

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO. 44 OF 2018

Dated: 17.02.2022

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

In the matter of:

**TRANSMISSION CORPORATION OF
ANDHRA PRADESH LTD.**

Vidyut Soudha,
Hyderabad- 500082

.... Appellant(s)

VERSUS

**1. ANDHRA PRADESH ELECTRICITY
REGULATORY COMMISSION**

[Through its Secretary]

4th&5th Floor, Singareni Bhavan,
Red Hills, Lakadi-ka-pul,
Hyderabad- 500004

2. ITC LIMITED

[Through its Chairman]

Agri Business Division ILTD,
Grand Trunk Road, P.B. No.317,
Guntur, Andhra Pradesh-522004

**3. STATE LOAD DISPATCH CENTRE,
ANDHRA PRADESH**

[Through its Manager]

Vidyut Soudha, Hyderabad- 500082

... Respondent(s)

Counsel for the Appellant (s) : Ms. Perna Singh

Counsel for the Respondent (s) : Mr.Sridhar Potaraju
Mr. Mukunda Rao Angara
Mr. Aayush
Ms. Shivani Tushir
Ms. Ankita Sharma
Mr. Yashvir Kumar for Res-1

Mr. Gopal Choudary
Mr. S. Vallinayagam for Res-2

J U D G M E N T(Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

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 appellant is a transmission licensee operating in the State of Andhra Pradesh. It is aggrieved by order dated 07.12.2017 passed by the respondent Andhra Pradesh Electricity Regularity Commission (APERC) in Original Petition no.32/2015 filed by the second respondent, ITC Limited, a wind power generator, directing payment of interest on transmission charges collected in excess, in terms of the tariff order dated 09.05.2014 for the period 09.05.2014 to 30.11.2015, which principal amount of excess collection had already been refunded during the pendency of the proceedings before the Commission, the levy of interest being in terms of Section 62(6) of the Electricity Act, 2003.
3. It appears that by the tariff order dated 09.05.2014, APERC had granted exemption to certain category of generators including wind power generators, for payment of transmission charges, observing in that context that it was doing so "*in line with government policy*". It appears that such exemptions / concessions were granted earlier in terms of the government policy which concededly had come to end with FY 2013. Referring to this fact, the appellant had filed a review petition (No.1/2015) before the Commission. The Commission dismissed the said review petition by its order dated 17.10.2015 stating *inter alia* that it had granted such exemption as above in exercise of its own power and jurisdiction under Section 86 of the Electricity Act, 2003, there being a public policy reflected in the legislation for suitable measures to be adopted for protection and promotion of renewable sources of energy.
4. There is no denial to the fact that neither the tariff order dated 09.05.2014 nor the order dated 17.10.2015 dismissing the review petition were challenged by the appellant by any appeal or other proceedings being taken out before any superior forum. The said dispensation thus attained finality. It, however, appears that a similarly placed entity 'Hetero Wind Power' had also claimed similar relief as claimed by the second respondent in the proceedings from which the impugned order has arisen, the case of

Hetero Wind Power being registered as OP No.14/2015, which other matter was decided by APERC by order dated 21.11.2015. It appears that in the said proceedings, the Commission rejected the claim for interest under Section 62(6) agitated by Hetero Wind Power referring *inter alia* to the pendency of the review petition during the relevant period.

5. In sharp contrast to the case of Hetero Wind Power, while dealing with the claim of the second respondent herein the Commission by its impugned order dated 07.12.2017 has imposed the interest under Section 62(6) making a departure observing that the former case was distinguishable, the appellant herein having continued with collection of the excess charges even after the dismissal of the review petition.

6. We have some doubts as to the correctness of the view taken by the Commission in the case of Hetero Wind Power. Be that as it may, the fact remains that after the tariff order had been issued by the Commission on 09.05.2014, the appellant had no authority in law or under the regulatory framework to claim the transmission charges from the appellant. The collection of such charges was indeed in excess of the tariff order within the mischief of Section 62(6) of the Electricity Act, 2003. Mere filing or pendency of the review petition would not give to the appellant the authority to claim and recover such charges, in the teeth of the inhibition in the tariff order. Particularly after dismissal of the review petition, such collection could and should not have been made.

7. In the above facts and circumstances, the conduct of the appellant being most improper, we are not inclined to entertain any challenge to the imposition of the interest in terms of Section 62(6) by the impugned order.

8. In this view, the appeal and the applications filed therewith are dismissed.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING
ON THIS 17th DAY OF FEBRUARY, 2022.**

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

pr/TP