

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

APL No. 61 OF 2016 &

IA No. 153 OF 2016 & IA No. 281 OF 2019

Dated: 29th August, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

ODISHA POWER TRANSMISSION CORPORATION LIMITED

Janapath,
Bhubaneswar
Odisha – 751022

... **Appellant (s)**

VERSUS

1. JINDAL STAINLESS LIMITED

KNIC, P.O. Danagadi,
Jajpur, Odisha – 755026

... **Respondent No.1**

2. ODISHA ELECTRICITY REGULATORY COMMISSION

Bidyut Niyamak Bhawan,
Unit VIII,
Bhubaneswar,
Odisha – 751012

... **Respondent No.2**

Counsel on record for the Appellant(s) : Raj Kumar Mehta for App. 1

Counsel on record for the Respondent(s) : Hitendra Nath Rath for Res. 1
Rutwik Panda for Res. 2

JUDGMENT

(PER HON'BLE MRS. SEEMA GUPTA, TECHNICAL MEMBER)

1. The Appellant-Odisha Power Transmission Corporation Limited (**"OPTCL"**) has preferred the instant appeal against the Order dated 27.01.2016 passed by Odisha Electricity Regulatory Commission (**"State Commission/OERC"**) in Case No.28 of 2015, whereby the Appellant was directed to treat the 1st Respondent, M/s Jindal Stainless Limited (**"JSL"**) as a short-term open access customer since it has availed open access in two phases for a period less than one year and directed the 1st Respondent to pay the transmission charges to the Appellant at the rate determined by OERC for short-term access customers.

2. The brief facts involved in this appeal are stated hereunder:

The Appellant-**Odisha Power Transmission Corporation Limited ("OPTCL")** is a wholly owned Company of the Government of Odisha and is carrying on the functions of Transmission of Electricity in the State of Odisha. Respondent No.1-**Jindal Stainless Limited ("JSL")** has availed power through open Access from its CGP at Jajpur, Odisha for its plant at Hisar Haryana. Respondent No.2 is the **Odisha Electricity Regulatory Commission**.

3. Odisha Electricity Regulatory Commission in exercise of powers conferred under Sub-section (2), (3) & (4) of Section 42 read with Section 39, 40, 86 and 181 of the Electricity Act, 2003 has framed **Orissa Electricity Regulatory Commission (Terms & Conditions for Open Access) Regulations, 2005** (**"OERC Regulations 2005"**) specifying that the said Regulations shall apply to Open Access for use of Intra-State Transmission and Distribution System in the State.

4. OERC in exercise of powers under Sub-Section (2) & (4) of Section 42 and Section 39, 40, 86 read with Section 181 of the Electricity Act, 2003 has framed **“Orissa Electricity Regulatory Commission Determination of Open Access Charges Regulations, 2006 (OERC Open Regulations 2006)”** for determination of Open Access Charges in the Intra-State Transmission and Distribution System in the State of Odisha.

5. Central Electricity Regulatory Commission (**“CERC”**) framed the **“CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in Inter-State Transmission and related matters) Regulations, 2009” (CERC Open Access Regulations)**, wherein Section (3) provides that the Regulations shall apply to the grant of connectivity, long term access and medium-term open access, in respect of Inter-State Transmission System. Long-term Access means the right to use Inter-State Transmission System for a period exceeding 12 years but not exceeding 25 years. Medium-term Open Access means the right to use the Inter-State Transmission System for a period exceeding 3 months but not exceeding 3 years.

6. The Odisha State Load Despatch Centre (**“SLDC”**), in accordance with the applicable Regulations of CERC/OERC, granted Standing Clearance/No Objection Certificate, dated 28.05.2014, for Open Access to Respondent No.1 from 01.11.2014 to 31.10.2015 through ISTS (inter-State Transmission System) up to 30 MW, specifying the rate of Transmission Charges as Rs. 250/- per MWh. The said clearance was for Transmission of Power from the CGP of Respondent No.1 at Duburi, Jajpur District, Odisha to the industry of Respondent No. 1 at Hissar in the State of Haryana. Further, SLDC granted Standing Clearance/No Objection Certificate, dated 04.09.14, from 01.02.2015 to 31.10.2015 to Respondent No.1 for Open Access through ISTS (inter-State

Transmission System) up to 10 MW. The Appellant has raised the bills on the Respondent No.1, which were duly paid by Respondent No.1 for some time. Thereafter, Respondent No.1 filed a Petition dated 10.08.2015 (Case No 28 of 2015) before OERC for determination of Open Access Charges under Section 39, 40, 42 (2) & (4), 86 read with Section 181 of the Electricity Act, 2003 read with OERC Open Access Regulations, 2005. OERC vide its order dated 27.01.2016, Impugned in the present Appeal, disposed of the said Petition with a direction that the Respondent No. 1 should be treated as a Short-term Open Access Customer as he has availed Open Access in two phases for a period less than one year and Respondent No.1 should pay the Transmission Charges to the Appellant at the rate determined by OERC for Short-term Open Access Customers. The Appellant was further directed to revise the bill of Open Access Charges pertaining to Respondent No.1. Aggrieved by the said directions of OERC in the Impugned Order, Appellant has preferred this appeal.

Appellant – OPTCL Submissions

7. Mr Raj Kumar Mehta, learned counsel for the Appellant, submitted that the dispute is with regard to the Transmission charges payable by Respondent No 1 with respect to State Transmission Network of OPTCL involved in inter-State Open Access. The Respondent No 1 has applied for NOC of SLDC for inter-State Medium Term Open Access vide Application, dated 20.05.2014, for 30 MW from 01.11.2014 to 31.10.2014 and vide Application, dated 22.08.2014, for 10 MW from 01.02.2015 to 31.10.2015. The SLDC granted NOC for Medium Term Open Access vide its Letter, dated 25.05.2014, for 30 MW for the period from 01.11.2014 to 31.10.2014 and vide letter, dated 04.09.2014, for 10 MW from 01.02.2015 to 31.10.2015 and in the NOCs, it was stated that State Transmission Charges are applicable as per OERC Order @ Rs. 250/- per MWh.

8. Learned Counsel further stated that no objection was raised by the Appellant regarding the Transmission Charges of Rs. 250/- per MWh, as specified in the NOC issued by SLDC, and the said charges were paid by Respondent No.1 for a period of seven months without any protest. However, subsequently, Respondent No 1 filed a Petition before OERC on the ground that OPTCL has been raising the Bills @Rs. 250/- per month considering Respondent No.1-JSL as a Long Term Customer even though JSL is a Short Term Open Access Customer as per OERC Intra-State Open Access Regulations, 2005.

9. Learned Counsel submitted that the OERC, vide ARR/Tariff Order dated 23.03.2015, has categorized open Access Customers as Long-Term Open Access Customers; which intend to avail access to the Inter-State/Intra-State Transmission System for a period of 25 years or more and Short-Term Open Access Customers, who intend to avail open access to the Inter-State / Intra-State Transmission for maximum one year and determined intra-State transmission charges for these categories of open access customers; which were quantified as Rs 6000/MW/Day (Rs 250/MWh) for Long Term Open Access Customers and 25 % of this i.e. Rs 1500/MW/Day (Rs 62.5 /MWh) for Short Term Open Access Customers. The rate of Rs. 250/- per MWh mentioned in the SLDC NOC was based on the Transmission Tariff Order dated 23.03.2015 issued by OERC, wherein it was stipulated that CGP will be treated as Long-Term Customers.

10. Learned counsel further submitted that the Respondent No.1 has availed inter-State Medium-Term Open Access in accordance with the provisions of the CERC Open Access Regulations, 2009, later, such inter-State Medium-Term Open Access could not be construed or treated as intra-State Short-Term Open Access for the purpose of levy of charges for

the State Network used in such inter-State Medium Term Open Access, in view of the definition contained under Section 2(36) of the Electricity Act, 2003. Moreover, having availed Open Access for a period of 7 months and paid Transmission Charges at the rate of Rs. 250/- per MWh based on the NOC granted by the SLDC, Respondent No.1 is estopped from challenging the said rate of transmission charges, as held by the Supreme Court in **“State of Punjab Vs. Dhanjit Singh” 2014 15 SCC 144.**

11. Learned Counsel also submitted that, even if Respondent No.1 intended to raise any dispute pertaining to Transmission Charges, the exclusive jurisdiction to adjudicate such dispute vests only with CERC in terms of Regulation 26 and Regulation 32 of the CERC inter-State Long-Term and Medium-Term Open Access Regulations, 2009. In view of above submissions, learned counsel submitted that Impugned Order is erroneous in law and is to be set aside.

