

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

**Appeal No 252 of 2015 & I.A. No 408 of 2015**

**Dated: 8<sup>th</sup> November, 2016**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson**  
**Hon'ble Mr. I.J. Kapoor, Technical Member**

**In the matter of :-**

**Salasar Steel & Power Ltd.**  
**Regd Office- 1<sup>st</sup> Floor, Bhatia Complex,**  
**Opp Rajkumar College, G.E. Road,**  
**Raipur, Chhattisgarh- 492001** **... Appellant**

**Versus**

- 1. Chhattisgarh State Electricity Regulatory  
Commission**  
**Irrigation Colony, Shanti Nagar,**  
**Raipur, Chhattisgarh – 492001** **...Respondent No.1**
  
- 2. Chief Electrical Inspector ,**  
**Government of Chhattisgarh,**  
**B Block, H Floor, Indravati Bhawan,**  
**Naya Raipur, Chhattisgarh – 492001** **...Respondent No.2**
  
- 3. Chhattisgarh State Power Distribution  
Company Limited**  
**Dagania, Raipur**  
**Chhattisgarh-492013** **...Respondent No.3**

**Counsel for the Appellant(s):** **Mr. M. G. Ramachandran**  
**Mr. Raunak Jain**  
**Ms. Mariya Muntaj Hashmi**

**Counsel for the Respondent(s): Mr. C. K. Rai**  
**Mr. Paramhans for R-1**

**Mr. K. Gopal Choudary**  
**Mr. Arvind Banerjee for R-3**

## **JUDGMENT**

### **PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER**

1. The present Appeal is being filed under Section 111 of the Electricity Act, 2003 by M/s. Salasar Steel and Power Ltd. (hereinafter referred to as the “**Appellant**”) challenging the Order dated 08.09.2015 (“**Impugned Order**”) passed by the Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) in the Suo Motu Petition No. 27/2015(M), in the matter concerning the captive status of the Power Plant of the Appellant for FY 2013-14.
2. The Appellant, Salasar Steel & Power Ltd., is a company registered under the Companies Act, 1956 and is engaged in the manufacture of various steel products and has installed 15 MW and 65 MW power plant along with 2x100 TPD sponge iron manufacturing unit at Raigarh in the State of Chhattisgarh.
3. The Respondent No 1 is the Electricity Regulatory Commission for the State of Chhattisgarh exercising jurisdiction and discharging functions in terms of the Electricity Act 2003.

4. The Respondent No.2 is the Chief Electrical Inspector in the State of Chhattisgarh appointed by the State Government under sub-section (1) of section 162 of the Electricity Act, 2003. The Respondent No. 3 is the Distribution licensee in the State of Chhattisgarh and is responsible for distribution of electricity within its licensed distribution area.

**5. Facts of the present Appeal:**

- a) The Appellant has established a 2 x 100 TPD sponge iron manufacturing unit in the State of Chhattisgarh. The Appellant in the year 2006 established a 15 MW power plant to meet its captive power requirements, out of which 4.5 MW is generated through waste heat (TG-1).
- b) The State Commission on 29.09.2006 passed an order in Petition No. 16 of 2006 (M) wherein it has been held that the Chief Electrical Inspector, Government of Chhattisgarh shall be responsible for obtaining the details of generation, auxiliary consumption and consumption by captive and non-captive users from all Captive Power Plants (CPPs) as the same is an "adjudicatory function". The Chief Electrical Inspector shall then submit such details to the State Commission and then the State Commission shall determine whether the generating unit qualifies as a CPP as per requirements of Rule 3 of the Electricity Rules, 2005 or not.

- c) The Appellant further established a separate thermal generating unit of 65 MW capacity (TG-2) in the same premises on 28.03.2012.
- d) As required by the State Commission, the Appellant submitted the prescribed and approved Form 'G' to the Chief Electrical Inspector, at the end of every month, containing the details of generation, consumption, power exported etc. for the period of April 2013 - March 2014.
- e) Further, the Appellant on 13.05.2014 (wrongly typed as 13.5.2013) provided to the Chief Electrical Inspector a summary of total number of units generated and consumed by the Appellant, including total auxiliary consumption and power exported though the grid.
- f) The State Commission initiated Suo-Motu proceedings on 25.05.2015 against the Appellant under Rule 3 of the Electricity Rules, 2005 regarding captive status of power plants of the Appellant for FY 2013-14.
- g) The Appellant made submissions to the State Commission on 15.7.2015 clarifying that it has two separate generating units in the same premises i.e. TG-1 of 15 MW and TG-2 of 65 MW. The said generating units were separate and also had separate TG generator, boiler, bus bar and evacuation facilities. Though the Appellant has been unable to fulfil the requirements of Rule 3 of the Electricity Rules, 2005 in respect of TG-2 of 65 MW, however

TG-1 of 15 MW is the captive generating unit of the Appellant and is required to be declared as such by the State Commission.

