

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 18 of 2010

Dated: 18th October. 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. V.J. Talwar, Technical Member,

In The Matter of

M/s. Dwarikesh Sugar Industries Ltd,
Dwarikesh Dham,
Faridpur, Bareilly,(UP)Appellant

Versus

1. M/s. UP Power Corporation Ltd
Shakti Bhawan,
Ashok Marg,
Lucknow (UP)
 2. M/s UP Power Transmission Corporation Ltd
Shakti Bhawan,
Ashok Marg,
Lucknow (UP)
 3. M/s.Madhyanchal Vidyut Vitran Nigam Ltd,
4-A, Gokhle Marg,
Lucknow (UP)
 4. UP Electricity Regulatory Commission,
Kishan Mandi Bhawan, IInd Floor,
Gomti Nagar,
Lucknow – 226010
- Respondents

Counsel for Appellant(s): Mr. Buddy Ranganadhan,
Counsel for Respondent(s): Mr. Pradeep Misra

JUDGMENT

PER MR. V J TALWAR, TECHNICAL MEMBER

1. Appellant M/s Dwarikesh Sugar Industries is the generating company. 1st Respondent, UP Power Corporation Ltd (Corporation) is Bulk Supplier in the State. 2nd Respondent UP Power Transmission Corporation Ltd is the State Transmission Utility (STU) and Transmission Licensee. 3rd Respondent, Madhyanchal Vidyut Vitran Nigam Ltd (DISCOM) is one of the distribution Licensees in the state of UP. 4th Respondent is UP Electricity Regulatory Commission (State Commission).
2. The present Appeal is directed against the State Commission's order dated 12th November 2009 in Petitions No. 558 & 580 of 2008 whereby the State Commission dismissed the petitions of the Appellant for recovery of damages against the Respondents No. 1 and 2 herein.
3. Aggrieved by the impugned Order of State Commission dated 12.11.2009, the Appellant, the generating company has filed this Appeal.
4. The short facts leading to the filing of this Appeal are as follows:-
 - 4.1. The Appellant Dwarikesh Sugar Industries Limited established a Greenfield Project of 7500 TCD Sugar Mill at Faridpur, Bareilly along with Cogeneration facility with ability to sell surplus 24 MW power. The

- Appellant executed a Power Purchase Agreement (PPA) dated 17.5.2006 with 3rd Respondent DISCOM for sale of 24 MW power produced from the Appellant's Sugar Mill's Cogeneration Plant. This PPA dated 17.5.2006 was approved by the State Commission on 25.5.2006 with the direction to execute final PPA in accordance with Regulations. Accordingly, the final PPA was executed on 15.11.2006.
- 4.2. The 3rd Respondent DISCOM had authorized 1st Respondent Corporation to execute the said Power Purchase Agreement and to do all the necessary relevant works on behalf of them. As such all the obligations under the said power purchase agreement were under taken by 1st Respondent Corporation on behalf of the 3rd Respondent DISCOM.
 - 4.3. The date of Commissioning of the Cogeneration plant as per the PPA was to be in December 2007.
 - 4.4. Under clause 8.3 of the PPA, the construction of the Transmission Line and other supporting works for the evacuation of power was to be undertaken by the Appellant. However, the Appellant, under the said clause had the option to require the Respondent No. 2 STU to construct the said line and other works at the cost of the Appellant.
 - 4.5. On 30.10.2006, the Appellant paid Rs 3.01 Crore to the 2nd Respondent the STU towards the cost of 132 kV evacuation line and 132 kV line bay at Faridkot Substation of STU.

