

**Before the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)**

Appeal No. 89 of 2014

Dated: 07th October, 2015

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

In the Matter of:

- 1. M/s Vandana Vidhyut Limited Raipur (Chhattisgarh)**
Vandana Bhawan, MG Road,
Raipur – 492 001.
- 2. M/s R.R. Energy Limited Raigarh (Chhattisgarh)**
NH-200, Jharsuguda Road,
Village – Garhumariya,
Raigarh – 496 001
- 3. M/s Shree Nakoda Ispat Limited Raipur (Chhattisgarh)**
Near Railway Crossings, Mowa,
Raipur – 492 007.
- 4. M/s Indra PowerGen Private Limited Raipur (Chhattisgarh)**
Hotel Mid Town Building, MG Road,
Raipur – 492 006 **... Appellant(s)**

Versus

- 1. Chhattisgarh State Electricity Regulatory Commission Raipur**
Through their Secretary,
Irrigation Colony, Shanti Nagar,
Raipur – 492 001. **... Respondent**
- 2. Chhattisgarh State Power Distribution Co. Ltd., Raipur**
Through Chief Engineer (Commercial)
Dangania,
Raipur – 492 001. **... Respondent/Petitioner**
- 3. Chhattisgarh State Power Transmission Co. Ltd. Raipur**
Through Chief Engineer (SLDC)
Dangania,
Raipur – 492 001. **... Respondent/Petitioner**

Counsel for the Appellant(s) : Mr. Praveen Kumar, Adv. and
Mr. Subhash Chandra Sood, Rep.

Counsel for the Respondent(s) : Mr. Anand K. Ganesan, Ms. Swapna
Seshadri, Ms. Mandankini Ghosh,
Mr. Ishaan Mukherjee and
Ms. Akshi Seem for R.No.1

Ms. Suparna Srivastava,
Mr. Arvind Banerjee for
Ms. Anushka Arora, Mr. Kumar
Harsh and Ms Nishtha Sikroria for
R.No.2 & 3

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

This is an appeal under Section 111 of the Electricity Act, 2003 filed by the appellants against the order dated 06.02.2014 (Impugned Order) passed by the Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as **State Commission**) in Petition No. 33 of 2012 filed by Chhattisgarh State Power Distribution Co. Ltd. (hereinafter referred to as **distribution licensee**) respondent No.2 herein and by Chhattisgarh State Load Despatch Centre on behalf of the Chhattisgarh State Power Transmission Company Limited (hereinafter referred to as the **transmission licensee**) seeking initiation of proceedings under section 142 of the Electricity Act, 2003, for punishment for non-compliance of directions by State Commission for under injection of the electricity generated by appellants', who are short term inter-State open access customers. The learned State Commission by Impugned Order dated 06.02.2014, while rejecting the preliminary objections of the appellants to the effect that State Commission has no jurisdiction over the matter, has concluded that since non-compliance of Regulations and the under injections were held within the territory of the Chhattisgarh State and at the time of using the grid, hence this State Commission has jurisdiction and directed to proceed with the case for hearing. The said Petition was filed by respondent Nos. 2&3/petitioners before the State Commission to take action under section 142

of the Electricity Act, 2003 against the appellants who are CPPs/IPPs short term inter-State open access consumers exporting power generated by them to different States beyond the State of Chhattisgarh for the said violations of Regulation 7(2) of the CERC (UI charges and related matters) Regulations 2009 for under injecting power at the injection points between April 2011 to December, 2011 during which period the appellants were allegedly unable to utilize full or substantial part of the reserve capacity without informing nodal agency about the reasons and the period making the grid uncertain.

2) The relevant facts for deciding this appeal are as under:

2.1) That the distribution licensee and State Load Despatch Centre (**SLDC**) had filed Petition No. 33 of 2012 under Section 142 of the Electricity Act, 2003 for under injection by the appellants open access customers before the State Commission. According to the Petition, the under injections were made by the appellants' generating companies between April 2011 to December 2011 and between this period, the appellants open access customers were unable to utilize full or substantial part of reserve capacity, without informing nodal agency about the reasons and the period. In this case of un-utilization, they had not surrendered the non-utilized capacity and by this conduct of the appellants the appellants are liable for making the grid uncertain.

2.2) That in the said Petition, the appellants raised the following preliminary objections :

- (i) The Commission has no jurisdiction over the matter.
- (ii) The Petition is not filed in prescribed format.
- (iii) Separate petitions cannot be filed by co-petitioners.
- (iv) The Petitioners are not sure about their stand in this case.
- (v) There is misjoinder of parties in this petition.

2.3) That the following allegations, against the appellants, were raised in the said Petition before the State Commission:

- (i) That a number of Captive Power Plants (CPP) and Independent Power Producers (IPP) of the State including the appellants were granted short term open access by nodal agencies, for inter-state transaction of power, during the period from April, 2011 to December, 2011. In other words, the appellants in certain time blocks during April 2011 to December, 2011, while undertaking short term inter-state open access transaction, injected less quantity of power in excess to the limits prescribed in Regulation 7(2) of Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) Regulations 2009 when the frequency was below 49.7 Hz. By doing so, the appellants made the grid uncertain hence, they are liable to be penalized in accordance with Regulation 7(4) of the said CERC (Unscheduled Interchange Charges and Related Matters) Regulations 2009 as amended from time to time. This action of the appellants, i.e. under injection in excess to the limits prescribed, amounted to mis-utilization of capacity of open access for which permission had been given to the appellants and therefore, action as per clause 40(6) of the State Commission's (Connectivity and Intra State Open Access) Regulations 2011 should be taken. This clause indicates that if on enquiry it is found that anyone had mis-utilized the transaction capacity for which permission was given, then in future permission may be either reduced to the quantum of capacity last utilized or may all together be refused.
- (ii) That many a times notices were issued to the appellants to maintain their injection as per approved schedule but the notices

went unheeded and therefore, action as per section 33(5) of the Electricity Act, 2003 may be initiated against the appellants for noncompliance of the directions of SLDC given under section 33(1) of the Electricity Act 2003.