- h) During hearing held on 24.07.2015 the State Commission had directed the Chief Electrical Inspector to verify the clarifications and data submitted by the Appellant. The Chief Electrical Inspector submitted its report to the State Commission on 19.08.2015.
  - i) The State Commission passed the Impugned Order on 08.09.2015 in Suo Motu Petition No. 27/2015 (M) wherein the State Commission has come to the conclusion that the generating units of the Appellant i.e. TG-1 of 15 MW and TG-2 of 65 MW, have both lost their captive status for FY 2013-14 as they could not fulfil the requirements under Rule 3 of the Electricity Rules, 2005.
- 6.** Aggrieved by the Order dated 08.09.2015 passed by the State Commission, the Appellant has preferred the present appeal on following grounds:
- a) The State Commission while issuing the Impugned Order has failed to consider that :-
    - i. The Form "G" submitted by the Appellant at the end of every month during FY 2013-14 clearly shows the bifurcated and separate details of generation and consumption of the two generating units of the Appellant.
    - ii. The referred Letter dated 13.05.2014 has been submitted by the Appellant in pursuance to approved format by the State

Commission, enclosing therewith the details of power generation and the captive consumption for the FY 2013-14.

- iii. The Letter dated 13.05.2014 is only a summary submitted at the end of the year combining the information provided on the first page of all the twelve 'G' Forms submitted by the Appellant to Chief Electrical Inspector regularly after every month during FY 2013-14.

## **7. QUESTIONS OF LAW**

The Appellant has raised the following questions of law in the present appeal:

- a. **Whether the State Commission has correctly determined the captive status of the TG-1 (15 MW) generating unit of the Appellant for FY 2013-14?**
- b. **Whether the State Commission has overlooked that the Appellant has supplied the bifurcated and separate details of generation and consumption vide 'G' Forms prescribed and approved by the State Commission, to the Respondent No. 2 after every month during the FY 2013-14?**
- c. **Whether the State Commission has the power to correct the mistakes even assuming that the Appellant had incorrectly given the summarized details of generation and consumption from both its units to the Respondent No. 2 at the end of the financial year vide its Letter dated**

**13.05.2014 (wrongly typed as 13.05.2013) in a combined manner though at sl. No. 2 in format-B it is indicated that the said details were for both the units, TG-1 and TG-2?**

8. The learned counsel for the Appellant has made following arguments/submissions for our consideration :
- a) The fact that there are two generating units of the Appellant i.e. TG-1 of 15 MW and TG-2 of 65 MW is not disputed in the present case. The two generating units of 15 MW (TG-1) and 65 MW (TG-2) have been established by the Appellant itself, which is claiming status of a captive user. The Appellant has 100% of the ownership of the Captive Power Plant and there is no issue on the qualification of condition of holding equity shares or ownership interest of Salasar Steel and Power Limited, the Appellant.
  - b) In the Impugned Order the State Commission has rejected the claim of captive status only on a limited ground that the electricity consumption by the Appellant constitutes only 23.08% of the net generation of CPP as against the requirement of 51% under Rule 3 of Electricity Rules 2005.
  - c) The State Commission has arrived at the above conclusion solely on the alleged basis that the Appellant had not furnished the bifurcated data with relation to the two units, TG-1 and TG-2 to the Chief Electrical Inspector. The Impugned Order, however, recognises that the bifurcated data were furnished in the reply filed by the Appellant in the proceedings before the State Commission but as it was not produced before the Chief Electrical Inspector, the

State Commission would not recognise the same. The Impugned Order does not proceed on any other ground for rejection of the captive status of the TG-1 of 15 MW as claimed by the Appellant.

- d) The captive status of the power plants is required to be done through Form 'G' which has been prescribed and approved by the State Commission.
  
