

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

**APPEAL NO. 78 OF 2016
AND
APPEAL NO. 135 OF 2016**

Dated: 22.09.2022

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

In the matter of:

APPEAL NO. 78 OF 2016

M/S R.M. MITTAL STEELS PVT. LTD.

Rep. by Director

Kothi Dholpur

Rajasthan-328001

... Appellant(s)

VERSUS

1. **THE MANAGING DIRECTOR,**
Jaipur Vidyut Vitran Nigam Ltd.,
Vidyut Bhawan, Jyoti Nagar, Jaipur
(JVVNL / Jaipur Discom)
Jaipur – 302 005
 2. **THE CHAIRMAN & MANAGING DIRECTOR,**
Rajasthan Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Jyoti Nagar,
Jaipur (RVPN)
Jaipur – 302 005
 3. **THE CHIEF ENGINEER (LD),**
Rajasthan Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Jyoti Nagar,
Jaipur (SLDC)
Jaipur – 302 005
 4. **RAJASTHAN ELECTRICITY
REGULATORY COMMISSION**
Vidyut Vinayamak Bhavan
Sahkar Marg, Nar State Motor Garage,
Jaipur – 302 005
- ... Respondent(s)

Counsel for the Appellant (s) : Mr. S. Vallinayagam
Ms. Kajal Singhal

Counsel for the Respondent (s) : Mr. Pradeep Misra
Mr. Suraj Singh for R-2 & 3

Mr. Manoj Kumar Sharma for R-2

APPEAL NO. 135 OF 2016

M/S NATIONAL ENGINEERING INDUSTRIES LIMITED

Khatipura Road, Hasanpura
Jaipur

... Appellant (s)

VERSUS

**1. RAJASTHAN RAJYA VIDYUT PRASARAN
NIGAM LIMITED**

Vidyut Bhawan, Janpath
Jaipur – 302 005.

**2. THE CHIEF ENGINEER (LD),
Rajasthan Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Jyoti Nagar,
Jaipur (SLDC)**

Jaipur – 302 005.

3. JAIPUR VIDYUT VITRAN NIGAM LTD.,

Vidyut Bhawan, Jyoti Nagar, Jaipur
(JVVNL / Jaipur Discom)
Jaipur – 302 005.

**4. RAJASTHAN ELECTRICITY
REGULATORY COMMISSION**

Vidyut Vinayamak Bhavan
Sahkar Marg, Nar State Motor Garage,
Jaipur – 302 005.

... Respondent(s)

Counsel for the Appellant (s) : Ms. Kriti Soni

Counsel for the Respondent (s) : Mr. Pradeep Misra

Mr. Suraj Singh for R-1 & 2

Mr. Manoj Kumar Sharma for R-2

Mr. Sandeep Pathak

Ms. Archana Pathak Dave

Mr. Akshat Sharma for R-3

J U D G M E N T(*Oral*)

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

1. Both these appeals give rise to identical questions of facts and law vis-a-vis liability of the appellants, Open Access consumers, drawing energy by dedicated lines for purposes of their respective steel industrial units, to pay transmission losses in terms of Regulation 22(2) of *Rajasthan Electricity Regulatory Commission (Terms & Conditions for Open Access) Regulations, 2004* which reads thus:

“The Energy losses [on account of use of the transmission and distribution system] shall be adjusted in proportion of the energy drawal by the open access consumer on the basis of [actual] losses [during previous year] in the system for the voltage level at which he is connected.”

2. Even the Commission accepts the position that the conditions precedent inherent in the above regulations are that they must be “use of the transmission and distribution system” and the losses for which liability is to be borne should be “actual” as incurred “during previous year”.

3. The case of appellant in second captioned appeal was decided first by order dated 24.11.2015, the Commission having taken the following view:

- “12. *In the instant case, indisputably, Petitioner is using Transmission and Distribution System of the Respondents and draws part of its requirement from the Distribution Company and therefore is liable for deduction of system losses. Further, the above regulation refers to actual losses in the system for the voltage level at which he is connected.*
13. *As per the above provision, we are of the view that system losses for the voltage level at which he is connected can be deducted if the consumer uses the Transmission and Distribution System of RVPN and Discom which are interconnected for drawing power from Discom and through open access.*
14. *In our view, the submission of the Petitioner regarding location of energy meter does not alter the position since it is the system losses for the voltage level at which he is connected which are relevant and not the line losses.*
15. *Accordingly, we hold that action taken by the Respondents is in accordance with the above Regulation and therefore is legal and valid.”*

4. The above view has been followed in the case of the first captioned appeal by the impugned order dated 29.01.2016, the prime premise on which the Commission has ruled being that the location of the meters does not alter the position since, as per the regulation, it is the system losses which have to be charged from Open Access consumer for voltage at which he is connected.

5. There is no clarity as to location at which the energy metres are actually installed and as to whether they are connected to the transmission system or the distribution systems.

6. It was pointed out to us that in which context of the similar claim in the matter of *Kalyani Steels Limited Vs. Karnataka Power Transmission Corporation Ltd.(KPTCL)* in Appeal No.28 of 2005, this tribunal by judgment dated 29.03.2006 had observed thus:

“41. As regards the third point, the appellant’s specific case that it is ready to accept transmission at the point of injection of power and suffer transmission loss throughout the 7.25 km transmission line. Therefore, with respect to the power that may be transmitted by way of Open Access purchase, the question of payment of transmission loss does not arise at all as factually the appellant bears the transmission loss. The appellant still seeks to retain standby supply and it is through the same transmission line. Unless the appellant also accepts the supply by the second Respondent from the same point of injection where the appellant undertakes to fix the necessary meter for measuring the consumption, the appellant cannot escape the transmission loss. If the appellant accepts the measurement on the spot of injection of power either from Open Access or when standby power is drawn from the second Respondent, then the liability for transmission loss also will not arise. Therefore, the contrary conclusion of the Commission and its conclusion deserves to be interfered while making the point clear. If the point of injection is at a different point where standby power is drawn, then it automatically follows, the appellant will be liable for transmission loss and all incidental charges such as surcharge, etc. follows.”

7. In our view, without clear findings being returned as to the location of the energy metres and as to its connection with the transmission or distribution network, an appropriate view in light of the regulation in question cannot be taken, not the least so as to return a finding that the energy losses for which liability to be fastened on the Open Access consumers is on account of “*use of the transmission and distribution system*”.

8. For the above reasons, we set aside the impugned orders challenged by these appeals and remit the petitions of the appellants to the State Commission for complete and effectual adjudication after necessary enquiry on facts as well.

Pronounced in Open Court on this 22nd Day of September, 2022.

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson