400 kV Vindhyachal–Korba line at Mahan TPS (approx. 20 km).***

93. In the same order, the Commission clarified that no licence is required to build a dedicated transmission line, and that the very act of granting an ISTS licence implies that the asset in question is part of the ISTS and not a dedicated transmission line, the para 13 of the order reads as under:

“It is further made clear that the Commission does not propose to treat the transmission system as a “dedicated” transmission system, for construction, maintenance and operation of which licence is not needed by the generating company, since the system may be utilized in future for carrying power other than that for which it is being proposed to be constructed presently.”

94. The above order of the Commission has not been challenged and has attained finality.

116. It is important to take a note of the provisions of the Act as noted in the foregoing paragraphs, specifically, Section 2(16), which defines “dedicated transmission lines” as lines as built by a generating station or a captive generating plant (under Sections 9 and 10), specifically for evacuation of power from the generating stations. Sections 9 and 10 provide that dedicated lines are owned by the generating stations, and no licence is required for such lines, and not by transmission licensees.

117. By contrast, Section 2(72) defines “transmission lines,” and Sections 2(73) and 40(a) lay down that only a licenced transmission entity may construct the transmission lines.

118. The Commission’s order dated 10.04.2008 in Petition No. 157/2007 granted EPTCL a transmission licence covering multiple lines and sub-stations, including the LILO of the 400 kV Vindhyachal–Korba line at Mahan TPS. That order explicitly noted that the assets in question were not dedicated lines but part of the ISTS.

119. This licence order has never been challenged and has attained finality. Once the LILO was included in the licenced scope, it is logically and legally inconsistent to treat the same line as if it were constructed without a licence by a generating station.

129. We, therefore, conclude that an asset developed by a transmission licensee under a valid ISTS licence cannot be classified as a dedicated transmission line. The LILO was explicitly included within the scope of EPTCL’s 2008 licence, which remains unchallenged. The Impugned Order’s reclassification of the LILO as “dedicated transmission line” is unsustainable in law.”

130. Accordingly, the liability to pay transmission charges for any ISTS asset must be determined under the Sharing Regulations,

reliance is also placed on this Tribunal judgment in Odisha Power Generation Corporation Limited v. CERC & Ors. The Commission erred in imposing exclusive liability on MEL for the LILO charges without duly applying the cost-sharing framework. The reliance on the “temporary” nature of the LILO or MEL’s relinquishment of LTA does not negate the fact that the line was, at all material times, part of a licenced ISTS.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 106 of 2020 has merit and is allowed.

The Impugned Order dated 21.01.2020, to the extent it treats the LILO of the 400 kV Vindhyachal–Korba line at Mahan TPS as a dedicated transmission line of MEL and imposes exclusive liability on MEL for transmission charges, is hereby set aside.

The LILO, having been included in the ISTS licence granted to EPTCL on 10.04.2008, shall be treated as an ISTS asset.”

39. Therefore, the issue has already been settled in Appeal No. 106 of 2020, an appeal ‘*inter se parties*’, inter alia, for the part of the same licenced asset.

40. Therefore, on the same grounds, the captioned appeal is completely covered by the judgment rendered therein, in Appeal No. 106 of 2020 dated 01.07.2025.

41. We, thus, found the present appeal to be devoid of merit and deserves to be dismissed.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 371 of 2018 is devoid of merit and is dismissed.

The CERC's Order dated 15.06.2016, passed in Petition No. 173/TT/2013 and Petition No. 111/TT/2015, and Review Order dated 30.1.2018, passed in Review Petition No. RP/55/2016 stands on merit and is upheld.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 2nd DAY OF JULY, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kks