- 4.6. The construction work for the 132 KV transmission line was being done by 2nd Respondent STU on deposit work basis
- 4.7. The Appellant commenced its crushing operations on 17.12.2007 and was in a position to export power to the State Grid. However, the evacuation line, being constructed by the 2rd Respondent, was not ready and thus the Appellant was not in position to feed it into the grid.
- 4.8. On 15.01.2008 the 2nd Respondent, STU informed the Appellant that the transmission line work was under progress and could be completed only by March 2008.
- 4.9. Even though the Appellant Generating Company had commenced its crushing operations and was in a position to evacuate power to the grid, it was not possible for 3rd Respondent to take the power due to non-commissioning of transmission works which was likely to be completed only in March, 2008. Hence the Appellant filed a Petition No.515/2008 before the State Commission for permission for temporary arrangement by 'solid tapping' of existing 132 kV Shajahanpur – Dohna line. The State Commission, vide its order dated 6.2.2008 permitted the proposed temporary arrangement for evacuation of power from the Appellant's generating station up to 30.04.2008.
- 4.10. On 2.6.2008 the 2nd Respondent, STU demanded from the Appellant additional set of CT & PT (Current Transformers and Potential Transformers) for providing independent check meter. The Appellant

contested the demand of additional CT and PT by the Respondents stating that Cost of CT & PT had already been paid by him.

4.11. In the mean time, the 2nd Respondent Corporation disconnected 132 kV line on 1.5.2008 for shifting of meters to the Faridpur sub-station. The line remained disconnected till 22nd June, 2008. Due to said disconnection of power/line for such a long period, the Appellant could not withdraw its banked energy for carrying out its necessary repairs and maintenance etc. of its plant and machinery. The Appellant had to run DG sets for carrying out necessary repairs and maintenance of its plant.

4.12. The Appellant was informed by the officers of the 2nd Respondent that line would be reconnected only upon supply of additional set of CT and PT. On 16.6.2008 a meeting between the Appellant and Respondent Corporation was held and it was decided to temporarily restore the supply till the final decision in respect of the liability of supply of additional one set of CT and PT in accordance with the terms of Power Purchase Agreement dated 15th November, 2006 is taken by the higher authorities of the Respondents.

4.13. Since the Appellant Company was under the threat of further disconnection of electricity being supplied by the 3rd Respondent DISCOM, the Appellant filed a Petition No. 558 of 2008 before the State Commission on 9.8.2008 praying, inter alia, to restrain the Respondents from disconnecting the Transmission Line.

- 4.14. The Appellant Company sent a letter to the Respondents, inter alia, bringing out the losses etc suffered by the Appellant on account of the disconnection of electricity due to the demand of additional set of CT & PT.
- 4.15. The State Commission in its interim order dated 24.2.2009 directed the 2nd Respondent to maintain status quo with respect to the Transmission Line. The State Commission also directed the 2nd Respondent to explain as to whether demand of additional CT & PT was in accordance with metering requirements as per the State Commission's CNCE Regulations 2005 or it is a part of industry practice and the Appellant herein was not being discriminated.
- 4.16. On 19.2.2009 the Appellant was informed by the Respondent Corporation about the decision taken by the Respondent Corporation, that any additional requirement beyond the conditions of PPA has to be borne by the Respondent Corporation at its own expenditure.:-

"Sub:- Double Metering Arrangement in Sugar Mills

As per approval of the Chairman & Managing Director on the problem of Double metering arrangement which is indicated by Sugar Mills (To connect bill meter & check meter separately with CT/PT), the following decisions have been taken in high level meeting on Dt. 17.1.09.

"As per provisions of Clause 14.1 of Power Purchase Agreement, two meters had to be made available which have been made available by the Cogenerator. So the provision of Double metering has been done as per conditions of PPA.

Therefore, if any other arrangement is not made by the Cogenerator, there is no obstacle in starting of the Electric lines.

If any point has been raised by the department beyond the conditions of PPA, then that has to be completed by the department on its own expenses”.

- 4.17. Upon receiving the above communication from the Respondent Corporation, the Appellant filed an additional affidavit before the State Commission on 28.2.2009 seeking compensation/damages to the tune of Rs 19,50,000/- on account of the Respondent Corporation having illegally disconnected the transmission line due to the illegal and unwarranted demand of the additional set of CT &PT for the period 1.5.2008 to 22.6.2008.
- 4.18. However, the State Commission, through its impugned order, inter alia, rejected the petition of the Appellant as also the claim for damages/compensation as claimed by the Respondent in the supplementary affidavit.
5. Aggrieved by this impugned Order dated 12.11.2009 the Appellant generating company has filed this present appeal.
6. Learned Counsel for the Appellant has raised the following contentions in support of his claim:
 - 6.1. The demand of the Respondent Corporation for additional CT & PT was totally unwarranted and unjustified as it was to be by its own admission in letter dated 19.2.2009.

