IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 51 OF 2020

Dated: 17.11.2022

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

In the matter of:

M/s. Gallantt Ispat Limited,
Through its Managing Director,
8th Floor, Gallantt Landmark,
Bank Road, Gorakhpur-273001. **… Appellant**

Versus

1. Uttar Pradesh Electricity Regulatory Commission,
Through its Secretary,
II Floor, UPERC Vidyut Niyamak Bhawan,
Gomti Nagar, Vibhuti Khand,
Lucknow, Uttar Pradesh-226010.

2. Uttar Pradesh Power Corporation Ltd.
Through its Managing Director,
Shakti Bhawan, 14-Ashok Marg,
Lucknow, Uttar Pradesh-226001.

3. Purvanchal Vidyut Vitran Nigam Ltd. (PUVVNL)
Through its Managing Director,
Purvanchal Vidyut Bhawan,
P.O. Vidyut Nagar, DLW,
Varanasi, Uttar Pradesh-221010 **… Respondents**

Counsel for the Appellant(s) : Ms. Suparna Srivastava
Mr. Tushar Mathur

Counsel for the Respondent(s): Mr. C.K. Rai
Mr. Sumit Panwar for R-1

Mr. Rajiv Srivastava for R-2&3

J U D G M E N T

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

1. M/s Gallantt Ispat Limited, (hereinafter "Appellant") has filed the present Appeal being aggrieved by the Order dated 22.08.2019 (in brief "the Impugned Order") passed by the Uttar Pradesh Electricity Regulatory Commission (herein after referred as "UPERC" or "State Commission") in Petition No.1320/2018 (in short "Petition")whereby, the State Commission has dismissed the Petition filed by the Appellant seeking exemption from installation of and billing through a '*lag plus lead meter*' at the premises of the Appellant.

2. The Appellant is engaged in the business of manufacturing of iron and steel products such as sponge iron, bars, rods, billets etc. and has a co-generation power plant and enhanced its generation capacity from 18 MW to 53 MW consisting of two waste heat recovery boilers of 35 tones power hour (TPH) steam generation capacity and one fluidized bed combustion (FBC) boiler of 110 TPH besides existing FBC boiler of 50 TPH generation capacities.

3. Respondent No.1, the Uttar Pradesh Electricity Regulatory Commission was established under Section 82 of the 2003 Act to discharge the functions as are laid down in Section 86 including functions relating to regulation of electricity and is vested with the powers to adjudicate the disputes raised in the present Appeal.

4. Respondent No.2, the Uttar Pradesh Power Corporation Ltd. (in short "UPPCL") is responsible for electricity transmission and distribution within the State of Uttar Pradesh and for that purpose, procures power from various sources including from State/Central Government owned power generators and

Independent Power Producers (IPPs) through Power Purchase Agreements entered into with them so as to ensure power supply to its consumers in a cost-effective manner.

5. The Respondent No.3 - Purvanchal Vidyut Vitran Nigam Ltd., (in short "PUVVNL")is one the said restructured distribution companies of Respondent No.2 created for distribution of power in eastern area of Uttar Pradesh.

6. The Appellant claims that its generating plant produces two or more useful forms of energies, including electricity, and is thus a co-generation unit as per Section 2 (12) of the Act.

7. The Appellant entered into a Power Purchase Agreement (PPA) with Respondent No.2 for sale of 12.5 MW powerout of the total capacity of the plant whereas balance capacity is used for captive consumption.

8. Intermittently, the plant requires energy more than the capacity retained for captive use and therefore, the required electricity is drawn from the State grid, however, when operation of the plant requires less energy than the energy being generated in the plant, the resultant surplus energyis injected into the State grid.

9. The Appellant submitted that electricity exported or imported by the Appellant into or from the State Grid is billed by Respondent No.2 and 3 accordingly for their commercial gains.

10. It was however, submittedby the Appellant that there is no contractual arrangement between the Appellant and Respondent No.2 or 3 for sale or purchase of suchdrawl /injection of electricity, which is made intermittently,and is therefore utilized by Respondent Nos. 2 and 3 free of charge.