- 2.4) The learned State Commission by the Impugned Order, has considered this contention of the appellants that the State Commission has no jurisdiction over the matters, related to inter-state open access and only the Central Electricity Regulatory Commission has jurisdiction to decide the matter as per the provisions of the Electricity Act, 2003 and Regulation 26 of CERC (Open Access in Inter State Transmission) Regulations 2008. To this contention of the appellants, the respondent petitioner's counter objection before the State Commission was that since both the parties are located in the territory of State Commission and are governed by the Regulations and Grid Code of the State Commission, as well as Central Commission, since connectivity given to the appellants is given under Terms and Conditions of CSERC (Connectivity and Intra-State Open Access) Regulations 2011, the State Commission has adopted UI Regulations of CERC at present and for noncompliance of any provisions of CERC Regulations by the appellants, the State Commission may take action. After going through the rival contentions of the parties, the learned State Commission, has in the Impugned Order, concluded that since such non-compliance of the Regulations and under injection was held in the State of Chhattisgarh State and at the time of using the Grid, the State Commission has jurisdiction to decide this controversy.
- 2.5) On the point of the Petition not being in the format prescribed in CERC (Conduct to Business) Regulations 2009, the State Commission in the Impugned Order has recorded that the filing of the Petition in the prescribed format is desired but not mandatory and the same Petition, though not filed in the prescribed format, is maintainable.

- 2.6) That while dealing with the issue of misjoinder of parties in the said Petition, the State Commission has held that Order II Rule-3 of Civil Procedure 1908 which provides that where causes of action are united, the jurisdiction of the Court as regards to the suit shall depend on the amount or value of the aggregate subject matter at the time of instituting the suit, is not applicable to the instant case. Accordingly, the State Commission has, while dealing with the said Petition, passed the Impugned Order that the State Commission has jurisdiction to decide the point in controversy, which is under challenge before this Appellate Tribunal in this appeal.
- 3) We have heard at length Mr. Subhash Chandra Sood, representative of the appellant and Mr. Anand K. Ganesan, Ms. Swapna Seshadri and Ms. Suparna Srivastava learned counsels for respondent Nos.1 & 2. We have also gone through the written submissions filed on behalf of both the parties and perused the impugned order including the material available on record.
- 4) The only issue arising for our consideration **is whether the State Commission has jurisdiction to take action under section 142 of the Electricity Act, 2003 against the appellants for violation of Regulation 7(2) of the CERC (UI charges and related matters) Regulations 2009 or this can be done only by the CERC (Central Commission)?**
- 5) The following are the contentions made on behalf of the appellants on the said issue:
- 5.1) That the appellant Nos. 1 & 2 are the IPPs biomass based power plants in the State of Chhattisgarh.

- 5.2) That the appellant No.3 is a captive power plant having two generating units each of 6 MW and 12 MW and used the power generated by the 6 MW plant for its own captive use and uses the 12 MW plant for sale of power through interstate open access transactions during the period in question. That appellant No.4 has also a 10 MW biomass based power plant and is an IPP.
- 5.3) The main case of the respondents 2 & 3/petitioners, as cited in the Impugned Petition filed by them before the State Commission, was by that the appellants and some other generating station of the State including CPPs and IPPs, while undertaking short term inter-State Open Access transaction, there was gross under-injection of electricity during April 2011 to December, 2011 in many time-blocks and days, in excess to the limits prescribed thereof under Regulation 7(2) of the CERC (Un-scheduled Interchange Charges & Related matters) Regulations 2009 when the frequency was below 49.7 Hz and by doing so the appellants had made the State Grid uncertain, hence they should be penalized with regard to Regulation 7(4) of the said Central Commission (UI Regulations) 2009, as amended from time to time because this action of the appellants namely, under-injection in excess to the limits prescribed, amounted to mis-utilization of capacity of open access for which permission had been given to the appellants and therefore action as per clause 40(6) of the State Commission's (Connectivity and Intra State Open Access) Regulations 2011 should be taken. The allegations made against the appellants in the said Petitions are absurd, untruthful and biased one.
- 5.4) Further, the respondents 2 & 3/petitioners' contention against the appellants is that for most of the time during April 2011 to December, 2011, the appellants were unable to utilize reserve capacity allotted to them and they neither informed the respondent/petitioners about

reasons for such un-utilization of the reserve capacity allotted nor did they surrender the un-utilized capacity and this action of the appellants amounted to mis-utilization of the allotted capacity/reserve capacity and therefore, as per clause 40(6) of the CERC (Connectivity and Inter State Open Access) Regulations 2011, they should be proceeded against for misuse of the allotted/reserve capacity. These facts are totally absurd and wrong because they are unfounded and un-substantiated.

- 5.5) That clause 40(6) of the CSERC (Connectivity and Intra State Open Access) Regulations 2011 is reproduced as under:

“The Commission may, either suo motu or on a petition filed by the SLDC or licensee, initiate proceedings against any open access customer on charges of misutilization of allotted capacity/reserved capacity and if required, may order an inquiry in such manner as decided by the Commission. When the charges of misuse of allotted capacity/reserved capacity is established in the above inquiry, the Commission may, without prejudice to any other action under the Act or regulations there under, reduce or cancel the reserved capacity of a open access customer.”

- 5.6) That Regulation 7(2) of the CERC (Unscheduled Interchange Charges & Related matters) Regulations 2009 with effect from 01.04.2009 provides as under:

“Regulation 7(2):

- (i) The over-drawal of electricity from the schedule by any beneficiary or a buyer during a time-block shall not exceed 12% of its scheduled drawal or 150 MW (whichever is lower) when frequency is below 49.5 Hz, and 3% on a daily aggregate basis.*
- (ii) The under-injection of electricity from the schedule by a generating station or by a seller during a time-block shall not exceed 12% of the scheduled injection of such generating station or seller when frequency is below 49.5 Hz, and 3% on daily aggregate basis.”*

5.7) That the CERC has framed the CERC (Unscheduled Interchange Charges & Related matters) amendment Regulations 2010 to amend some Regulations of the principal Regulations namely, Central Commission's UI Regulations 2009. As per this amendment of 2010 w.e.f. 03.05.2010 the Regulation 7(2) has been amended as under:

“The under-injection of electricity by a generating station or a seller during the time-block shall not exceed 12% of the scheduled injection of such generating station or a seller when frequency is below 49.7 Hz, and 3% on daily aggregate basis for all the time-blocks when the frequency is below 49.7 Hz.”

5.8) That the present appeal is restricted only to the question of jurisdiction of the State Commission to deal with the following prayers made in the Petition of the respondents 2 & 3 /petitioners.

- (a) Taking action under 142 of the Electricity Act, 2003 for violation of CERC (UI Charges & Related matters) Regulations 2010.
- (b) Taking action to reduce or cancel the reserve capacity of the open access customers.

5.9) That all the allegations made in the Petition against the appellants are without any substance or merit as the stray instance of under-injection, which are normal and unavoidable in the course of generation and dispatch of electricity (more so in the case of CPPs who sell surplus power after meeting their captive requirements) are being treated as such violations of the UI Regulations, that warrant penal action under section 142 of Electricity Act, 2003.

