

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

APPEAL NO. 235 OF 2021

Dated: 21st December 2021

**Present: Hon'ble Mr. Justice R.K. Gauba, Judicial Member
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

**CHHATTISGARH STATE POWER DISTRIBUTION
COMPANY LIMITED**

[Through its office of Chief Engineer (Commercial)]

Vidyut Seva Bhavan,
Danganiya, Raipur,
Chhattisgarh – 492013

..... Appellant(s)

VERSUS

1. M/S. STEEL AUTHORITY OF INDIA LIMITED

[Through its Division Bhilai Steel Plant (BSP),

Smt. S. Lakshmi, AGM (Energy Cell)]

Room No. 35, Works Building No. 1,
District – Durg Bhilai – 490001
(Chhattisgarh)

2. THE CHIEF ENGINEER INSPECTOR (CEI)

Block-2, H-I, Indrawati Bhawan,
Atal Nagar, Naya Raipur -- 492002.
(Chhattisgarh)

3. M/S. NTPC SAIL POWER COMPANY PVT. LTD.

[Through its Secretary]

NTPC Bhawan, Scope Complex,
Lodi Road,
New Delhi - 110 003.

**4. CHHATTISGARH STATE ELECTRICITY
REGULATORY COMMISSION**

[Through its Secretary]

Gaurav Path, Indravati Colony,
Raipur – 492001
(Chhattisgarh)

..... Respondents

Counsel for the Appellant (s) : Mr. Raj Kumar Mehta
Ms. Himanshi Andley

Counsel for the Respondent (s) : Mr. M.G. Ramachandran, Sr. Adv.
Ms. Anushree Bardhan
Mr. Ravi Nair
Ms. Srishti Khindaria for R-1

J U D G M E N T

PER HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. The appeal at hand under Section 111 of the Electricity Act, 2003 is directed against the Order dated 31.03.2021 passed by the Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as, “CSEERC” or “State Commission” or “Commission”) in Petition No. 19 of 2019 which had been filed under Section 86(1)(a) & (f) of the Electricity Act, 2003 by the first respondent Steel Authority of India Limited (for short, “SAIL”).

3. By the impugned decision, the State Commission has directed the appellant – Chhattisgarh State Power Distribution Company Limited (“CSPDCL”) – to refund to SAIL the Cross Subsidy Surcharge (CSS) and Maximum Demand Charges (MDC) that had been recovered by it for the Financial Year (FY 2014-15) based on the principles that were decided by Order dated 05.12.2017 in Petition No. 13 of 2017 and Order dated 02.07.2018 in Petition No. 63 of 2017, both of the State Commission. The

Appellant – Distribution Licensee (“Discom”) assails the impugned decision and direction of refund questioning the legality of the impugned order on the grounds that the petition wherein such order was passed was barred by law of limitation and the provision contained in Order II Rule 2 of the Code of Civil Procedure, 1908 (“CPC”).

4. The broad facts leading to this appeal may be noted at this stage.

5. SAIL, the first respondent, maintains its Bhilai Steel Plant (BSP) which meets its power requirements from three Power Plants of NTPC-SAIL (“NSPCL”) a Joint Venture Company of NTPC and SAIL, they being power plants PP1 (51 MW), PP2 (74MW) and PP3 (2x250 MW). While PP1 and PP2 are concededly Co-generation Captive Power Plants (CPPs) located within the campus of BSP, PP3 is located outside the said campus. It is stated that BSP also has a contract demand of 200 MVA with the appellant (CSPDCL), PP1 & PP2 being maintained by NSPCL which has taken over all Power Plants of SAIL in different Steel Plants, including BSP.

6. It is further stated that PP3 is an Inter-State Generating Station (ISGS) and connected to Power Grid (CTU). BSP has 280 MW of allocation from NSPCL (Unit-I & Unit-II), the other beneficiaries of NSPCL Unit-II being the

appellant (50 MW), Union Territory of Dadra & Nagar Haveli (100 MW) and Union Territory of Daman-Diu (70 MW).

7. SAIL-BSP has a receiving sub-station of 220/132 KV which is connected with four Incoming Feeders of 220 KV from NSPCL, the said sub-station also being connected to two feeders of 220 KV from Khedadmara sub-station of CSPDCL. It is stated that BSP also has its own Township and for its purposes BSP's Township Electrical Engineering Department ("BSP-TEED") is the Distribution Licensee which draws power from the network of BSP. To facilitate BSP-TEED, a Power Supply Arrangement (PSA) was executed on 14.04.2009 (amended on 05.12.2013) between Power System Department (PSC) of BSP and BSP-TEED. The allocation under the said amended PSA is to the extent of 26 MW out of 280 MW from PP3 and 2 MW from the other units. BSP-TEED receives power at its Town Distribution System and from there the power is distributed to the Township through 11 KV network.

8. The appellant had raised CSS bills against SAIL-BSP in October – November 2014. The bills were paid but subsequently, upon questions being raised, the State Commission registered *suo-motu* Petition No. 32 of 2016 for determination of Captive Status of Unit-II of NSPCL (2x250 MW) Power Plant. By Order dated 06.10.2016, the CERC determined Captive

Status of Unit-II for FY 2014-15. In the said proceedings, NSPCL was the only party impleaded.