- e) The Appellant had duly furnished the requisite details separately regarding generation and consumption for TG-1 (15 MW) and TG-2 (65 MW) in the prescribed Form 'G' to the Chief Electrical Inspector regularly on monthly basis after every month. This has also been accepted by the Chief Electrical Inspector in its letter dated 19.08.2015 filed before the State Commission. The data under form "G" submitted contains the details of generation, consumption, power exported etc. for the period of April 2013 - March 2014. As per the first page of the said 'G' Forms, the Appellant was required to submit the total units purchased, total units generated and consumed etc. On the top of the said page, the Appellant has mentioned that the said details are in respect of two units i.e. TG-1 and TG-2. On the second page, bifurcated details have to be provided in two parts - Part-1: Details of Produced Electricity, and Part-2: Details of Consumed Electricity. In both the parts, the Appellant had separately indicated the two separate TGs along with their respective generation and consumption. From all the twelve 'G' Forms submitted by the Appellant to the Respondent No. 1, it can be seen that these details have been bifurcated and shown separately and the total consumption of the Appellant from its TG-1, 15 MW unit is 30.95



million units in the FY 2013-14, which is 73.42% of the net generation of the Appellant from the said TG -1 unit of 15 MW.

- f) The letter dated 13.05.2014 submitted by the Appellant at the end of the financial year 2013-14 is in the form of summary for facilitating the Chief Electrical Inspector and not for the purpose of deciding the captive status of the power plants.
- g) Rule 3 of the Electricity Rules 2005 specifically provides for the recognition of one generating unit and not the entire generating station for considering the captive status and captive use.
- h) The Appellant qualifies as a captive user with reference to TG-1 (15 MW) as the consumption from the said unit is 73.42% of the net generation which is more than the requirement of 51% of the net generation as per the Rule 3 of Electricity Rules 2005.
- i) The State Commission in the Impugned Order has recorded the submissions of the Appellant that one of the unit is 15 MW capacity and the other is 65 MW thermal generating unit with separate TG generator, boiler, bus bar and evacuation facilities. It should then have verified the consumption of the Appellant from the said TG-1 of 15 MW as claimed by the Appellant in its 'G' Forms and then declared its status as a captive generating unit.
- j) As per Rule 3 (1) (a) (ii) of Electricity Rules 2005, the determination of CGP status has to be done on an annual basis, which may differ from year to year. Further, the consumption of electricity is required to be reckoned for each unit separately and not necessarily for the

aggregate consumption from both the units. The captive status can be considered unit wise and not for all the generating units or generating station as a whole. This is specifically provided for in the Explanation No. 1 to Rule 3 of the Electricity Rules, 2005. In fact, there is no provision for declaration of captive status upfront at the beginning of the year.

- k) The Appellant has been unable to fulfil the requirements of Rule 3 of the Electricity Rules, 2005 in respect of TG-2 of 65 MW, however, TG-1 of 15 MW is the captive generating unit of the Appellant and is required to be declared as such .
- l) The submissions and determination of captive status in the past years are not at all relevant considerations while determining the captive status for the subsequent years. It is entirely possible that a generator held to be an IPP in a relevant financial year may be a CGP in the subsequent year, based on the 'G' Forms submitted by the generator on a monthly basis and as per its annual captive consumption.
- m) The State Commission vide Order dated 29.09.2006 in Petition No.16/2006(M), itself took on the responsibility to monitor and declare the CGP status of power plants on an annual basis. This proposition has been confirmed by this Tribunal vide its Judgement dated 21.02.2011 in Appeal No. 270 of 2006. Since the State Commission is performing adjudicatory functions while deciding the captive status of the power plants, if the Commission discovers any error in computation and / or depiction of figures during such adjudication, it is well within the State Commission's powers to

correct the said mistakes and ascertain the veracity of the claims made by a party.