Respondent No.1 – JSL Submissions

12. Mr G. Umapathi, learned Senior Counsel appearing on behalf of Respondent No.1, submitted that under the CERC Regulations, 2010 there are three categories of open access viz., Short-Term Open Access Customer (1 to 3 months), Medium Term Open Access Customer (3 months to 3 years) and Long-Term Open Access Customer (more than 3 years). Conversely, under the OERC (Terms and Conditions for Open Access) Regulations, 2005, open access is classified into two categories such as Short-Term Open Access customer (less than one year) and Long-Term Open Access Customer (from 25 years and above) and Charges for Short-Term Open Access is Rs. 62.50 per MW and that for Long Term Open Access it is Rs. 250 per MW. There is no provision for

Medium-Term Open Access under the OERC Open Access Regulations, 2005.

13. Learned Senior Counsel fairly submitted that SLDC Odisha, while granting NOC for open access from Jajpur (Odisha) to Hisar (Haryana) for two periods i.e. (i) 30 MW for the period 01.11.2014 to 31.10.2015, and (ii) 10 MW for the period 01.02.2015 to 31.10.2015, as requested by JSL, had indicated that State Transmission Loss and transmission charges shall be levied in accordance with the OERC Tariff Order, at the rate of Rs. 250 per MW. Respondent No.1 though initially paid transmission charges at the rate of Rs.250 per MW, however, vide its letter dated 12.03.2015 raised objection *inter alia* stating that the transmission tariff payable should be only as per transmission charges fixed by OERC with regard to short term open access customer at Rs.62.50 per MW as per OERC Regulations. Subsequently, by another letter dated 16.04.2015, Respondent No.1 requested revision of the transmission bills to Rs 62.50 per MW as against Rs. 250 per MW as claimed by the Appellant.

14. Only, thereafter, Respondent No.1 preferred a Petition before the OERC and upon hearing the parties, the State Commission, vide Impugned Order dated 27.01.2016, held that Respondent No.1, having availed open access for a period of one year and less, falls within the category of short-term open access customer, and the transmission charges shall be leviable at the rate prescribed for such category. Consequently, the Commission directed OPTCL-the Appellant to revise the open access charges in terms of its order and refund the differential amount.

15. Learned Senior Counsel for the Respondent No.1 submitted that the issue of jurisdiction raised by the Appellant is wholly untenable, as the OERC has jurisdiction to decide whether Respondent No.1 is to be treated

as a short-term open access customer for utilizing the transmission lines within the State of Odisha and whether the charges payable are to be determined on that basis. Admittedly, the power generated by Respondent No.1 as a captive generator from the plant located at Odisha is transmitted through three stages: (a) within the State of Odisha, (b) from the border of Odisha to the border of Haryana through PGCL, CTU, and (c) from the Haryana periphery to the 1st Respondent's plant in Hisar through the State Transmission Utility. It is undisputed that Respondent No.1 is paying the charges for the areas covered under (b) and (c). As far as (a) is concerned, the issue is whether Respondent No.1 has to be treated as a short-term open access customer or not; in this regard, learned senior Counsel submitted that under OERC Regulations, open access for a period of one year or below is classified as short-term open access, therefore OERC has rightly held that Respondent No.1 is liable to pay open access charges as per the tariff order for the relevant years 2014-15 and 2015-16 at the rate of Rs. 62.50 per MW. Contending that the State Commission has jurisdiction to decide the issue, learned senior Counsel placed reliance on the judgments of this Tribunal, namely "**Bharat Aluminum Company Ltd. v. Chhattisgarh Power Transmission Company Ltd**". (Appeal No. 210 of 2012 dated 13.11.2013) and "**State Load Dispatch Centre v. Gujarat Electricity Regulatory Commission**" (Appeal No. 17 of 2015 dated 07.04.2016), wherein this Tribunal has affirmed that disputes of this nature fall within the jurisdiction of the State Commission.

16. The contention advanced by the Appellant that the Respondent No.1 ought to be classified as a Long Term Open Access customer is wholly untenable, in view of the OERC Regulations and the applicable tariff orders. Further, in the ARR and determination of transmission tariff for FY 2014-15 and FY 2015-16 in Case Nos. 83 of 2013 and Case No. 67 of 2014, OERC has categorically recorded that only two CGPs, namely

IMFA and NALCO, were recognized as Long Term Open Access consumers. Therefore, Respondent No.1 cannot, by any construction, be treated as a Long Term Open Access customer. The State Commission/OERC has, therefore, rightly held that it has jurisdiction to decide the issue and that Respondent No.1 is liable to pay transmission charges only as a Short Term Open Access customer to the Appellant. The state Commission has passed a reasoned order directing the Appellant to revise the charges and prayed that no interference is necessitated.

