

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

**IA NOS.710 OF 2024 AND 980 OF 2025**  
**IN**  
**APPEAL NO.79 OF 2023**

Dated : 16.12.2025

Present: Hon'ble Ms. Seema Gupta, Technical Member (Electricity)  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**M/s. GRIDCO Ltd,**  
*Represented Through its Managing Director*  
Janpath, Bhubaneswar – 751022  
Email: [sgm.pp@gridco.co.in](mailto:sgm.pp@gridco.co.in)

... Applicant/Appellant

*Versus*

- 1. Odisha Electricity Regulatory Commission**  
*Through its Secretary,*  
At: Plot No. 4, Chunokoli,  
SailashreeVihar, Chandrasekharapur,  
Bhubaneswar,  
Email: [orierc@gmail.com](mailto:orierc@gmail.com)
- 2. Department of Energy, Govt of Odisha**  
*Through Shri Nikunja Bihari Dhal, IAS*  
Principal Secretary  
2<sup>nd</sup> Floor, Kharaval Bhawan Gopabandhu Marg,  
Keshari Nagar Bhubaneswar, Odisha – 751001  
Email: [energy@nic.in](mailto:energy@nic.in)/ [energydept.odisha@gmail.com](mailto:energydept.odisha@gmail.com)
- 3. TP Central Odisha Distribution Ltd. (TPCODL), 6<sup>th</sup> floor,**  
*Through CEO,*  
JSS Tower – B, Infocity campus,  
Patia, Bhubaneswar, Odisha – 751024  
Email: [ashish.kumar@tpcentralodisha.com](mailto:ashish.kumar@tpcentralodisha.com)

**4. TP Northern Odisha Distribution Ltd**

*Through CEO,*

TPNODL, corporate office near Emami Bypass,  
RemunaGolei, Januganj, Balasore – 756019

Email: [devendra.prasad@tpnodl.com](mailto:devendra.prasad@tpnodl.com)

**5. TP Western Odisha Distribution Ltd**

*Through CEO*

AT/PO: Burl, Sambalpur, Odisha – 768017

Email: [shishir.dudeja@tpwodl.com](mailto:shishir.dudeja@tpwodl.com)

**6. TP Southern Odisha Distribution Ltd**

*Through CEO*

AT/PO Courtpetta,  
Berhampur Gunjam, Odisha – 760004

Email: [jeevanjyoti.nayak@tpsouthernodisha.com](mailto:jeevanjyoti.nayak@tpsouthernodisha.com)

... Respondent(s)

Counsel for the Appellant(s) : Sitesh Mukherjee, Sr. Adv.,  
Abiha Zaidi  
Suriti Chowdhary  
Anuj Bhawe

Counsel for the Respondent(s) : Rutwik Panda for Res. 1  
  
Soumyajit Pani for Res. 2  
  
Sajan Poovayya, Sr. Adv.  
Anand Kumar Shrivastava  
Shruti Kanodia  
Prabhat Kr. Shrivastava  
Shivam Sinha  
Anuja Jain  
Ishita Jain  
Sam C. Mathew  
Priya Goyal  
Nilesh Panda  
Amrita Bakhshi  
Rishika Garg  
Ankit Bhandari  
Akash Dash for Res. 3 to 6

## **ORDER**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. These two applications (IA Nos.710/2024 and 980/2025) have been filed by the appellant in this appeal seeking permission to submit certain additional documents. The details of the documents sought to be filed by way of application no.710/2024 are given hereunder: -

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<b>S. No.</b>	<b>Date</b>	<b>Particulars</b>
1.	10.12.2010	<b><i>Annexure A-1:</i></b> A copy of the relevant extracts of the 17 <sup>th</sup> Electric Power Supply Report published by the Central Electricity Authority (CEA).
2.	14.01.2015	<b><i>Annexure A-2:</i></b> A copy of the letter from Principal Secretary, Government of Odisha to the Joint Secretary, Ministry of Power.
3.	06.02.2019	<b><i>Annexure A-3:</i></b> A copy of the Notification of Ministry of Power.
4.	29.10.2021	<b><i>Annexure A-4:</i></b> A copy of the letter from the Government of Odisha to MOP for de-

		<i>allocation of Odisha's share of power from KBUNL station.</i>
5.	10.11.2021	<b>Annexure A-5:</b> <i>A copy of the relevant extracts of the Minutes of Meeting dated 10.11.2021 on Development of Coal Mines allotted to Power Sector in Odisha and other issues, the Government of Odisha raised the issue of surrender of 33 MW power from the station of KBUNL from the Appellant.</i>
6.	15.11.2021	<b>Annexure A-6:</b> <i>A copy of the notification of Ministry of Power regarding request of various states to surrender their share of power from Central Generating Stations.</i>
7.	01.12.2021	<b>Annexure A-7:</b> <i>A copy of the Minutes of Meeting dated 01.12.2021 between the Government of Odisha and CMD, NTPC.</i>
8.	21.05.2022	<b>Annexure A-8:</b> <i>A copy of the settlement letter dated 21.05.2022 between GRIDCO and KBUNL.</i>