- n) The Chief Electrical Inspector vide its Letter dated 19.08.2015 submitted its report to the State Commission mentioning that the generation and consumption of both the units i.e. TG-1 of 15 MW and TG-2 of 65 MW have been shown together by the Appellant. The Chief Electrical Inspector has affirmed and verified the details submitted by the Appellant in its reply from pages 8 to 43 containing the various 'G' Forms submitted by the Appellant at the end of every month during FY 2013-14.
- o) The claim of the Appellant has been disallowed on the grounds that the claim of the Appellant is an "afterthought", although the reliance is placed by the Appellant only on the 'G' Forms submitted much prior to the letter dated 13.05.2014. The Letter dated 13.05.2014 therefore is subsequent in time and ought not be considered. Therefore there is no question of any afterthought and the TG-1 (15 MW) unit of the Appellant is required to be declared as a CGP based on the information submitted by the Appellant to the Respondent No. 2 through the monthly 'G' Forms.
- p) The State Commission rejecting the claim of the Appellant is erroneous and contrary to the scheme and objective of the Electricity Act, 2003 to encourage captive generation and captive use of the electricity. Such a view has been taken only to impose upon the Appellant the burden of Cross Subsidy Surcharge when the Electricity Act, 2003 in Sections 38, 39, 40 and 42 (2)

specifically provides for non-levy of Cross Subsidy Surcharge for captive consumption of electricity.

9. The learned counsel for the State Commission has made following arguments/submissions on the issues raised in the present Appeal for our consideration
- a) A captive generating plant is a power plant setup by any person to generate electricity primarily for his own use. As provided in section 9 of the Electricity Act, 2003 a person may construct, maintain or operate a captive generating plant and dedicated transmission lines and no license is required for such construction, maintenance and operation of a captive generating plant.
  - b) Further the Rule 3 of Electricity Rules 2005 defines the requirements for Captive Generating Plant. The provisions under Rule 3 prescribed that a power plant can qualify as captive generating plant, if not less than 51% of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use. There are also certain other conditions, which a power plant has to fulfil for qualifying as a captive generating plant.
  - c) The State Commission has passed the following order in Suo Moto Petition no. 27 of 2015 (M)

*"7. According to the details submitted by the CEI, in respect of the respondent company, it is observed that installed capacity of the respondent's plant is 80 MW and it has generated 239.76 MU Electricity (net), in the year 2013-14, out of which only 55.3 MU Unit was consumed for captive purpose, which is only*

23.08% of the net generation. Prima facie, therefore, it appears that the respondent's power plant did not qualify as a Captive Generation Plant (CGP) in terms of definition given in section 2 (8) of Electricity Act, 2003 read with Rule-3 of Electricity Rules-2005 for the year 2013-14.

8. The respondent was served with notice no. 1016 dated 25.05.2015 and asked to justify its captive status for the relevant year, within 15 days. This notice was served upon the respondent. The respondent has filed reply on 15.07.2015."

9. The respondent has been operating two generating units in the same premises. One of the unit is 15 MW capacity including WHRB presence and the other is 65 MW thermal generating unit with separate TG generator, boiler, bus bar and evacuation facilities. According to the respondent the first unit of 15 MW is the captive generating plant of the Appellant and the other 65 MW plant is an independent generating unit as provided in the explanation and illustration of the rule 3(1) of the Electricity Act, 2005.

10. We have gone through the reports submitted by the Chief Electrical Inspector along with a letter dated 13.05.2013 vide which the respondent himself submitted the data regarding power generation and captive consumption to CEI. A copy of format-B is also on record which has been filled up by the respondent company itself. Though, in sl. no. 2 of the format-B, the installed capacity of the power plants, shown as 15 MW & 65 MW, but the other details are shown collectively. The bifurcation of the data, shown in reply, was not produced before the Chief Electrical Inspector. It seems, the data has been bifurcated after thought, to get benefit of relaxation in payment of applicable charges. Further, it is also not mentioned in the reply why the bifurcated data has not been submitted before the CEI. We therefore, could not accept the clarification regarding generation and captive consumption as given in para 4 of the reply.

11. On the basis of above discussion, we arrive at the conclusion that the power plant of the respondent company could not fulfil the criteria as prescribed in Rule-3 of Electricity Rules, 2005 and the end user could not qualify as a captive user, therefore, we declare that the power plant of the respondent has lost its captive status for FY 2013-14."