Respondent No.2- OERC Submissions

17. Mr Rutwik Panda, learned counsel for the Respondent No. 2 submitted that the provisions of Central Electricity Regulatory Commission Regulations do not contradict the provisions of Odisha Electricity Regulatory Commission (Terms and conditions for Open Access) Regulations, 2005 and Odisha Electricity Regulatory Commission (Determination of Open Access Charges) Regulations, 2006. Further, Regulation 4(1) (VI) of OERC dealing with open access charges read with Regulation 7 (1) (n) of the CERC (Sharing of Inter-State Transmission Charges & Losses), Regulations, 2010 make the position clear. Learned counsel also pointed out the proviso of Regulation 2 (1) (y) of CERC Regulations, 2010, as amended on 1st April 2015 dealing with Yearly Transmission Charges.

18. Learned counsel further submitted that it is a well-settled concept that when one uses the facilities and services of more than one agency, then he has to pay the charges to each agency. Accordingly, in the present case, the Odisha State Commission determined the transmission charges payable to the Appellant for the use of the State Network, while the CERC determined the charges for the use of CTU/PGCIL transmission network.

It is an admitted fact that Respondent No. 1, operates a CGP at Jajpur and injects power at the 'Duburi Grid', which constitutes an intra-State injection point, thereby utilizing the State Transmission Network and qualifies as an "Open Access Customer" within the meaning of Regulation 2(j) of the OERC (Determination of Open Access Charges) Regulations, 2006. Therefore, the State Commission is competent to determine the Open Access Charges in respect of the Appellant for the use of transmission system within the State and relied on the judgement of this Tribunal, namely, **"Bharat Aluminum Company Limited Versus Chhattisgarh Power Transmission Company Limited"** (Appeal No. 210 of 2012, dated: 13.11.2013) and **"State Load Dispatch Centre Versus Gujarat Electricity Regulatory Commission"** (Appeal No. 70 of 2015 dated 07.04.2016).

19. Learned counsel further stated that the present matter falls within the ambit of short-term open access, inasmuch as Respondent No. 1 had availed open access for a duration of one year, i.e., from 01.11.2014 to 31.10.2015. Upon consideration of the applicable regulations and the facts and circumstances of the case, the State Commission, has passed a reasoned order dated 27.01.2026 (Impugned Order) in accordance with law and Appeal filed by Appellant has no merit and is liable to be dismissed.

Analysis and Conclusion

20. Heard Mr. Raj Kumar Mehta, learned Counsel for the Appellant, Mr. G. Umapathi, learned Senior Counsel representing Respondent No 1-JSL and Mr. Rutwik Panda, learned Counsel for Respondent No 2-OERC and considered their respective written submissions, and relevant material placed on record. Upon due consideration of the arguments

advanced, the following issues arise for adjudication in the present Appeal::

Issue No 1. Whether State Commission/OERC has jurisdiction to decide the transmission charges payable for use of intra-State Transmission System, when JSL has obtained inter-State medium Term Open Access for Transfer of Power from its CPP in Odisha to its plant in Haryana?

21. Learned Counsel for Appellant has contended that for adjudicating the dispute with regard to payment of transmission Charges for use of State Transmission system, while availing inter-State Medium Term Open Access, the exclusive jurisdiction vests with Central Electricity Regulatory Commission (“CERC”) in terms of Regulations 26 and 32 of the CERC (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in inter-State Transmission) Regulations, 2009 and therefore, State Commission does not have jurisdiction to decide the issue of Transmission Charges for use of intra-State Transmission system while availing inter-State Open Access. Per Contra, learned Senior Counsel for Respondent No. 1 and learned Counsel for Respondent No 2, have contended that there is no conflict between the provisions of applicable CERC Regulations and OERC Regulations, 2005 and OERC Regulations 2006 and therefore, the State Commission/OERC has jurisdiction to determine the charges applicable for use of intra-State Transmission System while availing medium term inter-State Open Access.

22. The Relevant provisions of CERC inter-State Long Term and Medium Term Open Access Regulations, 2009 (**“CERC OA Regulations 2009”**), are reproduced hereunder:

“26. Transmission Charges

The transmission charges for use of the inter-State transmission system shall be recovered from the long-term customers and the medium-term customers in accordance with terms and conditions of tariff specified by the Commission from time to time:

Provided that if the State network is also being used in the access as a part of inter-State transmission system for 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, recovery of charges for such State network and terms and conditions thereof shall be in accordance with the regulation as may be specified by the Commission under section 36 of the Act for intervening transmission facilities, if such charges and terms and conditions cannot be mutually agreed upon by the licensees:

Provided that any disagreement on transmission charges for such State network as specified above, shall not be the sole reason for denying access and either party may approach the Commission for determination of transmission charges for such State network.”

32. Redressal Mechanism

All disputes arising out of or under these regulations shall be decided by the commission on an application made in this behalf by the person aggrieved.”

23. It is an admitted position of Respondent No.1 that for availing Medium Term inter-State Open Access from its CPP located in Jajpur, Odisha, to meet power requirement of its unit at Hissar, three different stages of transmission are involved a) within the State of Odisha from CPP up to border of Odisha : intra-State transmission system b) from border of Odisha up to border of Haryana : inter-State transmission System c) from periphery of Haryana up to plant situated in Haryana : intra-State transmission system; and Respondent No.1-JSL has been paying separate transmission charges for b) and c), and the same is not

in dispute. Further, there is no denial by Respondent No 1, with respect to payment of intra-State transmission charges for use of Odisha State Transmission system, however, the dispute is with regard to quantification of payment of transmission charges for use of Odisha intra-State Transmission System (c).

24. The learned Counsel for the Appellant-OPTCL, referring to Regulation 26 & 32 of CERC OA Regulations 2009, has contended that for the conveyance of electricity within the State which is incidental to such inter-State transmission of electricity, recovery of charges for such State network and terms and conditions thereof shall be in accordance with the regulation as may be specified by the Commission and the said Regulation refers to the Central Commission i.e CERC, therefore CERC alone has jurisdiction to adjudicate the issue in the present case.

25. If we accept the interpretation as being canvassed by Appellant, then Regulation 26 of CERC OA Regulations 2009, would mean that the transmission charges for conveyance of electricity within a State, which is incidental to such inter-State transmission of electricity would be decided by CERC in terms of Section 36 of the Electricity Act, 2003. Such an interpretation, in our view, in the present case, would mean that CERC Regulations specifying inter-State transmission charges would include charges for conveyance of electricity within the State, treating the same as incidental to the inter-State Transmission of electricity and OPTCL cannot then separately charge for use of intra-State transmission system under the regime of inter-State open Access.

26. We take note that the procedure for making application for grant of Medium Term Open Access to ISTS, as approved by CERC is to be read in conjunction with CERC OA Regulations 2009, and the applicability of

transmission charges is mentioned at para 18 of such procedure and is reproduced below:

“18 Transmission charges

18.1. The transmission charges for use of the ISTS shall be recovered from the medium- term customers in accordance with terms and conditions of tariff specified by the Commission from time to time and the Regulations. If the State network is also being used in the access, recovery of charges for such State network and terms and conditions thereof, shall be in accordance with the regulation and as may be specified by the State Commission under Section 36 of the Act, if such charges and terms & conditions cannot be mutually agreed.”

27. In the present case, Appellant has not disputed any terms and conditions of inter-State Open Access so granted to the Respondent No1-JSL and therefore, in our view, Regulation 32 of CERC OA Regulations 2009 is not applicable to the present case. Learned Counsel for the Appellant has also not disputed the applicability of levy of Transmission Charges separately by OPTCL for use of intra-State Transmission System in Odisha for availing inter-State Medium Term Open access, but has only disputed the quantum of such intra-State Transmission charges, which as per CERC OA Regulations 2009, approved procedure is to be determined by respective State Commissions under section 36 of the Electricity Act.

28. Further, we find contradiction in the contentions put forth by the Appellant with regard to jurisdiction of CERC as on the one hand, the Appellant does not dispute that intra-State Open Access Transmission charges for Odisha shall be as per OERC order, and has also levied transmission charges in terms thereof, however on the other hand, the Appellant has contended that in case of any dispute with regard to

applicable intra-State Open Access Transmission Charges so determined by State Commission, then OERC does not have jurisdiction and it is CERC, which will have the jurisdiction.