- 6.2. The Respondent disconnected the line without any reason or justification. The said disconnection was just to pressurize the Appellant to submit to Respondents' unjust demand.
- 6.3. The State Commission had nothing before it to assume that the line was disconnected due to technical reasons.
- 6.4. While holding that the Appellant could have rescheduled its maintenance scheduled, the State Commission had ignored that maintenance in sugar industry which could be carried out only during off season i.e. between May to September.
- 6.5. Because of illegal disconnection of the line, the Appellant could not draw its banked energy and had to depend on DG Set to meet its energy demand required for urgent maintenance.
7. The learned counsel for the Respondent Corporation refuted the allegations made by the Appellant and submitted in reply as follows:
 - 7.1. That the present Appeal is not maintainable under law and the Petitions filed by Appellant were rightly dismissed by the State Commission as the State Commission has no jurisdiction to decide the Petition filed by Appellant.
 - 7.2. There is no provision under Section 86 (1)(f) of Electricity Act, 2003 under which damages can be granted for alleged disconnection of transmission line. Thus the Petition filed by Appellant before the State Commission was not maintainable and had been rightly dismissed. If the

- Appellant has any grievance, the remedy of such grievance lies elsewhere and not under the Electricity Act 2003. Hence the present Appeal is liable to be rejected.
- 7.3. The State Commission, at the request of the Appellant, allowed temporary arrangement of solid tapping the existing 132 kV line to facilitate evacuation of power from the Appellant's generating station. The permission of the State Commission expired on 30th April 2008. The transmission line was disconnected on 1st May 2008 i.e. after expiry of the State Commission's permission and also at the end of sugarcane crushing season and when no power was being generated by the Appellant.
- 7.4. It was disconnected for the purpose of connecting it with 132 KV Faridpur Sub Station as per the PPA. It required some works to be done viz., shifting of jumpers; shifting and installations of meters (along with CTs & PTs) from the Generating Station to Faridpur substation and thereafter testing of the line by Chief Electrical Inspector of the State. Hence the question of awarding any damages to the Appellant did not arise.
- 7.5. Disconnection of line had nothing to do with the demand of additional CT & PT. These are two different aspects altogether.
8. In view of rival contentions referred to above urged by the learned counsel for parties, following questions would arise for consideration:

- i) Whether the disconnection of line was on some 'technical grounds' as held by the State Commission or it was to force the Appellant to submit to its demand of additional CT & PT?
 - ii) Whether the demand of additional CT & PT by the Respondent was unwarranted & unjustified?
 - iii) Whether the Appellant is entitled for any compensation as it was denied to withdraw banked energy and it had to run DG sets to meet its requirement of energy for carrying out maintenance works.
9. We shall now deal with each question one by one. The first question before us for our consideration as to Whether the disconnection of line was on some 'technical grounds' as held by the State Commission or it was to force the Appellant to submit to its demand of additional CT & PT?
- 9.1. The Power Purchase Agreement between the Appellant and the 3rd Respondent, DISCOM was executed on dated 15.11.2006. The date of Commissioning of the cogenerating plant as per the PPA was to be December 2007. Under clause 8.3 of the PPA, the construction of the Transmission Line and other supporting works for the evacuation of power was to be undertaken by the Appellant. However, the Appellant, under the said clause had the option to require the Respondent No. 2 to construct the said line and other works at the cost of the Appellant. Thus, the construction work for the 132 KV transmission line was being done by 2nd Respondent on deposit work basis