9.		<b><i>Annexure A-9: A copy of the Order of Ld. Odisha Electricity Regulatory Commission dated 04.10.2021.</i></b>
11.	2010-11 to 2019 to 20	<b><i>Annexure A-10: Relevant extracts of True Up Orders from FY 2010-2011 to FY 2019-2020.</i></b>
13.		<b><i>Annexure A-11: A copy of the relevant extracts of the Balance Sheet of GRIDCO from Annual Reports.</i></b>
14.		<b><i>Annexure A-12: A copy of the judgement titled 'GRIDCO Limited vs Western Electricity Supply Company of Orissa limited and Ors' [(2024) 2 SCC 500]</i></b>

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2. The details of the documents sought to be filed by way of application no.980/2025 are given as under: -

“3. ANNEXURE A-1:  
COPY OF THE ORDER DATED 26.05.2025 PASSED  
BY THIS HON'BLE TRIBUNAL

4. ANNEXURE A-2:  
COPY OF THE AUDITOR'S CERTIFICATE

5. ANNEXURE A-3:  
*COPY OF THE ORDER DATED 07.01.2025 IN  
PETITION NO. 135/2023*
6. ANNEXURE A-4:  
*COPY OF THE EXTRACTS OF THE ORDER DATED  
13.02.2024 AND 24.03.2025*
7. ANNEXURE A-5:  
*COPY OF THE SUPPLEMENTARY PPA EXECUTED  
BETWEEN NTPC AND GRIDCO FOR KBUNL*
8. ANNEXURE A-6:  
*COPY OF THE ORDER DATED 20.07.2016 PASSED  
BY LD. OERC IN CASE NO. 43 OF 2011*
9. ANNEXURE A-7:  
*COPY OF THE WRITTEN SUBMISSION DATED  
02.04.2024*
10. ANNEXURE A-8:  
*COPY OF THE ORDER DATED 09.05.2025 PASSED  
BY LD. OERC"*

3. We have heard Shri Sitesh Mukherjee, learned senior counsel appearing on behalf of the appellant/applicant as well as Shri Sajan Poovayya, learned senior counsel appearing on behalf of respondent nos.3 to 6.

4. We may note that Rule 27 of Order 41 CPC empowers a court to receive additional evidence/documents on behalf of a party during the proceedings of the appeal. However, such power of an appellate court is not absolute but is restricted by the conditions as stated in the said legal provision which must be

fulfilled before allowing any such document to be produced. For the sake of reference, we extract Order 41 Rule 27 hereunder: -

*“27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —*

*(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*

*(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*

*(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*

*(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”*

5. Clause (aa) of Rule 27(1) of Order 41 is material for our discussion. This clause envisages that the appellate court may allow additional documents/evidence to be produced by any party to the appeal only when the party seeking to produce the additional documents/evidence satisfies the court that in spite of exercise of due diligence, such evidence/documents were not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the judgment assailed in the appeal was passed. Order 41 Rule 27 is, thus, an exception to the general rule that the appellate court should not travel outside the record of the lower court and should not admit or consider any documents/evidence which were not produced before the trial court which passed the judgment under appeal. However, the appellate court can permit additional documents/evidence only and only if the conditions laid down in the said rule are established by the concerned party.

6. In Haji Mohammed Ishaq v. Mohd. Iqbal and Mohd. Ali and Co. (1978) 2 SCC 493, the Supreme Court has held that the appellate court should not



ordinarily allow new evidence to be adduced in order to enable a party to raise new points in appeal and where a party on whom the onus of providing a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce the evidence. Similarly, in State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912 and S. Rajagopal v. C.M. Armugam AIR 1969 SC 101, the Apex Court has observed that it is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court, and therefore, in the absence of satisfactory reasons for non-production of the documents/evidence in the trial court, additional documents should not be admitted in the appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. A party who had ample opportunity to produce certain evidence in the lower court but fails to do so or chose not to do so, cannot have it admitted in appeal.

7. In Union of India v. Ibrahim Uddin and Another (2012) 8 SCC 148, the Supreme Court has held as under: -

*“36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception,*

*Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (Vide: K. Venkataramiah v. A. Seetharama Reddy & Ors., AIR 1963 SC 1526, Municipal Corpn. of Greater Bombay v. Leela Pancham, AIR 1965 SC 1008, Soonda Ram v. Rameshwaralal, AIR 1975 SC 479; and Syed Abdul Khader v. Rami Reddy, AIR 1979 SC 553).*

.....

*40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice*

*of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal."*

8. It is, therefore, a well settled legal position that a party to an appeal is not entitled, as of right, to produce additional documents during the appeal proceedings. Order 41 Rule 27 enables the appellate court to receive additional evidence/documents only in exceptional circumstances and where the conditions laid down in the rule are satisfied. Mere inadvertence or negligence of a party in not filing the requisite documents before the trial court does not constitute "substantial cause" within the meaning of Rule 27 of Order 41. Also, the mere fact that certain evidence is important as well as material, is not in itself a sufficient ground for admitting evidence in appeal.

9. The order impugned in this appeal is dated 22.10.2021 passed in case No.62/2020 for truing-up of the expenses of the appellant for Financial Year 2015-2016 to Financial Year 2019-2020.

10. Annexures A-1 to A-3 and A-7 to A-11 sought to be filed by way of application No.710/2024 relate to the period prior to the passing of the order impugned in this appeal. The reason which prevented the appellant from filing these documents before the Commission has been stated in Paragraph 30 of the application which is extracted hereinbelow: -

*“30. That the documents being prayed to, to be placed on record are necessary to support the case of the Appellant and would further assist in reaching a just and proper decision of the claims and the controversy in the Appeal. Consideration of these documents is necessary to decide the matter in issue and for doing complete justice between the parties. That the said documents could not be traced before by the Appellant on account of inadvertence and the said documents were already available in the public domain. Appellant is ensuring to provide essential background to the Hon’ble Tribunal to assist them in reaching the conclusion.”*

*(Emphasis supplied)*

11. Thus, according to the appellant, though these documents were already available in public domain, same could not be traced on account of inadvertence. It is not the case of the appellant that these documents were not within its knowledge before passing of the impugned order by the Commission or could not be found by it despite exercise of due diligence. As held by the Hon'ble Supreme Court in the above referred judgments, mere inadvertence or negligence on the part of a party to the appeal does not constitute sufficient ground within the meaning of Order 41 Rule 27 for taking on record those documents.

12. As regards the Annexures A-4 to A-6 to the said application, it is evident that these came into existence subsequent to the passing of the impugned order by the Commission, and therefore, the same can be taken on record in this appeal proceedings. Annexure A-12 is the copy of the judgment delivered by Supreme Court and hence can be cited and looked into at any stage of the proceedings.

13. We also find that the Annexures A-1, A-3, A-4, A-6 and A-8 sought to be filed by way of IA No.980/2025 are the copies of the orders passed by the Commission/this Tribunal, and therefore, these being judicial/quasi-judicial orders can be tendered in appeal proceedings also at any stage. As regards Annexures A-2, A-5 and A-7 mentioned in this application are concerned, the

appellant has not made out any sufficient ground for not being able to file those documents before the Commission. In this application also, the appellant has stated in Paragraph No.12 that these documents could not be traced on account of inadvertence even though the same were available in public domain. As already noted hereinabove, mere inadvertence or negligence on the part of a party to the appeal does not entitle it to produce documents at the appellate stage when no diligent effort was made to trace those documents and file the same during the proceedings of the case before the Commission.

14. Learned senior counsel appearing for the appellant/applicant vehemently argued that where the additional evidence sought to be adduced at appellate stage has a direct and important bearing on the issue involved in the appeal, it would be imperative to take the same on record. On this aspect, the learned senior counsel placed reliance on the judgments of the Supreme Court in Union of India v. Ibrahim Uddin (Supra) and Gridco Limited v. Western Electricity Supply Company of Odisha Limited (2024) 2 SCC 500.

15. We have perused both of these judgments. Nowhere in these judgments has the Apex Court held that where document/evidence sought to be adduced at appellate stage is material to the controversy involved in the appeal, same must be admitted even though the conditions laid down in Order 41 Rule 27 are not fulfilled. In fact, in Ibrahim Uddin case, the Supreme Court has very clearly

held that the appellate court may permit the additional document only and only if the conditions laid down in Rule 27 of Order 41 are found to exist. In the same judgment the Apex Court has also held that the mere fact that certain evidence important, is not in itself a sufficient ground for admitting that evidence in appeal.

16. In view of the above discussion, we permit the appellant to place on record the documents annexed as Annexure A-4, A-5, A-6 and A-12 to the IA No.710/2024 and the documents annexed as Annexure A-1, A-3, A-4, A-6 and A-8 to the IA No.980/2025. All other documents annexed to the applications cannot be taken on record for the reasons setout hereinabove.

17. Both the applications stand disposed off accordingly.

**Appeal No.79 of 2023**

18. List this appeal along with connected appeal Nos.80 of 2023 and 81 of 2023 for hearing on **20.01.2026**.

Pronounced in the open court on this the 16<sup>th</sup> day of December, 2025.

(Virender Bhat)  
Judicial Member

(Seema Gupta)  
Technical Member (Electricity)

✓  
*REPORTABLE / NON-REPORTABLE*  
*tp*