29. This Tribunal in its judgement in **“Bharat Aluminum Company Limited vs Chhattisgarh Power Transmission Company Limited”** (Appeal No. 210 of 2012, dated: 13.11.2013) has held that intra-State entities are to pay transmission charges for use of State Network as determined by the State Commission in its annual tariff order. Relevant Extracts are as under:

“38. The fundamental issue underlying the present controversy namely the applicable transmission charges between the parties is applicable transmission charges payable for use of State network during the course of Inter-State transmission under Short Term Open Access.”

“40. In terms of sub clause (3), inter-state entities while undertaking bilateral inter-state open access transmission of electricity under short term are required to additionally pay transmission charges for use of the State network as determined by the respective State Commission.”

“49. Summary of Our Finding:

i) The Appellant has to pay the transmission charges for use of the intra-state transmission system at the rate determined by the State Commission by its transmission tariff order dated 31.3.2011 with effect from 9.4.2011.

ii) The Central commission’s Open Access Regulation provide for payment of transmission charges for use of State Network as fixed by the Central Commission for use of State network only under the condition when charges for the State Network are not determined by the State Commission.”

30. Thus, intra-State entities availing inter-State Open Access need to additionally pay intra-State transmission charges for conveyance of

electricity within the State, besides inter-state transmission charges, and accordingly, Respondent No 1 has no dispute with regard to payment of intra-State Transmission charges for conveyance of electricity within Haryana as well as in Odisha in addition to inter-State Transmission charges; a position not disputed by Appellant also.

31. The State Commission/OERC has already framed Orissa Electricity Regulatory Commission Terms and Conditions for Open Access Regulations, 2005, and determined the rates, charges and terms and condition for use of intra-State Transmission and distribution System by an open Access Customer, and also the relevant provisions of OERC (Determination of Open Access Charges) Regulations, 2006 (**“OERC Regulations 2006”**) are reproduced hereunder:

4. Open Access Charges

Open Access Customers shall pay the following charges for the use of the intra-state transmission/distribution system which shall be regulated as follows:

(1) Transmission/Wheeling Charges

(i) Open access customers connected to the intra-state transmission/distribution systems shall pay the transmission and wheeling charges as applicable to the appropriate licensees, as the Commission may determine from time to time.

vi) In case inter-state transmission system is used by an open access customer in addition to distribution system, transmission charges for inter-state transmission shall be payable by the customer in accordance with CERC Regulations in addition to wheeling charges as approved by the Commission.”

32. Thus, as per **“OERC Regulations 2006”**, Open Access customers connected to intra-State transmission system shall pay the transmission and wheeling charges as determined by the State Commission, and accordingly, intra-State transmission charges are payable by Respondent

No 1- JSL for conveyance of electricity within the State of Odisha, which is also not disputed either by Appellant or Respondent No 1 and same has also been indicated in the NOC issued by the SLDC to JSL for availing inter-State Medium Term Open Access. In our view, when State Commission has jurisdiction to determine the intra-State transmission charges to be levied upon Open Access Customers for use of State Transmission Network, it also has jurisdiction to adjudicate any dispute with regard to payment of such intra-State open access transmission Charges. This Tribunal in its judgement in “**State Load Dispatch Centre vs Gujarat Electricity Regulatory Commission**” (Appeal No. 70 of 2015, dated 07.04.2016) while dealing with the issue “whether the State Commission has jurisdiction to deal with the issues emerging out on the denial of Short Term Open Access by the Appellants to the Respondent No 2 considering the subject Transmission as power conveyance through power exchange” has held that if the dispute arises with regard to use of intra-State Network, it would fall within the jurisdiction of respective State Commission within whose jurisdiction the intra-State Network falls; relevant portion of the said judgement is reproduced as under :

“(ii) The Respondent No. 2 is an embedded consumer of the Appellant No.2. Any transaction whether bilateral or collective or Intra-State 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.”

33. In view of the above discussion, the issue No 1 is, therefore, decided in favour of Respondent No 1 and Respondent No 2 and as against the Appellant.

Issue No 2 : What Open Access charges for use of intra-State transmission system in Odisha be applicable and whether Respondent No1 is estopped from challenging the Long term Rate applied on it, having paid the said amount for some time?

34. Learned Counsel for the Appellant has contended that Respondent No 1, having availed the inter-State Medium Term Open Access and having paid Long Term Open Access transmission charges @ 250 per MW on the basis of NOC granted by SLDC for 7 months is estopped from challenging the said rate of transmission charges and in that regard learned Counsel placed reliance on the judgement in “**State of Punjab vs Dhanjit Singh**” (2014) 15 SCC 144. On a query by the Bench, Appellant fairly stated that the issue of estoppel was not pleaded by them before the State Commission. Therefore, it is clear that learned Counsel for the Appellant has raised the plea of estoppel for the first time before this Tribunal and no reasons have been shown as to why such a plea was not taken before the State Commission. Nevertheless, this Tribunal is the first Appellate Court, and is empowered to consider it even if it was not raised before the lower Court/State Commission, more so if the issue raised is a pure question of law.

35. We note that Odisha SLDC granted NOC, dated 29.05.2014, for the period from 01.11.2014 to 31.10.2015 and also NOC dated 04.09.2014 for the period from 01.02.2015 to 31.10.2015 and in both the NOCs, it is specifically mentioned that State transmission losses and charges are applicable as per OERC order and the said charges were indicated as Rs 250/MWh. Respondent No 1 admitted that though they initially paid

transmission charges @ Rs 250/MW, however vide its letter dated 12.03.2015, had raised objection that intra-State Transmission charges should be as per Short Term Open Access charges fixed by OERC, and again vide letter, dated 16.04.2015, Respondent No 1 asked the Appellant to revise the bills in terms of Short Term Open Access charges i.e. Rs 62.50/MW as determined by OERC. Subsequent thereto, Respondent No 1 filed a Petition (Case No 28/2015) before OERC, in which Impugned Judgement was passed on 27.01.2016. Will the doctrine of estoppel be applicable to Respondent No 1, barring them to contest the applicability of Long Term Open Access charges for using the intra-State transmission system? Estoppel prevents a person from denying or contradicting a previous representation, conduct, or position if another party has relied on it to their detriment. It is a principle of fairness, consistency, and integrity in legal proceedings. As per Section 115 of the Indian Evidence Act, 1872; “When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed to deny the truth of that thing.” This codifies estoppel as a rule of evidence, barring inconsistent claims in judicial proceedings. In the present case, the Respondent No 1 has raised the objections to the Long Term Open Access Charges being billed to them even during the currency of NOC period.

36. In the judgement in “**State of Punjab vs Dhanjit Singh**” (2014) 15 SCC 144 relied upon by the Appellant, the respondent, Dhanjit Singh Sandhu, was allotted a residential plot on 01.04.1986 in Ludhiana by the Punjab Urban Planning and Development Authority (PUDA) and the allotment terms required the Respondent to complete construction within three years. Extensions were permissible upon payment of extension fees under the Punjab Urban Estates (Development and Regulation) Act, 1964. After the enactment of the Punjab Regional and Town Planning and

Development Act, 1995, PUDA issued a Circular in 1998 revising extension fees upward. The Respondent paid the increased fees but later challenged the same, claiming that they were excessive and not in accordance with Rule 13 of the 1995 Rules. The Respondent sought a refund of approximately ₹1.20 lakh, alleging that PUDA had collected fees beyond what was legally permissible. His representation was rejected, prompting a writ petition before the Punjab & Haryana High Court, which directed PUDA to refund the excess amount with interest. The Supreme Court, in the referred judgement held that the Respondent, having accepted the allotment terms & Conditions and did not raise construction up to Year 2000 and accordingly paid the extension fees voluntarily, and could not later challenge them. Applying the doctrine of “approbate and reprobate”, it was held that the Respondent couldn’t accept benefits at first and then dispute the conditions later. The Supreme Court distinguished the facts from the case of Tehal Singh v. State of Punjab relied by the High Court, noting that Respondent therein had already availed the benefit of extensions, and accordingly reversed the decision of the High Court ruling that the Respondent was not entitled to refund of the extension fees.

37. However, in the present case, objections to the bills based on Long term Charges have been raised even during the currency period of NOC and notably, the NOC granted by SLDC though indicated the Transmission charges as Rs 250/ MWh, it further qualifies that Transmission losses and charges shall be as per OERC Order. In our view, the Appellant’s claim for the applicability of issue of estoppel against the Respondent No 1 is devoid of merit simply because Respondent paid long term charges for some period, during the currency period of NOC. The said NOC, issued for availing Medium Term inter-State Open Access, itself states that Transmission charges for intra-State Transmission system shall be as per OERC Order, and Respondent No

1 had raised the objection even during the currency of the NOC issued by SLDC. Considering the facts of the present case, in our considered view, the judgement in “**State of Punjab vs Dhanjit Singh**” (2014) 15 SCC 144 relied upon by the Appellant is not applicable.