9.2. The Appellant Generating Company had commenced its crushing operations in December 2007 and was in a position to evacuate power to the grid, and it was not possible due to non-availability of evacuation system. Hence a Petition No.515/2008 was filed by the Appellant before the State Commission for permission for temporary arrangement by 'solid tapping' of existing 132 kV Shajahanpur – Dohna line. The State Commission, vide its order dated 6.2.2008 permitted the proposed temporary arrangement for evacuation of power from the Appellant's generating station up to 30.04.2008. Relevant Portion of State Commission's order dated 6.2.2008 is quoted below:-

*"We find that final agreement between the parties was made on 15.11.06 in compliance to Order dt.25.5.06. However, prior to it the parties had agreed to commission the plant by Dec,07 and to transmit power through a 132 KV line connected with 132 KV grid substation at Faridpur. There is no change on these conditions in the agreement executed on 15.11.06. **It is awful to note that the petitioner has approached the Commission with this petition on 22.1.08 after the commissioning of the plant in Dec,07 and as such has miserably failed on the commitments made in the PPA. The urgency so created by the Petitioner could have been avoided had the progress of transmission system monitored. The construction of the dedicated transmission line is the responsibility of the Petitioner under the provisions of CNCE regulations as such primary responsibility of such delay lies on the Petitioner.** Incidentally, the construction of the transmission system has been assigned by the Petitioner to UPPTCL which is also a State Transmission Utility (STU) with statutory duty to carry electricity from the generating stations to the load centers. Having committed to schedule of construction of the transmission system, it has also failed to execute the work in time as execution agency. In past, we have approved alternative schemes for evacuation of power on temporary basis due to scheduled*

transmission system had failed to come up prior to commissioning of the plant. The provisions of PPA in this regard have been approved by the Commission by an order and failure to abide by them may amount deliberate non-compliance of the order of the Commission. Therefore, the parties to this petition or for that matter parties to any PPA shall ensure that the timelines and connectivity conditions approved by the Commission are adhered and the Commission would not encourage alternative arrangements for power evacuation ordinarily for want of due diligence on part of the co-generation plants and State Transmission Utilities. State Transmission Utilities shall also endeavor to provide connectivity at its substation as per the agreement and prior to the date of commissioning.

The petitioner is in a position to generate power and the consumer of the State should have benefit of such generation. As such the temporary alternative arrangement for evacuation of power proposed by the petitioner and consented by UPPCL & UPPTCL is approved with the condition that adequate measures should be taken for stability of grid, protection of line and electrical safety of the installations. The generating company / STU has to comply with the requirements of Director, Electrical Safety, Government of Uttar Pradesh, and safety specifications of CEA u/s 53 of Electricity Act, 2003 as mentioned under section 7.3 of PPA. The construction and energization of transmission system shall be commissioned after due clearance of Director, Electrical Safety. The alternative arrangement shall operate up to 30.4.08 and parties to the petition and UPPTCL shall ensure that the transmission system as agreed in the PPA is commissioned possibly by the end of March, 08. The representative of the Petitioner in the hearing has submitted that metering shall be at the Petitioner's end and he will provide a separate room for installation of the meter with lock and key in the possession of UPPTCL. The parties to this petition shall act accordingly. {emphasis added}

- 9.3. Perusal of finding of the State Commission in its order dated 6.2.2008 would reveal that the State Commission had permitted the temporary

arrangement for evacuation of power from the Appellant's generating station only up to 30.4.2008. This arrangement could not have continued beyond the approved date i.e. 30.4.2008. In order to continue with the temporary arrangement beyond 30.4.2008, the Appellant had filed another petition before the State Commission being No. 533 of 2008 seeking approval for extension of time for evacuation of power through temporary arrangement. The State Commission disposed off this petition through its Order dated 19.5.2008 declining to extend the continuance of temporary arrangement. The relevant portion of the State Commission's order dated 19.5.2008 is quoted below:

"The petitioner has filed this petition seeking further extension of time for evacuation of power through the said temporary arrangement.