5.10) That the appellants agree that ideally there should have been no under-injections when the frequency happened to be below 49.7 Hz but then at times it is not just possible to maintain schedules due to circumstances beyond control of the generating companies like the appellants.

- 5.11) That under-injections have taken place in respect of the appellants on a number of occasions due to reasons attributable to the respondents 2 & 3 petitioners/ licensees as well. Such reasons happened to be (i) excessive high voltage in the feeder evacuating the power, (ii) grid failure leading to no injection, (iii) high fluctuations in the grid and (iv) backing down instructions from the licensee. Every instance of under-injection when frequency is below 49.7 does not *ipso facto* make a generator liable for penal action under section 142 of the Electricity Act 2003. The first and the basic requirement for the petitioners before making a complaint to Commission, warranting a probe in the matter, was that efforts should have been to establish with data the instances of persistent and continuous under-injections running over a considerable period whereupon the Commission could have asked the appellants to show cause as to why penal action may not be taken against the appellants and then to deal with the matter on the basis of reply so received as warranted by rules/regulations. This basic requirement is not complied with in the petitions.
- 5.12) That the respondent/petitioners had argued before the State Commission that under-injections by appellants made the grid uncertain indicated as to what they meant by the term “*uncertain*”. Details are given on monthly basis whereas to substantiate the allegations time-blockwise details with prevailing frequency were required as a punitive action proposed against the appellants is under-injection in excess to the limits when the frequency was below 49.7 Hz.
- 5.13) That the contention of the respondents/petitioners that they had to resort to load shedding in order to restrict over-drawal from Regional Grid is also wrong as the details provided in the Petition show that in some months, respondent/petitioners were under-drawing power from

the Regional Grid when the alleged under-injections were taking place and the load shedding was undertaken on such dates as well on which there was net over-injection and not net under-injection by the respondent /petitioners and load shedding had been done when the frequency was above 49.5 Hz whereas this was to be resorted to when frequency was below 49.7 Hz as per the State Grid Code.

- 5.14) That as far as the aspect of “Grid become un-certain” i.e. Grid discipline is concerned, the fact is that in absence of intra State ABT mechanism in the State, no transaction within the State other than those generators undertaking inter-State transactions is governed by frequency related UI mechanism.
- 5.15) That the time-blocks and the frequency, in which load shedding was undertaken, are not given in the Petition whereas as per the State Grid Code load shedding was to be done in discreet time-blocks. The quantum of power under-injected during the time-blocks is also therefore not given in the Petition. Consequently, there is no relationship between the quantum of load shedding and the quantum of power under-injected and by which the 13 IPPs / CPPs in the Petition and to what extent.
- 5.16) That the exchange of power transactions to which the dispute relates to are short term interstate Open Access transactions and such transactions amount to “interstate transmission of electricity”. The “interstate transmission system” has been defined in section 2(36) of the Electricity Act, 2003 and the clause II of this section states as follows:

“Interstate Transmission system includes the conveyance of electricity across the territory of an intervening state as well as conveyance within the state which is incidental to such interstate transmission of electricity.”

- 5.17) That as per Section 79(1)(c) of the Electricity Act, 2003, it is the function of the Central Commission to regulate the “interstate transmission of electricity” to regulate means to deal with all matters incidental to the interstate transmission of electricity including the said violations of the CERC (UI & related matters) Regulations 2009. The matter of contemplating penal action under section 142 of the Electricity Act, 2003 or adjudication thus happens to be within the purview of the Central Commission.
- 5.18) That alleged act of exceeding the limits of under-injection when frequency is below 49.7 Hz happens to be a violation of CERC (Unscheduled Interchange) Regulations 2009 and Regulation 6(1) of the CERC (Unscheduled Interchange) Regulations 2009 states that the provisions of the Grid Code and the CERC (Open Access in inter-state Transmission) Regulations 2008, as amended from time to time, shall be applicable for declaration of capacity, scheduling and elimination of gaming. Thus both the Regulations i.e. Grid Code and the CERC (Open Access) Regulations 2008 as amended from time to time happen to be those brought out by the Central Commission and hence the jurisdiction happens to be of the Central Commission.
- 5.19) That Regulation 6(1) of CERC (Unscheduled Interchange) Regulations 2009 is produced below:

“Declaration, scheduling and elimination of gaming

The provisions of the Grid Code and the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations 2008, as amended from time to time, shall be applicable for declaration of capacity, scheduling and elimination of gaming.”

5.20) That CERC (Open Access in Interstate Transmission) Regulations 2008 as notified on 20.05.2009 contain the Regulation 26 captioned “Redressal mechanism” which reads as under :

“Redressal Mechanism

26. All disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved.”

5.21) That therefore the matter in hand is required to be dealt with by Central Commission only under the said “redressal mechanism”.

5.22) That further Regulation 7(4) of the CERC (Unscheduled Interchange and Related matters) second amendment, 2010 also empowers the Central Commissions only to initiate any penal action under section 142 of the Electricity Act 2003 for exceeding the limits of under-injection as provided therein. Regulation 7(4) reads as under:

“Payment of Unscheduled Interchange Charges under Regulation 5 and the Additional Unscheduled Interchange Charge under Regulation 7(3) above, shall be levied without prejudice to any action that may be considered appropriate under Section 142 of the Act for contravention of the limits of over-drawal or under generation as specified in these regulations, for each time block when frequency is below 49.7 Hz.”

5.23) That the Hon’ble Supreme Court vide its order dated 17.08.2007 in Civil Appeal No.2104 of 2006 in the matter of Central Power Distribution Co. Vs. Central Electricity Regulatory Commission had in paragraph 24 noted as under:

“24) As already noticed, the Central Commission has the power and function to evolve commercial mechanism such as imposition of UI charges to regulate and discipline. It is well settled that a power to regulate includes within it the power to enforce. See Indu Bhusan vs. Rama Sunderi, AIR 1970 SC 228, K. Ramanathan vs. State of Tamil Nadu (1985) 2 SCC 116, V.S. Rice and Oil Mills vs.

State of Andhra Pradesh, AIR 1964 SC 1781, Deepak Theatre, Dhuri vs. State of Punjab, 1992 Supp. (1) SCC 684. Question (G)”

5.24) That the afore noted case law laid down by the Hon'ble Supreme Court thus rules out the scope of State Commission to enforce the Central Commission's Regulations. This deficiency, if any, in regard to as to which Commission shall be competent to take action under section 142 of the Electricity Act, 2003 was rectified by CERC in its second amendment to CERC (Unscheduled Interchange & Related matters) Regulations 2009 issued on 05.03.2012 under Regulation 7(6) which is as under:

“Payment of Unscheduled Interchange Charges under Regulation 5 and the Additional Unscheduled Interchange Charge under Regulation 7(3) above, shall be levied without prejudice to any action that may be considered appropriate by the Commission under section 142 of the Act for contravention of the limits of over-drawal or under-generation as specified in these regulations, for each time block when frequency is ‘below 49.80 Hz’.”

5.25) That apart from the above, Regulation 32 of the State Commissions (Connectivity and Open Access) Regulations 2011 also prescribes that the procedure for interstate open access transactions shall be as per CERC (open access interstate transmissions) Regulations 2008 as amended from time to time.

5.26) That Regulation 32 of the State Commission's (Connectivity and Open Access) Regulations 2011 provides as under:

“Inter-State open access

Notwithstanding anything contained in above Regulations, procedure for inter-State short term Open Access shall be as per Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, or its statutory re-enactments, as amended from time to time.

Provided further that all applicants intending to use the State grid for short-term inter-State open access shall be required to fulfill the eligibility criteria as specified under Regulation 5 of these Regulation and while submitting application for short-term inter-State open access shall follow Regulation 12(2) of these Regulation.”

5.27) That in this view of the matter, the matters related to inter State transactions are required to be dealt with in accordance with CERC (Open Access in interstate Transmission) Regulations 2008 as amended from time to time.

5.28) That the matter in question relates to scheduling and dispatch of electricity by generating company. The State Grid Code 2011 in clause 6.5 captioned as “Scheduling and Dispatch Code” is as under:

“The scheduling and dispatch code prescribed in this code shall not be applicable to the any users availing short term intrastate or short term interstate open access but shall be applicable to intrastate long and medium term open access customers. Long, medium and short term interstate open access shall be regulated by the IEGC and CERC Interstate Open access Regulations as amended from time to time.”

5.29) That according to the Stage Grid Code the scheduling and dispatch provisions of interstate transmission of power shall be as per Indian Electricity Grid Code (IEGC) and CERC (Open Access) Regulations 2008.

5.30) That the State Commission cannot proceed against the appellants as per Regulation 40(6) of the State Commissions (Connectivity and Intrastate Open Access) Regulations 2011 to take any action in regard to curtailing or refusing the open access permission because there is no such provision for the same in the CERC (Open Access in Interstate Transmission) Regulation 2008 or as amended from time to time and the same has been upheld by CERC in a judgment dated 09.05.2013 in some

matter of Rajasthan where facts are identical to the facts of the present case.

5.31) That the power given under Section 86(1)(c) of the Electricity Act, 2003 to the State Commission is that State Commission shall facilitate intrastate transmission system and wheeling of electricity and these powers and the powers given under section 86(1)(f) of the Act are general in nature whereas the powers given to the Central Commission under section 79(1)(f) of the Act are specific for the clause mentioned in (a) to (d) of section 79(1) of the Electricity Act 2003 and the specific powers to have the supremacy over the general powers is well settled by law. As such the State Commission does not have any power under the Electricity Act 2003 to deal with the matters relating to interstate transmission of power.

5.32) That the State Commission's findings in the Impugned Order that the powers of the Central Commission as well as State Commission are concurrent and they have concurrent jurisdiction is illegal and wrong and contrary to the tenets of law settled by Hon'ble Supreme Court. This Appellate Tribunal by judgment dated 04.09.2012 in appeal N. 94 and 95 of 2012 held that the Central Commission has got a wide jurisdiction. In fact, the functions vested in the Central Commission are specific in nature whereas, the functions vested in the State Commission are general in nature applicable to a particular State. The specific function will therefore, have to be given supremacy to the general functions vested in the Central Commission. This is provided under Rule 8 of the Electricity Rules 2005 which provides as under:

"The tariff determined by the Central Commission for generating companies under clause (a) to (b) of sub section (1) of Section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under Clauses (a) or (b) of sub-section (1) of Section 86 of the Act and subject to

the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.”

- 5.33) That the provisions of Electricity Act 2003 specifically provide for a related jurisdiction of the Central Commission in regard to NTPC as per section 79(1)(a). The provisions of section 86 of the Act vesting the functions of the State Commission have to be read subject to section 79(1)(a) and 79(1)(b) of the Electricity Act 2003. In other words, if the matter falls within the section 79(1)(a) to 79(1)(b) of Electricity Act, 2003 the provisions of section 86(1)(f) of the Act will have no application when the scope of section 79(1)(f) is applicable.
- 5.34) That whatever is within the jurisdiction of the Central Commission, the State Commission should not encroach upon the same by claiming to exercise the concurrent jurisdiction or exclusive jurisdiction by virtue of section 86 of the Electricity Act 2003. The jurisdiction of the State Commission would be only in respect of the matters other than those which are already covered by the jurisdiction of the Central Commission under section 79 of the Electricity Act 2003.
- 5.35) That as per the scheme of Electricity Act 2003, the Central Commission has the plenary powers to regulate the grid particularly in the context of grid being integrated and connected across the region comprising of more than one State. The State grid cannot be isolated and cannot be seen as independent from the regional grid.
- 6) **Per contra**, the following are the submissions made on behalf of respondent No.1/State Commission on the said issue:

6.1) That the State Commission has jurisdiction to deal with the matter under CERC (UI charges and related matters) Regulations 2009 because the State Commission has enacted CSERC (Connectivity and Open Access) Regulations 2011 w.e.f. 01.05.2011. Regulation 33.4 of the CSERC Open Access Regulations 2011 provides as under:

“33.4 Unscheduled Interchange Charges:

(a) The mismatch between the scheduled and the actual drawal at drawal points(s) and scheduled and the actual injection point(s) shall be met from the grid and shall be governed by the CERC (UI Charges and related matters) Regulations, 2009 till the notification of CSERC (Intra-State ABT, Unscheduled Interchange charges and related matters) Regulations and thereafter it will as per the regulations to be notified and amendments, if any.”

6.2) That the State Commission has adopted the CERC UI Regulations 2009 without any condition or modification for handling the mismatch between the scheduled and the actual drawal at drawal point(s) and scheduled and the actual injection at injection point(s). Till date, the State Commission has not enacted any regulation/UI settlement for Chhattisgarh and the billing is done as per the CERC UI Regulations, 2009.

6.3) That Regulation 4 of Central Commission’s UI Regulations 2009 provides as under :

“4. Scope : These regulations shall be applicable to :

(i) the generating stations and the beneficiaries and

(ii) sellers and buyers involved in the transaction facilitated through short term open access or medium term open access or long-term access in inter-State transmission of electricity.”

6.4) That the ‘generating station’ means a generating station whose tariff is determined by the Commission under clause (a) of sub-section 1 of

Section 62 of the Electricity Act, 2003. The appellants are not the generating stations whose tariff is determined by the Central Commission. The word “*seller*” means a person other than a generating station, supplying electricity, through a transaction scheduled in accordance with Regulations applicable for short term open access, medium term open access and long term open access. A conjoint reading of Regulation 4 of Central Commission UI Regulations 2009 with the definition of ‘generating station’ and ‘seller’ would reveal that any generating station other than a generating station whose tariff is determined by Central Commission shall be classified as a seller, if such generating station is supplying electricity through a transaction schedule in accordance with the Regulations applicable for short term open access, medium term open access and long term open access.

- 6.5) That the Central Commission UI Regulation 2009 do not make any distinction between an inter-State generating station/intra-State generating station and a captive generating plant. Therefore, all intra-State generating stations which are connected to the State grid system and not to the regional grid and who wish to sell power through inter-State open access would qualify as seller under the Central Commission’s UI Regulations 2009.
- 6.6) That the appellants are all intra-State entity within the State of Chhattisgarh. The appellants are connected to the State grid and are paying transmission/wheeling charges to the STU as determined by the State Commission. The scheduling and energy accounting for the appellants are being done by SLDC. The connectivity to the appellants has also been granted as per State Commission’s Open Access Regulations. In fact, the appellants are state-embedded generators.

- 6.7) That the Central Commission in its order dated 30.10.2014 in Petition No.134 of 2011, *Bharat Aluminium Company Ltd. Vs. CSTPL* has held that only the State Commission has the jurisdiction either to lay down the accounting procedure or to accept with or without modifications the procedure laid down by the Central Commission in so far as the intra-State entities are concerned. The Central Commission has also taken note of Regulation 33.4 of the State Commission's Open Access Regulations 2011, by which the State Commission has adopted the Central Commission's UI Regulations 2009.
- 6.8) That merely because the State Commission has adopted the Central Commission UI Regulation 2009 would not mean that the Central Commission will get jurisdiction to decide the matter or that the State Commission will lose jurisdiction to deal with the matter. In the present case, the Central Commission UI Regulations 2009 have been incorporated by reference in the State Commission's Connectivity and Open Access Regulations 2011 by Regulation 33.4 and it is as if the provisions have been bodily lifted and made applicable to the intra-State generators.
- 6.9) that further, any violation of the UI Regulations by intra-State generators has to be dealt with by the State Commission alone and this does not affect the comity of jurisdiction in any manner.
- 6.10) That the State Commission has jurisdiction to adjudicate the matter even under 86(1)(f) of the Electricity Act, 2003 and State Commission Open Access Regulations 2011, in particular Regulation 33 and 40 of the State Commission Open Access Regulation 2011.

6.11) That Regulation 40 deal with non-utilization or excess utilization of reserve capacity by Open Access Regulations of the State Commission's Open Access Regulations 2011 which provides as under:

“40. Non-Utilization or excess utilization of reserved capacity by Open Access Customer-

- (1) In case an open access customer is unable to utilize, full or substantial part of the reserved capacity, he shall inform the nodal agency along with reasons and period for his inability to utilize the reserved capacity and shall surrender the non-utilized capacity.*
- (2) ...*
- (3) ...*
- (4) ...*
- (5) ...*
- (6) The Commission may, either suomotu or on a petition filed by the SLDC or licensee, initiate proceedings against any open access customer on charges of misutilization of allotted capacity/ reserved capacity and if required, may order an inquiry in such manner as decided by the Commission. When the charges of misuse of allotted capacity/ reserved capacity is established in the above inquiry, the Commission may, without prejudice to any other action under the Act or regulations there under, reduce or cancel the reserved capacity of a open access customer.”*

6.12) That as the connectivity to the State grid is given to the appellants under the terms and conditions of the State Commission's Open Access Regulations 2011, the State Commission has jurisdiction to adjudicate the matter and cancel or reduce the reserved capacity for open access customers. The comity of jurisdiction is also recognized by the Central Commission in Regulation 20(4) of the Central Commission's (Open Access in inter-State Transmission) Regulations 2008 which provides that:

“Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection

points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.”

6.13) That Regulation 6.4 of the CERC (Indian Electricity Grid Code) Regulations 2010 dealing with the demarcation of responsibilities provides as under:

“6.4 Demarcation of responsibilities:

1. ...

2. The following generating stations shall come under the respective Regional ISTS control area and hence the respective RLDC shall coordinate the scheduling of the following generating stations:

a) Central Generating Stations (excluding stations where full Share is allocated to host state),

b) Ultra-Mega power projects

c) In other cases, the control area shall be decided on the following criteria:

(i) If a generating station is connected only to the ISTS, RLDC shall coordinate the scheduling except for Central Generating Stations where full share is allocated to one State.

(ii) If a generating station is connected only to the State transmission network, the SLDC shall coordinate scheduling, except for the case as at (a) above.

(iii) If a generating station is connected both to ISTS and the State network, scheduling and other functions performed by the system operator of a control area will be done by SLDC, only if state has more than 50% Share of power. The role of concerned RLDC, in such a case, shall be limited to consideration of the schedule for inter state exchange of power on account of this ISGS while determining the net drawal schedules of the respective states. If the State has a Share of 50% or less, the scheduling and other functions shall be performed by RLDC.

(iv) ...

3. There may be exceptions with respect to above provisions, for reasons of operational expediency, subject to approval of CERC. Irrespective of the control area the jurisdiction, if a generating station is connected both to the ISTS and the STU, the load dispatch centre of the control area under whose jurisdiction the generating station falls, shall take into account grid security implication in the control area of the other load dispatch centre.
4. ...
5. ...
6. The system of each regional entity shall be treated and operated as a notional control area. The algebraic summation of scheduled drawal from ISGS and from contracts through a long - term access, medium - term and short - term open access arrangements shall provide the drawal schedule of each regional entity, and this shall be determined in advance on day-ahead basis. The regional entities shall regulate their generation and/or consumers' load so as to maintain their actual drawal from the regional grid close to the above schedule. If regional entities deviate from the drawal schedule, within the limit specified by the CERC in UI Regulations as long as such deviations do not cause system parameters to deteriorate beyond permissible limits and/or do not lead to unacceptable line loading. However, such deviations from net drawal schedule shall be priced through the Unscheduled Interchange(UI) mechanism.
7. ...
8. The SLDC, SEB/distribution licensee shall always endeavour to restrict the net drawal of the state from the grid to within the drawal schedules, whenever the system frequency is below 49.7 Hz. The concerned SEB/distribution licensee User, SLDC shall ensure that their automatic demand management scheme mentioned in clause 5.4.2 acts to ensure that there is no over drawl when frequency is 49.5 Hz or below. If the automatic demand management scheme has not yet been commissioned, then action has to be taken as per manual demand management scheme to ensure zero overdrawal when frequency is 49.5 Hz or below.
9. The SLDCs/STUs/Distribution Licensees shall regularly carry out the necessary exercises regarding short-term demand estimation for their respective States/area, to enable them to plan in advance as to how they would meet their consumers' load without overdrawing from the grid."

- 6.14) That the injection pattern of intra-State entities selling power in inter-State open access also reflects drawal pattern of State drawing power from Regional grid. The energy injection of intra-State entities during inter-State open access is also consumed within the State.
- 6.15) That the judgment dated 04.09.2012 of this Appellate Tribunal in the case of *BSES Yamuna Power Limited vs. Delhi Electricity Regulatory Commission and NTPC Limited*, relied upon by the appellants, does not apply to the instant case because the reported case was on the basis that in the context of a dispute under section 79(1)(a) of the Electricity Act, 2003 between a company i.e. NTPC and the distribution licensee, only the Central Commission has jurisdiction under section 79(1)(f) of the Act. Section 79(1)(f) clearly covers clause (a) to (d) of the same section.
- 6.16) That the next judgment dated 11.02.2012 of this Appellate Tribunal in the case of *Delhi Transco Limited (SLDC) vs. CERC and NRLDC* is relied upon by the appellant is not applicable because the second reported case was a case where the RLDC had complained and the Central Commission had initiated a *suo motu* proceeding against the Delhi SLDC for not ensuring grid discipline and disturbing the entire Northern Regional Grid by not complying with the RLDC directions. This case supports the jurisdiction of the State Commission, if the case is of grid wise distribution due to non-compliance with RLDC directions, the penalty can be imposed by Central Commission on the SLDC. But in the present case, the SLDC has complained that the intra-State entities i.e. generating companies including the appellant had not followed the SLDC instructions and caused grid instability within the State of Chhattisgarh. Therefore, any dispute involving the SLDC and the generating companies has to be dealt with by a State Commission only.

6.17) That the order of the Central Commission in the case of *Sadashiva Sugars* relied upon by the appellants is to the effect that no back up supply charges can be levied in certain factual situations by the distribution companies in Karnataka on inter-State open access transactions. The same is not applicable to the present case.

6.18) That after the passing of the Impugned Order on preliminary issue by the State Commission, an adjudicatory officer has been appointed by the State Commission to enquire into the detailed facts since the matter involved more than 15 intra-State generators and individual stations need to be considered while deciding such a petition.

7) **Our consideration and conclusion:**

7.1) The respondent Nos. 2 & 3/petitioners filed the impugned petition being No. 33 of 2012(M) under section 142 of the Electricity Act, 2003 before the State Commission stating :

a) That a number of CPPs and IPPs of the State of Chhattisgarh were granted short term open access by nodal agencies for inter-State transaction of power during April 2011 to December 2011. They are embedded generators and have connectivity with the State network (STU) and falling under the control area of State Load Despatch Center (co-petitioner in the disputed petition).

b) That for short term inter-State transaction of power, the nodal agencies are Regional Load Despatch Centers for grant of open access, but applications are routed through State Load Despatch Centre for its consent. SLDC is coordinating scheduling of these embedded generators and monitoring station's operations on real time basis.

- c) That the duties of load dispatch center has been specified in clause 6.4
- “Demarcation of responsibilities” of Indian Electricity Grid Code (IEGC) Regulations 2010 and amendment therein that “the load dispatch center of a control area is responsible for coordinating the scheduling of a generating station within the control area, real time monitoring of the station’s operations, checking that there is no gaming in its availability declaration or in any way revision of availability declaration and injection schedule, switching instructions, metering and energy accounting, issuance of UI accounts within control area, collection and disbursement of UI payments and outage planning etc.”*
- d) That while availing open access, the open access customers have to abide by the various provisions of Open Access Regulations and Central and State Grid Code. SLDC, vide its communication dated 09.04.2012 had intimated that the CPPs and IPPs (mentioned in the petition in all numbering 11) had violated clause 7(2) of the CERC (UI charges and related matters) Regulations 2009, a number of times, by way of under injecting power than their schedule beyond prescribed limits and contravened provisions of Regulations.
- e) That the State Commission has notified CSERC (Connectivity and open access) Regulations, 2011 wherein clause 33.1 states that *“Notwithstanding anything contained in the succeeding Regulations of this regulation, scheduling of all types of Inter-State open access transactions shall be as specified by the Central Commission.”* Further in clause 33(4) it is provided that *“the mismatch between the scheduled and actual drawl at drawl point(s) and scheduled and the actual injection at injection point(s) shall be made from the grid and shall be governed by the CERC (UI) charges and related matters), Regulation, 2009 as amended from time to time.”*

- f) That by under injecting the power less than the schedule, the CPPS and IPPs including the appellants also mis-utilized the capacity allotted and hence liable for action as per clause 40(6) of CSERC (connectivity and intra-state open access) regulations 2011 which provides as under:

“The Commission may, either suo-motu or on a petition filed by the SLDC or licensee, initiate proceedings against any open access customer on charges of misutilization of allotted capacity/ reserved capacity and if required, may order an inquiry in such manner as decided by the Commission. When the charges of misuse of allotted capacity/reserved capacity is established in the above inquiry, the Commission may, without prejudice to any other action under the Act or regulations there under, reduce or cancel the reserved capacity of a open access customer.”

- g) That due to under injection by these Open Access customers including the appellants, availability of the petitioners gets reduced because deficit power to the extent of power less injected by such Open Access customers is supplied by the petitioners, as schedules are not changed by such open access customers. It forces the petitioners to go for emergency load curtailment that is on which load curtailment has been carried out during the period April 2011 to December 2011 (details enclosed with the petition). The petition further states that details of load curtailment done due to under injection by the CPPs and IPPs are to be furnished by the co-petitioners/SLDC.
- h) That many a times, co-petitioner/SLDC had warned these IPPs and CPPs on real time basis for under injection within the schedule, notices had also been served by SLDC on a number of occasions regarding violation of instructions but the situation could not be

improved. Petition also states that the details of such notices issued by SLDC are to be furnished by SLDC.