- d) The State Commission in its previous order dated 21.04.2014 passed in Suo Motu Petition No. 88 of 2013 (M) has also decided the Captive Status of the Appellant's Power Plant. The State Commission decided that the Power Plant of the Appellant has lost its captive status for FY 2012-13. The State Commission in its order dated 21.04.2014 has not accepted the bifurcated data of the Appellant's Power Plants. The bifurcation of the data, shown in reply filed by the Appellant before the State Commission, was not produced before the Chief Electrical Inspector. It seems, the data has been bifurcated after thought, to get benefit of relaxation in payment of applicable charges.
- e) The Appellant in its own letter dated 13.05.2014 has submitted the data regarding power generation and captive consumption to Chief Electrical Inspector and format-B is also on record which has been filled up by the Appellant company itself. Though, in sl. no. 2 of the format-B, the installed capacity of the power plants, shown as 15 MW & 65 MW, but the other details are shown collectively. The details submitted by the CEI, in respect of the Appellant's Power Plant, it is observed by the State Commission that installed capacity of the Appellant's power plant is 80 MW and it has generated 239.76 MU Electricity (net), in the year 2013-14, out of which only 55.3 MU Unit was consumed for captive purpose, which is only 23.08% of the net generation. Therefore, from the above data it appears that the Appellant's power plant did not qualify as a Captive Generation Plant (CGP) in terms of definition given in section 2(8) of Electricity Act, 2003 read with Rule-3 of Electricity Rules 2005 for the year 2013-14.

- 10.** The learned counsel for the Respondent No 3 (Distribution Licensee) has made following arguments / submissions on the issues raised in the present Appeal for our consideration
- a) The Appellant had set up both the units i.e. TG 1 of 15 MW and TG 2 of 65 MW to meet the captive power requirements. The 65 MW TG-2 was set up in 2012 for captive use as an additional captive generating unit.
  - b) It is evident from the Form “G” submitted by the Appellant that there has been regular captive consumption from the TG-1 (15 MW) as well as TG-2 (65 MW) set during the FY 2013-14. Further, the Appellant has stated in its Application for Permission of Synchronization and Parallel Operation of Generator with CSPTCL Grid dated 02.06.2011 that its status is that of a CGP and that auxiliary and co-located captive load of a total 22.5 MW is connected. Therefore both the 15 MW TG-1 and the 65 MW TG-2 are captive generating units co-located in the same premises as the industrial unit of the Appellant consuming electricity generated from both the units.
  - c) As both TG-1 and TG-2 are identified as captive generating units, the required consumption is to be determined with reference to the aggregated generation and consumption from the two units taken together.

**11. After having a careful examination of all the issues brought before us on the issues raised in this Appeal for our consideration, our observations are as follows:-**

- a) The present case pertains to decision of the State Commission while granting “Captive Status” to the power plant of the Appellant. The Captive Status is granted by the State Commission based on the report submitted by the Chief Electrical Inspector after getting inputs the Appellant. The Section 2 (8) of the Electricity Act 2003 defines the Captive Generating Plant as :

*“2 (8) **“Captive generating plant”** means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;”*

- b) The Rule 3 of the Electricity Rules 2005 lays down the criteria for classification of a generator as a captive generating plant and the requirements of such plant.

***“Requirement of Captive Generating Plant-***

*(1) No power plant shall qualify as a 'Captive Generating Plant' under section 9 read with clause (8) of section 2 of the Act unless-*

*(a) in case of a power plant-*

- i. Not less than twenty six percent of the ownership is held by the captive user(s), and*



- ii. *Not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:*

*Provided that in case of power plant set up by registered co-operative society, the conditions mentioned under paragraphs (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:*

*Provided further that in case of associations of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume, not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power within a variation not exceeding ten percent.;*

- (b) *in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy(ies) the conditions contained in paragraphs (i) and (ii) of sub-clause(a) above including -*

***Explanation-(1)*** *The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and*

*(2) The equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six percent of the proportionate of the equity of the company related to the generating unit or units identified as per captive generating plant.*

### ***Illustration***

*In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the captive Generating Plant.*

*The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.*

- (2) *It shall be the obligation of the captive users to ensure that the consumption by the captive users at the percentages mentioned in sub-clause (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.*

*Explanation- (1) For the purpose of this rule-*

- a. "annual basis" shall be determined based on a financial year;*
- b. "captive user" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "captive use" shall be construed accordingly;*
- c. "ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;*
- d. "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity."*

As per Rule 3 (1) (a) of the Electricity Rules 2005, a power plant can qualify as captive power plant only when it satisfies both the conditions i.e. holding 26% of the ownership and consumption of not less than 51% of the aggregate electricity generated on annual basis in a financial year for captive use. It is evident from above that the status of any power generating plant as CPP or otherwise for any year can be established

only after completion of the respective financial year. Thus, no power plant can be declared upfront as CPP.