In the hearing, the petitioner submitted that line agreed in the PPA was complete but could not be used for evacuation of power because the bay at the grid substation was not complete. The petitioner prayed to allow use of temporary evacuation system to enable it to withdraw banked energy. The representative of UPPTCL submitted that the bay at the substation should be complete within one week as the jumpering work was in progress and it was technically not feasible to work on line if the temporary line was in circuit. The respondent has prayed not to allow further extension so that the work is completed

The commission finds that the crushing season has ended and the petitioner is not contemplating supply of power to licensee during off season and since temporary system cannot operate in view of the said facts and circumstances and directs UPPTCL to complete the

works of connecting the line with its substation within this month positively.

The petition is disposed.”

- 9.4. Bare reading of the State Commission’s order dated 6.2.2008 and 19.5.2008 would reveal that the permission to temporary arrangement was accorded only for evacuation of power from the Appellant’s generating station up to 30.4.2008. Permission for usage of the said temporary arrangement for withdrawal of banked energy was denied by the State Commission in its order dated 19.5.2008.
- 9.5. Perusal of records placed before us revealed that though the Line was disconnected on 1.5.2008, the demand for additional CT and PT was raised by the Appellant only on 2.6.2008.
- 9.6. In the light of above findings, it cannot be said that the disconnection of line was to force the Appellant to submit to its demand of additional CT & PT. The question is answered accordingly.
10. Next question before us for our consideration as to whether the demand of additional CT & PT by the Respondent was unwarranted & unjustified?
 - 10.1. Clause 14 of the PPA deals with the metering. Clause 14.1 of the PPA requires the Appellant to provide two identical sets of ABT compliant meters. Clause 14.1 of the PPA is reproduced below:

14. Metering.

*14.1. The Generating Plant shall supply, **two identical sets of ABT compliant meters**, with the facility for downloading data*

*to measure the quantity and time details of the Power exported from and imported by the Generating Plant, conforming to the specifications approved by STU, **alongwith all necessary associated equipments.** These meters shall be installed and maintained by STU. These meters shall be installed at the grid substation of STU at the interconnection point. One set of export/import meters shall be termed as Bill Meter and other set will serve as the Check Meter. **The complete metering system consisting of meters, Current Transformers & Potential Transformers** shall conform to the 0.2 accuracy class, individually and collectively, **and shall comply with the technical standards, accuracy and calibration requirements of the Indian Electricity Rules and the specifications of the Bureau of Indian Standard and the guidelines of CEA for installation of meters.**”*

- 10.2. From the above it is seen that the key words used in the clause 14.1 of the PPA are ‘two sets of ABT compliant meters’. What constitute the sets of meters? Whether it meant meters only or something more than the meters? This clause also provides that the complete metering system shall comply with, inter alia, guidelines of CEA for installation of meters. Let us refer to CEA’s Regulations on installation of meters. Regulation 2(p) of CEA’s Regulations defines meters as under:

*“2 (p) ‘Meter’ means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system and **shall include, wherever applicable, other equipment such as Current Transformer (CT), Voltage Transformer (VT) or Capacitor Voltage Transformer (CVT) necessary for such purpose;**”*

- 10.3. Conjoint reading of Clause 14 of the PPA and Regulation 2(p) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 would make it clear that two sets of meters would mean two

meters along with associated CTs and PTs. The officer of the 3rd Respondent in his letter dated 25th May 2008 had rightly pointed out that the purpose of twin metering (main meter and check meter) would be lost if both the meters are connected through the same set of CTs and PTs.

10.4. Natural offshoot of the above explanation would be as to whether it is normal industry practice to provide separate CTs and PTs wherever double metering (main and check meters) is required. The layout of EHV (Extra High Voltage) outdoor substations is generally quite complex and would be further complicated if two separate sets of CTs and PTs are provided for each feeder requiring double metering. While on one hand each of the meters i.e. main meter and check meter are required to be connected through separate sets of CTs and PTs, the provision of additional CTs and PTs would require additional space and would make layout of the substation very complex. Therefore, in practice 'multi core' CTs, having separate identical secondary windings for main and check meter is used. Further, one common Bus bar PT is utilized for all check meters installed on various feeders. Thus the requirement of separate CT and PT for main and check meter is met with, without complicating the layout of the substation.