38. In view of the aforesaid discussion, the Issue No 2 is decided against the Appellant.

39. The issue which remains to be deliberated now is “what are applicable transmission charges as per OERC tariff order? The same is deliberated in following paragraphs.

Issue No 3 : What Open Access charges for use of intra-State transmission system in Odisha be applicable to the Respondent No 1?

40. Learned counsel for the Appellant has contended that the rate of Rs. 250/MWh mentioned in SLDC NOC is based on OERC Transmission Tariff Order, dated 23.03.2015, in which it is stated that CGP will be treated as Long Term customer. The learned Senior Counsel for the Respondent No 1 submitted that OERC in the Impugned judgement has rightly held that JSL having availed open access for a period of one year and less, falls within the category of short-term open access customer, and the transmission charges shall be leviable at the rate prescribed for such category in the OERC Order.

41. We note from the OERC Regulations 2005 and OERC Regulations 2006 and Tariff Order, dated 22.03.2014, for FY 2014-15, and Tariff Order, dated 23.03.2015, for FY 2015-16, that all the customers seeking open Access from OPTCL transmission system are classified as under:

- i) Long Term Open Access Customers (LTOA Customers) availing or intend to avail access to the inter State/ Intra-State system for a period of 25 years
- ii) Short Term Open Access Customers (STOA Customers) who can avail open access to the inter State/ Intra-State system for a maximum period of 01 year with condition to reapply after expiry of the term.

42. There is no dispute that Respondent No 1, on both the occasions, has availed open access for less than one year, which qualifies as Medium term Open Access under inter-State Open Access, while the period of open Access for up to one year is termed as Short Term Open Access under OERC Open Access Regulations 2005. OERC tariff order, dated 22.03.2014, for FY 2014-15 and OERC tariff order, dated 23.03.2015, for FY 2015-16 specify Long Term Open Access charges as Rs 6000/MW/Day or Rs 250/MWh, and in terms of OERC Regulations, the short term open Access Customers shall pay at 25% of long term open access charges and approved the rate of Rs 1500/MW/Day or Rs 62.5 MWh for Short term open access customers.

43. Learned Counsel for the Appellant has contended that as per OERC tariff order, dated 23.03.2015, CGP will be treated as a long term customer, and accordingly, rate mentioned in the SLDC NOC of Rs 250/MWh is justified. We note from the said tariff order that Long Term Open Access customer means a “person availing or intending to avail access to Inter-State/ Intra –State transmission system for a period of 25 years or more. Based on such premise, four Discoms and Captive Generating Plant (CGPs) happens to be the long term customers of OPTCL”. Thus, in our view, only those CGPs, who avail or intend to avail open access for twenty five years or more shall qualify to be Long Term Open Access Customers. It is an admitted position that Respondent No.1-

JSL has not applied for Open Access for 25 years to qualify as Long term Open Access Customers in terms of OERC Regulations, and the Open Access availed by them on each occasion under the present *lis* is up to one year, which in terms of OERC Regulations 2005 falls under the category of Short Term Open Access Customers. Furthermore, in the tariff order for FY 2014-15 and FY 2015-16, while working out the ARR, the Appellant-OTPCCL has mentioned that it proposed to earn revenue from Long term Customers i.e. for wheeling of power to Discoms and for wheeling of power from the CGPs like IMFA and NALCO to load centers. The Appellant-OPTCL, in their submissions, for working out ARR requirement, have not included power wheeling from CGP of JSL under revenue from Long term Customers. Thus, we are of the view that there is no infirmity in the Impugned Order with regard to applicability of Short Term Open Access Charges for using intra-State Transmission System for availing Medium Term inter-State Open Access for period of one year or less by Respondent No1.

44. In view of the above discussion and deliberations, we do not find any merit in the Appeal and accordingly we uphold the Impugned Order passed by the State Commission. The captioned Appeal is hereby dismissed along with all associated IAs, if any.

Pronounced in open court on this 29th Day of August, 2025

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

Reportable / Non-Reportable

ts/ag