11. The Appellant submitted that while dismissing the above Petition, the Commission has failed to appreciate that the Regulations of the Central Electricity Authority (in short "CEA") and the Uttar Pradesh Electricity Grid Code (in short "UPEGC") do not specifically provide for the arrangement of metering in the peculiarities of the Appellant's project and the State Commission vide its Order dated 20.10.2008 passed in Petition No.566/2008 has clarified that for co-generation units, metering should be done by way of a *'lag only meter'* and a '*lag+lead logic'* meter must not be used since the '*lag only'* meter blocks readings of reactive energy component (kVArh), thereby treating leading power factor as unity and registers instantaneous Kwh as instantaneous kVAh in case of leading power factor thereby recording only the actual units (active energy) consumed and as a consequence of the Impugned Order, which require the Appellant to be billed on the basis of a *lag+lead type* meter installed at the sub-station, resulting in excess billing to the tune of Rs.40 to 50 lacs during the trial run and Rs.5-7 lacs per month thereafter.

12. The Appellant submitted that effective from the month of December 2017, with the operationalization of additional turbines by the Appellant, the energy not utilized by the Appellant was exported to the grid free of charge. However, the 'reactive energy' component (kVArh) of the power so exported is being added to the 'active energy' reading (kVAh) of the Appellant's plant enhancing its unit-wise consumption (in kVAh) from the actual units consumed by the *Lag+lead meter* installed at the sub-station of Respondent No.2. It is the case of the Appellant that owing to its peculiar operations where power is being imported as well as exported by the Appellant into the grid, the said anomaly in billing caused due to *Lag+lead meter* ought to have been corrected by the Commission by directing installation of a *Lag only meter* in terms of its Order

dated 20.10.2008 passed in Petition No.566/2008 which has given rise to the present controversy.

13. The grievance of the Appellant is that while passing the impugned Order, Respondent No.1 has failed to appreciate that the metering of the Appellant being a co-generation unit and owing to the peculiarities of the nature of its operations is required to be done through a *"lag only"* meter in terms of the aforesaid Order, however the State Commission has differentiated the Appellant from other co-generation plants, which essentially operate in the same manner as that of the Appellant, based on the sole ground that the Appellant does not have any contractual arrangement with the Respondents for sale of power.

14. The Appellant submitted that there is no dispute that the power consumed by it is to be billed on the basis of 'apparent power' consumed by it, it is the case of the Appellant that the reactive energy component in the said computation must only include the import of reactive energy (lagging) and not the export of reactive energy (leading).

15. It is important to note here that unscheduled injection or drawl of reactive power adversely impact the Grid Security, it is therefore, important for the Regulatory Commissions established under the Electricity Act, 2003 and the System Operators (Regional and State Load Centers) to ensure and effectively deal with such injections and drawls under the provisions of the Regulations notified.

16. It was further submitted that the Clause 5.3 of the Electricity Supply Code, 2005 mandates all meters to be supplied and installed in conformity with the technical requirements as prescribed under the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 (in short "CEA

Regulations")**,** meters are divided into three broad categories being the Interface Meters, the Energy Accounting and Audit Meters and the Consumer Meters, further as per these Regulations, the meter installed at the premises of the Appellant's plant falls under the category of a Consumer Meter which is defined under Regulations 2(j)to mean a meter used for accounting and billing of electricity supplied to the consumer but excluding those consumers covered under 'Interface Meter'.

17. Also added that the CEA Regulations under its Schedule also prescribe the 'Standards of Installation and Operation of Meters' whereof Part-III provides for standards for 'consumer meters' which provides that the purpose of a Consumer Meter is to measure the cumulative 'active energy' utilized by any consumer. As such any billing of the Appellant on the basis of 'reactive energy' through use of an interface meter at the sub-station end is violative of the CEA Regulations.

18. The Appellant through its submissions and the oral arguments made, pleaded that its plant should be treated at par with cogeneration plants, accordingly, the order dated 20.10.2008 passed in Petition No.566/2008 by the State Commission completely covers its case regarding metering of energy exported/ imported through *lag only meter* and not by *lag+lead meter*, the order dated 20.10.2008 was passed by the State Commission in the case of cogeneration plants owned by the sugar industries.

19. The Respondents 2&3 submitted that the claim of Appellant that the meter to be installed at the sub-station has to be Consumer Meter and the Interface Meter is not the appropriate meter since it would capture reactive energy also whenever the power from the plant of the Appellant gets exported into the grid,

due to installation of *lag plus lead meter,* the cost of the reactive energy captured through the meter has accounted for Rs.40-50 lacs during the trail run and Rs.5-7 lacs per month thereafter which is the crux of the present Appeal.

