

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

**Appeal No. 100 of 2008**

**Dated: 13<sup>th</sup> April, 2011**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,**  
**Chairperson**  
**Hon'ble Mr. Rakesh Nath, Technical Member,**

**In the matter of**

State Load Despatch Centre  
SLDC, Orissa Power Transmission  
Corporation Ltd.  
4<sup>th</sup> floor, Bidyut Bhavan  
Janpath, Bhubaneswar  
Orissa-751022

... Appellant(s)

Versus

1. Nav Bharat Ventures Ltd  
Nav Bharat Chambers  
Raj Bhavan Road  
Hyderabad
2. Southern Regional Load  
Despatch Centre  
29 Race Course Road  
Bangalore-560009
3. Eastern Regional Load  
Despatch Centre  
14, Golf Club Road  
Tollyganj  
Kolkata-700033

4. Orissa Power Transmission Corporation Ltd.  
4<sup>th</sup> floor, Bidyut Bhavan  
Janpath  
Bhubeneswar-751022
  5. Reliance Energy Trading Ltd  
2/22A Shanti Niketan  
New Delhi-110021
  6. Eastern Regional Power Committee  
14, Golf Club Road  
Tollygunge,  
Kolkata-700033
  7. Central Electricity Regulatory Commission  
36, Chanderlok Building  
Janpath  
New Delhi-110001
- ....Respondents

Counsel for Appellant(s): Mr. R.K. Mehta  
Mr. Antaryami Upadhyay  
Mr. S. Lakhi Singh  
Ms Marie Riba  
Mr. Gaurav Srivastava

Counsel for Respondent(s): Mr. K. Gopal Choudhary  
Ms Jyoti P. Ch.Manager, SRLDC  
Ms Swapna Seshadri  
Mr. Mullapudi Rambabu  
Mr. Sanjay Sen

**JUDGMENT**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON**

1. State Load Despatch Centre is the Appellant. Challenging the order dated 5.5.2008 passed in the review petition filed by the Appellant before the Central Commission, the present Appeal has been filed by the Appellant. The short facts are follows:

(a) Nav Bharat Ventures Limited, Hyderabad is the first Respondent herein. It owns 30 MW captive Generating Plant. The first Respondent entered into an agreement for the sale of surplus power to Reliance Energy Trading Limited, the 5<sup>th</sup> Respondent. The 5<sup>th</sup> Respondent in turn entered a further agreement to sell the power to the distribution utilities in AP.

(b) The Reliance Energy Trading Ltd. (R-5) made an application on 18.10.2007 to the Southern Regional Load Dispatch Centre (R-2) for a short term open access for 25 MW for a short period from 7.1.2008 to 31.1.2008. As per the short term Open Access Regulations the Southern Regional Load Dispatch Centre sought the consent from the Appellant through Eastern Regional Load Dispatch Centre for the above transaction on 19.10.2007. On 22.10.2007, the Appellant denied the consent mainly on the ground of non-installation of the telemetering and communication equipments by Respondent No. 1. The Respondent No. 2 by the letter dated 26.10.2007, informed the Reliance Company (R-5) that it was not able to approve the transactions, as no consent had been obtained from SLDC, the Appellant.

(c) Aggrieved by the said decision conveyed by the Appellant SLDC, the Nav Bharat Ventures Ltd, the first

Respondent approached the Member Secretary, Eastern Regional Power Committee under Regulation 35 of the CERC (Open Access in Inter State Transactions), Regulation 2004 for redressal of its grievance. That application was forwarded by the Committee to the Central Commission for consideration.

(d) At that stage, the Nav Bharat Ventures Ltd, the first Respondent filed a Petition No.156 of 2007 before the Central Commission for the relief and directions to be issued to the Appellant for the approval of open access. After hearing the parties, the Central Commission passed an order dated 31.12.2007 directing that the open access be allowed and the Regional Load Dispatch Centres were directed to schedule the transactions applied for even if the application/clearance was received after normal cut off date subject to the availability of spare transmission capacity.

However, open access transactions was denied by the Appellant despite the directions of the Central Commission by the order dated 31.12.2007. Therefore, the Nav Bharat Ventures Ltd, the first Respondent filed a Petition before the Central Commission in Petition No.10 of 2008 seeking for the fresh directions to the SLDC Appellant to allow the open access. During the pendency of the said application, the first Respondent also filed a Petition No.11/2008 under section 142 of the Act for non compliance of the order dated 31.12.2007. Accordingly, the Central Commission initiated proceedings under Section 142 and show cause notice was issued.

(e) At that stage, on 17.3.2008 the Appellant filed a Review Petition in Petition No.37 of 2008 in the main Petition No.156 of 2007. On 5.5.2008 a review Petition No.37 of 2008 had been disposed of by Central Commission rejecting the Review Petition by which the Appellant was directed to grant open access even though

the required equipment for transmitting real time data to SCADA, though installed by the first Respondent in the meantime had not been made operational. Ultimately in pursuance of the above order the Appellant gave its consent for grant of open access to the first Respondent and as such the orders dated 31.12.2007 and 5.5.2008 have been complied with.

(f) The Appellant although complied with the order of the Central Commission has filed the present Appeal as against the said order since other CGPS are insisting for grant of open access on the basis of impugned order.

2. According to the Appellant, the open access had been granted to the Respondent, but even then the Appellant was constrained to file this Appeal since the other CGPS may also seek for open access without complying with the provisions of

Orissa Grid Code which provided for the installation of communication facilities on the basis of the impugned order.

3. The learned Counsel appearing for the Respondent -1 strenuously has raised a preliminary objection stating that the order impugned was passed in the review petition dated 5.5.5.2008 confirming the earlier order dated 31.12.2007, and rejecting this review petition, and therefore the Appeal as against the dismissal order in Review Petition is not maintainable as held by this Tribunal in various judgments. It is further contended that the first respondent has already arranged for and provided PLCC for connectivity purposes as such the order passed on 31.12.2007 which was affirmed by the Central Commission by the order dated 5.5.2008 had been fully complied with and as such the issue does not survive any more.

4. As admitted by the Appellant, on the basis of the mere apprehension entertained by the Appellant that some other



parties may also seek for similar relief claiming that they are not required to arrange for the PLCC and the Data Communication facilities in earlier impugned order, the present appeal has been filed. As correctly pointed by the Respondent, the order impugned 5.5.2008 was passed by the Central Commission in the Review Petition No.37 of 2007 rejecting the Review Petition affirming the original order dated 31.12.2007. It is settled law, the Appeal is not maintainable as against the Dismissal Order passed in the Review Petition.

5. Admittedly, there is no appeal as against the original order dated 31.12.2007 passed in Petition No.156 of 2007. Hence in this Appeal, there can be no scope for seeking the order dated 31.12.2007 to be set aside as that order has become final. Therefore, the Appellant in this Appeal can not contend that the Central Commission acted without jurisdiction in granting open access. The Central Commission is vested with the jurisdiction in matters of inter state transmission and open access.

6. The provisions of OGC are not open access conditions for inter state open access. They are merely connectivity conditions. Therefore, it can not be stated that the Central Commission has acted contrary to the provisions of OGC.

7. In view of the above this Appeal is liable to be dismissed not only on the ground that it is not maintainable but also on the ground that it is devoid of merit as pointed out by the learned Counsel for the Respondent.

8. Hence the Appeal is dismissed. No order as to costs.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 13<sup>th</sup> April, 2011

REPORTABLE/NON-REPORTABLE  
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