- i) That by under injecting than the scheduling by the CPPs / IPPs the possibility of gaming cannot be ignored.
- j) The following prayers were made in the said petition filed by respondent Nos. 2 & 3 / petitioners before the State Commission:
 - i) To take action against CPPs / IPPs under section 142 of the Electricity Act, 2003 as per SLDC's letter No. 52 dated 09.04.2012.
 - ii) To take action as per clause 40(6) of the CSERC (connectivity and intra-State open access) Regulations 2011.
 - iii) To impose penalty under section 33(5) of the Electricity Act 2003 for not obeying the directions of SLDC or any other relief that State Commission may deem fit for meeting the justice.

7.2) Since the main issue for our consideration is whether the State Commission is fully competent to decide the aforesaid controversy as set out in the petition by exercising its power under section 86 of the Electricity Act 2003 or the Central Commission is competent for the said purpose? We have given the pleadings/facts mentioned in the petition filed by the respondent Nos.2 & 3/petitioners before the State Commission in the preceding paragraphs. The law is well settled that for the purpose of deciding the question of jurisdiction the pleadings of the petition are to be scrutinized cautiously and carefully and then to decide whether or not the concerned Commission has jurisdiction to decide the said controversy.

- 7.3) We have, in the upper part of this judgment, narrated in details the facts of the matter, in particular the pleadings of the petition and the rival contentions raised by the parties, including the relevant regulations cited by the parties. Hence, we do not deem it proper to reproduce the same here again.
- 7.4) **As is disclosed from the pleadings of the petition, filed by respondent Nos. 2 & 3/petitioners, the appellants are captive power plants/IPPs of the State who were granted short term open access for inter-State transaction of power generated by them during the period April 2011 to December 2011 and the State generators are situated within the boundaries of State of Chhattisgarh but they are required to export the whole power generated by them beyond the State of Chhattisgarh to different States of the country.** Thus the appellants are admittedly, short term open access consumers under taking inter-State transactions of power during the period April 2011 to December 2011. It is also not in dispute that appellants are embedded generators, which means that the generating stations are situated within the territory of State of Chhattisgarh and in this way they are embedded generators and have connectivity with the State transmission network for transmission of the power through open access to other States of the country.
- 7.5) We can gather, from the pleadings of the petition the facts that for a short term inter-State transaction of power undertaken by the appellants (short term inter-State open access consumers), the nodal agencies are Regional Load Despatch Centers for grant of such open access. Though it is also true that applications for grant of open access are routed through SLDC for the consent of the SLDC. It is also not in dispute but natural that SLDC has to coordinate the scheduling of the embedded

generators and monitoring generating station's operations on real time basis.

- 7.6) The duties of Load Despatch Centre have been specified in the clause 6.4 dealing with 'demarcation of responsibilities' of the IEGC 2010 which we have already cited above while narrating the pleadings of the petitioners.
- 7.7) It is also not in dispute that while availing open access, the CPPs/IPPs/ open access consumers have to abide by the various regulations of the open access regulations of the Central Grid Code and State Grid Code.
- 7.8) The main allegation against the appellants in the petition is that the appellants as per communication dated 09.04.2012 furnished by co-petitioner SLDC have violated clause 7.2 of the CERC (UI charges and related matters) Regulations 2009 number of times by way of under injecting power than their schedule beyond prescribed limits.
- 7.9) It is also an admitted fact that Regulation 38 of CSERC (connectivity and open access) Regulations 2011 states that Notwithstanding anything contained in the succeeding Regulations of this regulation 38, scheduling of all types of Inter-State open access transactions shall be as specified by the Central Commission. This Regulation 38 of the CSERC (connectivity and open access) Regulations 2011 clearly states that in spite of there being anything in the CSERC (connectivity and open access) Regulations 2011 the scheduling of all types of inter-State open access transactions shall be as specified by the Central Commission.**
- 7.10) Not only this, there is a further Regulation 33(4) of CSERC (connectivity and open access) Regulations 2011 which provides that the mismatch between scheduled and actual drawal at drawal point(s) and schedule and actual injection at injection point(s) shall be made from the grid and

shall be governed by the CERC (UI charges and related matters) Regulations 2009, as amended from time to time.

- 7.11) Before arriving at our conclusion we deem it proper to go through the relevant portions of the Impugned Order dated 06.02.2014 passed by the State Commission in the afore said petition No. 33 of 2012 (M). The learned State Commission has considered the plea of the appellants that the State Commission has no jurisdiction over the matters related to inter-State open access and only the Central Commission has jurisdiction to decide the matter in view of the Electricity Act, 2003 and Regulation 26 of the CERC (open access inter-State transaction) Regulation 2008.
- 7.12) It appears from the Impugned Order that the respondents 2 & 3/petitioners opposing the said plea of the appellants before the State Commission stated that since both the parties are located within the territory of the State Commission and are governed by State grid code as well as the Central grid code and connectivity given to the appellants under the terms and conditions of CSERC (connectivity and intra-State open access) Regulations 2011 and also in view that the State Commission has adopted CERC UI Regulations, 2009 hence, the State Commission has got jurisdiction to decide over the said controversy.
- 7.13) After considering the pleas taken in the preceding paragraphs, the learned State Commission has, while passing the Impugned Order, arrived at the conclusion that since such non-compliance of the regulations and under injections were held within the territory of State of Chhattisgarh, while using the State grid, the State Commission has the jurisdiction to decide the said issue. This impugned order is in challenge before us in the instant appeal.

7.14) The CSERC (Connectivity and intra-State open access) Regulations 2011 giving definitions of “**Central Commission**” as the Central Electricity Regulatory Commission, “**Commission**” as the Chhattisgarh State Electricity Regulatory Commission, “**connectivity**” for a generating station including a CGP, bulk consumer, a captive user, distribution licensee or a transmission licensee is a state of getting connected to the intra-State transmission system and/or distribution system and further ‘**intra-State entity**’ is a person whose metering, scheduling and energy accounting is done at the State level. The State 2011 Regulations define ‘**short term open access**’ as open access for a period of up to one month at one time and ‘**short term open access customer**’ as an open access customer who has been granted short term open access.

7.15) Regulation 13 of CSERC (connectivity and intra-State open access) Regulations 2011 dealing with consent of STU/SLDC/transmission licensee (other than STU)/ distribution licensee in sub-section 1 states that in case of inter-State open access, *STU in the case of application for grant of long term open access and SLDC in the case of grant of medium term open access and short term open access shall convey its consent or otherwise as per the provisions of Central Electricity Regulatory Commission (Grant of connectivity, long term access and medium term open access in inter-State transmission and related matters) Regulations 2009 and Central Electricity Regulatory Commission (Open Access in inter-State transmission) Regulations, 2008, respectively or their statutory re-enactments, as amended from time to time with a rider that in respect of a generating station or consumer connected to a transmission licensee (other than STU/distribution licensee) and intending to seek open access, the STU/SLDC before giving its consent to a CTU/RLDC as required under the Central Commission’s*

regulations, shall require the generating station or consumer to submit a consent of the distribution licensee concerned.