Further Clause 3 (1) (b) of Electricity Rules, 2005 prescribes that a generating station can identify a unit or units of such generating stations for captive use. In such cases when any unit(s) has been identified for captive use then the electricity consumed by captive users shall be with reference to unit or units in aggregate identified for captive use and not with reference to generating station as a whole.

- c) In the present case, the Appellant has 100% ownership in the Power Plant and hence fulfils one of the requirement as per Clause 3(1) (a) (i) of Electricity Rules 2005 regarding ownership.
- d) The State Commission has entrusted Chief Electrical Inspector with a duty to submit detailed information of generation and consumption of each and every power plant claiming captive status, to the State Commission for every Financial Year. The Form "G" is required to be submitted by the Generators to the Chief Electrical Inspector on monthly basis giving details of the electricity generation and consumption for assessing captive status of the Power Plants.
- e) We are in agreement with the contention of the Appellant that for the purpose of determining the annual captive status of any power plant only the relevant 'G' Forms submitted by the generator are required to be considered. It is entirely possible that a generator held to be an IPP in a relevant financial year

may be a CGP in the subsequent year based on the 'G' Forms submitted by the generator and as per its annual captive consumption.

- f) In its reply dated 15.07.2015 to the State Commission on the “Captive Status of power plants during the year 2013-14”, the Appellant has submitted that in the FY 2013-14 out of the two units, the first Unit of 15 MW is the captive generating plant while the second 65 MW is an Independent generating unit, as provided in the explanation and illustration to Rule 3(1) of the Electricity Rules 2005.
  
- g) We have noted captive consumption from both the Units i.e. TG-1 (15 MW) as well as TG-2 (65 MW) during the period under consideration as it is evident from the Form “G” submitted by the Appellant regularly on monthly basis to the Chief Electrical Inspector. Though there has been significant consumption for TG-1 but there had been captive consumption for TG-2 also but the quantum is very less. Hence we are not in agreement with the submissions of the Appellant that only TG-1 (15 MW) has been identified by the Appellant for captive use and TG-2 is an Independent Generating Unit.
  
- h) Hence considering the provision of Rule 3 (1) (b) of Electricity Rules, 2005 which prescribes that a generating station can identify a unit or units of such generating stations for captive use, it is clear that Appellant had identified both the Units i.e. TG-1(15 MW) and TG-2 (65 MW) for captive use during FY 2013-14. In view of above for deciding the captive status of the

Appellant plant, the aggregated Generation and consumption from both the units i.e. TG-1 (15 MW) and TG-2 (65 MW) has to be considered as per the provision of Rule 3 (1) (b) of Electricity Rules 2005.

- i) Considering our analysis as above, we decide the Issue at serial No. 7 (a) above i.e. **Whether the State Commission has correctly determined the captive status of the TG-1 (15 MW) generating unit of the Appellant for FY 2013-14?** against the Appellant. We find no infirmity in the decision of the State Commission in this regard.
- j) Similarly on the Issue at serial No. 7 (b) above i.e. **Whether the State Commission has overlooked that the Appellant has supplied the bifurcated and separate details of generation and consumption vide `G' Forms prescribed and approved by the State Commission, to the Respondent No. 2 after every month during the FY 2013-14?**, we also decide that there is no shortcoming in the analysis of the State Commission and the Impugned Order has been passed by the State Commission after considering all the facts and aspects in place.
- k) On the last Issue at serial No. 7 (c) above i.e. **Whether the State Commission has the power to correct the mistakes even assuming that the Appellant had incorrectly given the summarized details of generation and consumption from both its units to the Respondent No. 2 at the end of the financial year vide its Letter dated 13.05.2014 (wrongly typed as 13.05.2013) in a combined manner though at sl.**

**No. 2 in format-B** it is indicated that the said details were for both the units, **TG-1 and TG-2?**, we are of the firm view that there was no mistake as such by the Appellant and the State Commission has rightly decided the issue in the Impugned Order.

**ORDER**

We are of the considered opinion that there is no merit in the present Appeal and the I.A. and both the Appeal and I.A. are hereby dismissed as devoid of merit.

The Impugned Order dated 08.09.2015 passed by the State Commission is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **day of 8<sup>th</sup> November, 2016.**

**(I.J. Kapoor)**  
**Technical Member**

**(Mrs. Justice Ranjana P. Desai)**  
**Chairperson**

✓  
**REPORTABLE/NON-REPORTABLE**

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