

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal Nos.116 & 117 of 2005

Dated: March 2, 2006

Neyveli Lignite Corpn. Ltd. ... Appellant

Versus

Southern Regional Electricity Board
& Others ... Respondents

Present: Hon'ble Mr Justice. Anil Dev Singh, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member

For the appellant : Mr. K.K. Singh, Mr. P. Suresh

For the respondents : Mr. M.T. George for KSEB
Mr. Ramji Srinivasan with
Ms. Mandakini Singh for R-4
Mr. S. Sowmyanarayanan for TNEB.
Mr. K. Srinivasa Rao, Member
Secretary, SREB.

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

1. These appeals are directed against the orders of the Central Electricity Regulatory Commission (CERC) dated October 15, 2003 and March 5, 2004.

2. The facts giving rise to the appeals briefly stated are as follows:

Thermal Power Station-II of Neyveli Lignite Corporation Ltd. (NLC) was set up and commissioned in two stages as per the following details:-

UNIT	DATE OF SYNCHRONISATION	COD
STAGE-I		
UNIT 1	17-01-88	23-04-88
UNIT 11	06-02-87	08-05-87
UNIT 111	29-03-86	29-09-86
STAGE-II		
UNIT IV	30-03-91	25-01-92
UNIT V	30-12-91	02-06-92
UNIT VI	30-10-92	17-03-93
UNIT VII	19-06-93	09-04-94

3. Two captive mines of capacities indicated below were also commissioned simultaneously on completion of each of the stages:

Stage 1 : 47 lakh tones per annum

Stage II : 58 lakh tones per annum

The Government of India allocated 50 MW of power from each stage to cater to the requirements of captive mines.

4. From the very inception, both the stages of Thermal Power Station-II (TPS) have been considered and treated as two separate stations for purposes of tariff.

5. Availability Based Tariff (ABT) was applied in the Southern Region w.e.f. January 1, 2003. The declaration of availability of power is being made by the appellant for Stage-I and Stage-II of the NLC/TPS-II separately. Similarly, fixing of the schedule by the Southern Regional Load Despatch Centre (SRLDC), Bangalore is also being done stage-wise.

6. The appellant filed a petition before the Central Electricity Regulatory Commission (CERC) for combining Stage-1 and Stage-II of the Thermal Power Station-II for treating it as a single station for the purpose of computation of Unscheduled Interchange (UI). The CERC by its Order dated October 15, 2003 rejected the petition. Thereupon, the appellant filed a petition before the CERC seeking review of its order dated October 15, 2003. The CERC not finding any

error apparent on the face of the record in the original order dismissed the review petition on March 5, 2004.

7. Not being satisfied with the order dated Oct., 15, 2003 and the order dated March 5, 2004 of the CERC, the appellant has filed the present appeal.

8. We have heard the parties extensively. A preliminary objection regarding maintainability of Appeal No. 16/2005 filed against the order of the Commission dated March 5, 2004, was raised by the learned counsel for the respondents. It was contended that since the order dated March 5, 2004 was passed by the Commission in review, no appeal would lie against it. We see no force in the submission. According to Section 111 of the Electricity Act, 2003 an order passed by the Commission is appealable. The word "order" is not qualified. It would include original order as well as order passed in review. Therefore, preliminary objection cannot be sustained and is accordingly rejected.

9. The learned counsel for the appellant contended that the prayer of the appellant for combining both the stages of TPS-II is for the purpose of overcoming difficulty of UI charges. According to him, combining the two stages would help in mitigation of the suffering of the appellant on account of UI liability caused due to operational reasons. It was pointed out that in case Stage-1 or Stage-II does not generate to the declared capacity, the appellant is liable for UI charges. But by combining both the stages into one single block, it will be conducive to maintain load on the units nearer to the schedule and for meeting the commitments made with the consumers. The learned counsel urged that the Commission was under a misconception that the petition for combining the two stages was filed in order to evade payment of UI charges. The learned counsel adverted to the original order of the Commission and submitted that the reasoning of the Commission was fallacious.

10. The purpose of combining two stages as reflected from the arguments of the appellant is that the appellant by supplementing generation from Stage-II of TPS-II will be able

to offset any shortfall in generation from Stage-1 and in doing so it will mitigate its liability to pay UI charges for Stage-1 of TPS-II, when the appellant fails to meet SRLDC schedule.

11. We find that the Commission cannot be faulted in its view that in case the prayer of the appellant is accepted, it may encourage gaming. Possibility cannot be ruled out that a generator having a set up like the appellant will step up generation from one outfit, even beyond its declared capacity, with a view to meet the deficit from the other outfit. This can lead to generators declaring inflated capacities of their units to avoid the payment of UI charges/penalties. This fusion of both the stages for purposes of UI charges will have a baneful effect. Therefore, the Commission was entirely right in its opinion that combining both the stages of TPS-II would encourage gaming.

12. It is not in dispute that the tariff for power generated by Stage-1 and Stage-II is different. Tariff of Stage-II is higher than that of Stage-I. In case both the stages are combined together, it will be possible for the appellant to despatch its costlier generation to the beneficiaries. Therefore, we find no

flaw in the reasoning of the Commission that combining of Stage-1 and stage-II will result in payment of higher energy charges by the beneficiaries of the generating stations.

13. ABT was implemented in the Southern Region from January 1, 2003. The appellant accepted the ABT and did not raise any objections thereto by asking the Commission to combine Stage-I and Stage-II for the purpose of avoiding payment of UI charges/penalty. The ABT scheme, *inter-alia*, envisages of a charge for Unscheduled Interchanges. Blending two stages for purposes of U.I. charges will affect ABT regime adversely.

14. It is also apparent from the record that both the stages of TPS-II have separate switchyards. While Stage-I has 230 KV switchyard, Stage-II has 400 KV switchyard. These switchyards are connected through 400/230 KV interconnecting transformers. Besides, tariff for power generated by two stages is being fixed separately.

15. In view of the aforesaid discussion, we do not find any merit in the appeals and the same are accordingly dismissed.

(Justice Anil Dev Singh)
Chairperson

(H.L. Bajaj)
Technical Member