7.16) Regulation 32 of the State Commission's intra-state Regulations 2011 provides as under:

“32. Inter-State open access

Notwithstanding anything contained in above Regulations, procedure for inter-State short-term Open Access shall be as per Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, or its statutory re-enactments, as amended from time to time.

Provided further that all applicants intending to use the State grid for short-term inter-State open access shall be required to fulfill the eligibility criteria as specified under Regulation 5 of these Regulation and while submitting application for short-term inter-State open access shall follow Regulation 12(2) of these Regulation.

7.17) Further, Regulation 33(4) of the State Commission's intra-State Regulation 2011 provides that mis-match between the scheduled and the actual drawal at drawal point(s) and scheduled and the actual injection at injection point(s) shall be met from the grid and shall be governed by the CERC (UI charges and related matters, Regulation, 2009 till the State Commissions Regulations are notified. Thus it is admitted by the learned counsel for the State Commission that no State Commission Regulations to deal with the mis-match have been notified as yet. This leads us to the conclusion that as yet the mis-match as provided in Regulation 33(4) of State Commission's intra-State Regulation 2011 shall be governed by the CERC (UI charges and related matters) Regulations

2009. To interpret this Regulation in some other terms will amount to frustrate or defeat the purposes for which the Regulation 33(4) of State Commission intra-State Regulations 2011 had been intended. Each Regulation is to be interpreted giving correct, proper and legal interpretation to it after taking into consideration the reference and context in which the said words are used.

7.18) There is a Regulation 40 to State Commissions intra-State Regulations 2011, dealing with non-utilization or excess utilization of reserve capacity by the open access customers. It has been brazenly contended repeatedly on behalf of the appellants that no reserve capacity was kept reserved for the appellants who are short term inter-State open access customers and the same is evident from the information obtained under Right to Information Act.

7.19) The CERC (open access in inter-State Transmission) Regulations 2008 were notified on 25.01.2008 stating in Regulation 1(2) thereof that these Regulations shall apply to the applications made for grant of open access for energy transmission schedules commencing on or after 01.04.2008 for use of the transmission lines or associated facilities with such lines on the inter-State transmission system. The Central Commission 2008 Regulations define the Commission as CERC and grid code as the grid code specified by the Central Commission under clause (h) of sub-section (1) of section 79 of the Electricity Act, 2003. The Central Commission 2008 Regulations further define “intra-State entity” as a person whose metering and energy accounting is done by SLDC or by any other authorized State utility. These Regulations further define “open access customer” as a person who has availed or intends to avail open access under these Regulations and includes short term open access customer as defined in any other Regulation, specified by Central Commission or a generating company including captive power plant or a licensee

permitted by the State Commission to receive supply of electricity from a person other than a distribution licensee of his area of supply or a State Government entity authorized to sell or purchase electricity.

7.20) Regulation 20(4) of the CERC (open access in inter-State transmission) Regulation 2008 clearly provides that *“Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.”*

7.21) We want to first peruse Regulation 26 of the CERC (open access in inter-State transmission) Regulations, 2008 and as amended by CERC (open access in inter-State transmission) (amendment) Regulations 2009. Regulation 26 dealing with “redressal mechanism” of CERC (open access in inter-State transmission) Regulation 2008 says *“Unless the dispute involves the State Load Despatch Centre and the intra-State entities of the concerned State and falls within the jurisdiction of the State Commission, all disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved.”*

7.22) The Regulation 26 of CERC (open access in inter-State transmission) Regulations 2008 has been amended by CERC (open access in inter-State transmission (Amendment) Regulations 2009 as under:
“All disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved.”

7.23) Thus from the above it is clear that the Regulation 26 of the Central Commission’s (open access in inter-State transmission) Regulations 2008

has been amended by the Central Commission's (Amendment) Regulations 2009 clearly specifying that all disputes arising under these regulations shall be decided by Central Commission based on an application made by the aggrieved person.

- 8) We have carefully and cautiously studied the Central as well as State Commissions various regulations on the point in controversy before us and collated them. We find that in the case in hand it is the Central Commission which is legally competent to take action under Section 142 of the Electricity Act, 2003 against the appellants for the violation of Regulation 7(2) of CERC (UI charges and related matters) Regulations 2009 if any violation thereof is established. The learned State Commission is not legally competent to adjudicate upon the matter just on the ground that both the parties are situated within the territorial jurisdiction of the State of Chhattisgarh. No State Commission can be bestowed with the jurisdiction just on the ground that both the parties are situated within the territorial jurisdiction of the concerned State Commission. Even the State Commission cannot be held entitled to hold jurisdiction just on the ground that the short term inter-State open access consumers like the appellants are governed by the State Grid because such short term open access consumers first, use the intra-State transmission system, for which they pay the relevant charges to the concerned STU or State Grid utility. In the case in hand, the appellants are CPPs/IPPs undertaking short term inter-State open access transmission of electricity generated by them to be exported to other States of the country beyond the State of Chhattisgarh, hence, they are liable to be governed by the relevant regulations of the Central Commission.
- 9) In view of the above discussions, we are of the firm view and hold that the learned Central Electricity Regulatory Commission is legally

competent and has jurisdiction to take action under section 142 of the Electricity Act, 2003 against the appellants for violation (if any) of Regulation 7(2) of the CERC (UI charges and related matters) Regulations 2009. We further hold that the learned State Commission does not have any jurisdiction to take action under Section 142 of the Electricity Act, 2003 for the said violation of regulation 7(2) of the CERC (UI charges and related matters) Regulations 2009. All the findings recorded in the impugned order, being against law and absurd, are liable to be set aside and appeal is liable to be allowed. Consequently, the sole issue related to the jurisdiction is decided in favor of the appellants and against the respondents.

ORDER

This appeal, being Appeal No. 89 of 2014, is allowed and the Impugned Order dated 06.02.2014 passed by the Chhattisgarh State Electricity Regulatory Commission, in Petition No. 33 of 2012 is hereby set aside and the said Petition No. 33 of 2012 filed by respondents 2&3/petitioners is hereby ordered to be returned to the respondents 2&3/petitioners giving liberty to the respondent Nos. 2 & 3/ the petitioners to present proper petition before the learned Central Electricity Regulatory Commission, if they are so advised.

No order as to costs.

Pronounced in the open court on this **07th day of October, 2015.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member



REPORTABLE / ~~NON-REPORTABLE~~