9. It is stated by the appellant that since BSP was drawing power from Unit-II of NSPCL, it (appellant) had raised bills of CSS from the months of October, 2014 to February, 2015. After determination of Captive Status of Unit-II for FY 2014-15, by Order dated 06.10.2016, in Petition No. 32 of 2016, bill dated 09.11.2016 was issued towards the difference of units and the charges for FY 2014-15. The bill was concededly paid. It is on 08.06.2017 that the first respondent claimed refund of CSS paid for FYs 2014-15, 2015-16 and 2016-17 in respect of energy drawn for distribution by BSP-TEED.

10. In 2017, the State Commission registered Petition No. 13 of 2017 for determination of Captive Status of NSPCL's Plants (2x250 MW) for 2015-16. The first respondent was allowed to join the said proceedings on its request. It submitted before the State Commission that they have their own distribution licensee for the Township area and, therefore, the power supplied from Unit-II of PP3 of NSPCL should not be subjected to CSS. The Petition no. 13 of 2017 was decided by the State Commission, by Order dated 05.12.2017, holding that the Unit-II of NSPCL is an IPP which supplies power to various entities including SAIL-BSP for captive use and for supply to the consumers in Bhilai Township through TEED. It was, *inter-alia*, also

held that the first respondent is not liable for payment of CSS in respect of power consumed by Township area through BSP-TEED, Unit-I having been treated as Captive Unit of BSP.

11. Against the above backdrop, the first respondent filed Petition No. 63 of 2017, *inter-alia*, seeking direction to the appellant to return the amount collected from SAIL as Cross Subsidy Surcharge as well as charges based on drawal from Unit-II of NSPCL as deemed drawal from CSPDCL for FY 2015-16 and 2016-17 and 2014-15. The petition was allowed by the State Commission by Order dated 02.07.2018.

12. In the wake of the above decision dated 02.07.2018, the appellant filed two petitions, one styled as '*Miscellaneous Petition*' (Petition No. 24 of 2018) for removal of difficulties in compliance of the Order dated 05.12.2017 in Petition No. 13 of 2017 and other to seek review of the Order dated 02.07.2018 (Petition No. 53 of 2018). The said petitions were dismissed by the State Commission by Orders dated 22.12.2018 and 30.11.2018 respectively.

13. On the basis of the above chronology of events, it is concededly no longer in dispute that no Cross Subsidy Surcharge is chargeable on the supply of electricity by NSPCL in respect of supply for the distribution

activities undertaken by SAIL-BSP to BSP-TEED for which SAIL-BSP has been granted a distribution license under the provisions of Electricity Act, 2003 and that, while computing the liability to pay Maximum Demand Charges, the quantum of any supply from NSPCL to SAIL-BSP cannot be included and such Maximum Demand Charges are payable only in regard to supply of electricity by CSPDCL to SAIL-BSP.

14. The Petition (No. 19 of 2019) on which the impugned order was passed on 31.03.2021 by the State Commission was subsequently filed seeking refund of CSS and Demand Charges recovered by the appellant for FY 2014-15, reliance being placed on Orders dated 05.12.2017 in Petition no. 13 of 2017 and 02.07.2018 on Petition no. 63 of 2017 referred to above.

15. It is the contention of the appellant that the claim of refund pertaining to FY 2014-15, presented in the year 2019, was time barred and could not have been entertained in view of the provision contained in Section 3 of the Limitation Act, reliance being placed on the ruling in *Andhra Pradesh Power Co-ordination Committee & Others v Lanco Kondapalli Power Ltd & Ors.* [(2016) 3 SCC 468]

16. While there can be no quarrel with the proposition that provisions of Limitation Act do apply to such claim as was agitated before the State

Commission leading to the impugned order being passed by it (the Regulatory Commission) in exercise of its jurisdiction under Section 86 of the Electricity Act, 2003, the plea of bar by limitation does not impress us. On being asked, it was fairly conceded by the learned counsel for the appellant that the claim of refund essentially arises out of the determination of the Captive Status of the power plant of the first respondent by the State Commission by its Order dated 05.12.2017. In these circumstances, the claim for refund having been filed within the prescribed period of limitation of three years, the objection cannot be given any credence and must be rejected.

17. The appellant has also invoked the provision of Order II Rule 2 CPC to submit that the appellant had consciously omitted to raise a claim *vis-à-vis* FY 2014-15 by its Petition no. 63 of 2017 and, therefore, such claim ought to be treated as relinquished and could not have been entertained or granted by the State Commission. We are not impressed. Suffice it to note here that reference to claim for such refund pertaining to FY 2014-15 was mentioned in the averments in the Petition no. 13 of 2017 and also reflected in the Order dated 05.12.2017 and reiterated in the pleadings in the subsequent Petition no. 63 of 2017. Be that as it may, the Petition no. 19 of 2019, on which the impugned order was passed, was not a case brought to the State Commission for adjudication over the right to claim such refund. It was in

effect a petition for implementation of the decision already taken by the State Commission by its previous Orders dated 05.12.2017 and 02.07.2018.

18. In these circumstances, the bar of Order II Rule 2 of CPC cannot come in the way.

19. In the forgoing facts and circumstances, we find no substance in the appeal. It is accordingly dismissed.

PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING
ON THIS 21st DAY OF DECEMBER, 2021.

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Judicial Member