10.5. Perhaps, UPPTCL, the 2nd Respondent who was entrusted with the construction of 132 kV line and associated bay made provision for single winding CTs suitable for single metering instead of 'multi core' CTs required for double metering. Cost of this single winding CT was

included in the cost of 132 kV line bay and was recovered from the Appellant. Realizing this error at the time of shifting meters from the Appellant's generating station to STU's Faridpur grid substation, a demand of additional set of CTs and PTs was raised. When the State Commission in petition no 558 of 2008 raised query about normal industry practice in this regard, the Respondents agreed to meet any additional requirement from their own funds.

- 10.6. In the light of above findings it cannot be held that the demand of additional set of CTs and PTs was unwarranted or unjustified. At the best it can be said to be a case of an oversight by the 2nd Respondent at the time of preparation of estimates for line bay.
11. Next question for our consideration as to whether the Appellant is entitled for any compensation as it was denied to withdraw banked energy and it had to run DG sets to meet its requirement of energy for carrying out maintenance works.
 - 11.1. The State Commission vide its order dated 6.2.2008 had permitted the temporary arrangement for evacuation of power from the Appellant's generating station only up to 30.4.2008. The State Commission in its order dated 19.5.2008 declined to extend the date for continuation of temporary arrangement for allowing the Appellant to withdraw its banked energy for carrying out maintenance works at its plant. The State Commission in its impugned order dated 12.11.2009 has observed as follows:

“The Commission enquired that knowing the facts why the Petitioner has not rescheduled the maintenance program. Had it been rescheduled, there would not have been such unwanted expenditure, as stated by the Petitioner. The disruption in supply occurred due to technical reasons well known to the Petitioner and thus cannot be considered as willful misconduct. The period mentioned above was off season meaning thereby that there was no loss of production. As such the matter of disconnection has already been decided by the Commission in its order dt. 24.2.09, the issue is limited to the demand of additional CT & PT.”

- 11.2. The contention of the Appellant that maintenance work could be carried out only during off season cannot be accepted. As per the PPA Off season period is between the months of May to September. Maintenance could have been carried out any time during this period. It is recalled that the State Commission had approved of ‘solid tapping’ of existing 132 kV line as a temporary measure to facilitate evacuation of power. Solid tapping of an EHV line is generally not recommended as it interferes with the protection scheme (impedance relay setting) of the grid. Therefore, it was necessary to stop the temporary arrangement and shift to permanent system at the earliest. Since the crushing season ended in April 2008 and temporary arrangement was not required for evacuation of power, the State Commission vide its order dated 19.5.2008 had rightly declined to extend its continuance.

11.3. In view of the State Commission's Orders dated 6.2.2008 and 19.5.2008, we do not find any reason to interfere with the impugned order of the State Commission and the Appellant is not entitled for any compensation.

12. Summary of our findings:

12.1. Bare reading of the State Commission's order dated 6.2.2008 and 19.5.2008 would reveal that the permission to temporary arrangement was accorded only for evacuation of power from the Appellant's generating station and that too up to 30.4.2008 only. Permission for usage of the said temporary arrangement for withdrawal of banked energy was denied by the State Commission. It cannot be, therefore, held that the disconnection of line was to force the Appellant to submit to its demand of additional CT & PT.

12.2. Conjoint reading of Clause 14 of the PPA and Regulation 2(p) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 would make it clear that two sets of meters would mean two meters along with associated CTs and PTs. The purpose of twin metering (main meter and check meter) would be lost if both the meters are connected through the same set of CTs and PTs. It cannot be held that the demand of additional set of CTs and PTs was unwarranted or unjustified.

12.3. The Appellant is not entitled for any compensation as disconnection of line was carried out in pursuance of the State Commission's order

dated 6.2.2008 and cannot be held as misconduct on part of the Respondent.

13. In view of our above findings, we do not find any ground to interfere with the impugned order of Uttar Pradesh Electricity Regulatory Commission dated 12.11.2009.
14. Hence, the Appeal being devoid of merit is dismissed. However, there is no order as to cost.
15. Pronounced in the open court today the 18th October, 2011.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 18th October, 2011

REPORTABLE/NON-REPORTABLE