20. The Respondents further submitted that the case of the Appellant is not analogous to the co-generation plants of Sugar Mills which were allowed to install of *lag only meter* by order dated 20.10.2008, it is well settled that plants set up by the Sugar Mills are cogeneration plants as defined under Section 2 (12), Electricity Act, 2003 (in short "the Act"), as per the aforesaid provision, *'co-generation' "means a process which simultaneously produces two or more forms of useful energy (including electricity)"*.

21. Further, the State Commission in its impugned order has recorded the reason for not considering the case of the Appellant for grant of parity with co-generators in terms of the order dated 20.10.2008, the relevant extract is quoted as under:

> *"11. The Commission finds that the context in which the aforementioned order dated 22.10.2008 was issued, is different as the order was considering the reactive power arising out of capacitance of transmission line during low load whereas in instant matter, the reactive power is generated due to operations carried out by the petitioner within its plant.* ***Further, the aforementioned order is applicable only to those co-generators that have an agreement with DISCOMs for selling power whereas the petitioner is only a consumer of DISCOM and does not have any agreement with DISCOM to***

sell power. Therefore, there is no parity between the petitioner's case and that of co-generators."

22. We agree with the observation of the State Commission as the power exported or imported is intermittent in nature and there is no PPA signed with the Respondents for sale of such power. The State Commission recorded the submission of the Respondents at paragraph 2 of Impugned Order as under:

"2. The matter was heard for the first time on 12.06.2018 and again on 18.09.2018. In the hearing, the counsel for UPPCL argued that on the complaint of the Petitioner UPPCL constituted an enquiry Committee to look into the matter. ***The Committee submitted that the petitioner was granted permission to install ABT meters with certain conditions. The petitioner was also directed to install two similar meters one main and other check meter and also it was specifically told that only lead +lag ABT meters are allowed but the petitioner has got only one new ABT meter installed and that too is lag only.*** *The Committee also observed that aforementioned UPERC order is not applicable in this case as petitioner is not a co-gen unit but a HV category consumer having captive generation plant that supplies only surplus power to grid. Based on the findings of the Committee, UPPCL vide letter dated 02.05.2018 communicated the petitioner to have 2 lead+lag meters installed at its premises to resolve the billing issues.*

UPPCL also submitted that based on the finding of the Committee, the management has taken the final decision and in the Petition the Petitioner has not challenged the findings of the Committee."

23. The Appellant submitted that the important issue for consideration is whether the Appellant is co-generating power plant or not. However, the issue under challenge is not whether the Appellant's plant is cogeneration plant or not but whether it can be considered similar to the plants which were dealt in the petition no. 566 of 2008, which has been dealt and considered by the State Commission, as quoted above, we find no infirmity in the order passed by the State Commission.

24. The Appellant further submitted that the requirement of a PPA cannot be considered as a pre-condition for the technical requirements of metering arrangement between a distribution licensee and a con-generating plant in as much as the PPA only provides for the terms and conditions of the sale of power and is in no way related to the billing of the electricity consumed by such a co-generation plant.

25. We find no merit in the above contention of the Appellant as in the present case, it is not an arrangement between a cogenerating plant and a distribution licensee for injection of power into the grid but an arrangement between a distribution licensee and a consumer owning a captive generating plant injecting intermittent power into the grid or drawing power that to intermittently, as submitted by the Appellant that the Appellant being a primary user of electricity, imports the same from Respondent Nos. 2 and 3 as a high-tension consumer, requiring proper metering and billing for maintaining the grid stability also.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the present Appeal filed by the Appellant i.e. Appeal No. 51 of 2020, has no merit and is thus dismissed.

The Impugned Order dated 22.08.2019 passed by the Uttar Pradesh Electricity Regulatory Commission in Petition No.1320/2018 is upheld.

The captioned Appeal is disposed of as dismissed accordingly, including all pending IAs, if any.

PRONOUNCED IN THE OPEN COURT ON THIS 17th DAY OF NOVEMBER, 2022.

(Sandesh Kumar Sharma)	**(Justice R.K. Gauba)**
Technical Member	Officiating Chairperson

pr/mkj