

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**APPEAL NO. 6 OF 2018 &
IA NO. 27 OF 2018**

Dated: 28th September, 2018

**Present: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF

Meja Urja Nigam Private Limited
NTPC Bhavan, Scope Complex 7,
Institutional Area, Lodhi Road,
New Delhi - 110013

.... Appellant

VERSUS

1. **Central Electricity Regulatory Commission**
3rd and 4th Floor, Chanderlok Building
36, Janpath,
New Delhi – 110001
2. **Power Grid Corporation of India Limited**
“Soudamini”, Plot No. 2, Sector 29
Gurgaon -122001
3. **Rajasthan Rajya Vidyut Prasaran Nigam Ltd.**
Vidyut Bhawan Vidyut Marg,
Jaipur- 302 005
4. **Ajmer Vidyut Vitran Nigam Ltd**
400 KV GSS Building, Ajmer Road,
Heerapura, Jaipur - 302024
5. **Jaipur Vidyut Vitran Nigam Ltd**
400 KV GSS Building, Ajmer Road,
Heerapura, Jaipur - 302024
6. **Jodhpur Vidyut Vitran Nigam Ltd**
400 KV GSS Building, Ajmer Road,
Heerapura, Jaipur - 302024

7. **Himachal Pradesh State Electricity Board**
Vidyut Bhawan,
Shimla – 171 004 (H.P)
8. **Punjab State Power Corporation Ltd**
(erstwhile Punjab State Electricity Board),
The mall,
Patiala-147 001
9. **Haryana Power Purchase Centre,**
IInd Floor, Shakti Bhawan,
Sector-6,
Panchkula – 134 109
10. **Power Development Department**
Govt. of Jammu & Kashmir
Janipura Grid Station,
Jammu (Tawi) - 180 007
11. **Uttar Pradesh Power Corporation Ltd.**
10th Floor, Shakti Bhawan Extn.
14, Ashok Marg,
Lucknow - 226 001
12. **Delhi Transco Ltd.**
Shakti Sadan
Kotla Road (Near ITO).
New Delhi – 110002
13. **BSES Yamuna Power Ltd**
Shakti Kiran Building,
Karkardooma,
Delhi-110092
14. **BSES Rajdhani Power Ltd,**
BSES Bhawan, Nehru Place,
New Delhi – 110019
15. **Tata Power Delhi Distribution Ltd.,**
33 kV Substation, Hudson Lane,
Kingsway Camp
New Delhi-110 009.
16. **Electricity Department**
Chandigarh Administration
Sector -9,
Chandigarh – 160009

17. **Uttarakhand Power Corporation Ltd.**
Urja Bhawan, Kanwali Road,
Dehradun – 248001
18. **Northern Central Railway**
Allahabad – 211011
19. **New Delhi Municipal Council**
Palika Kendra, Sansad Marg,
NEW DELHI-110002
20. **Uttar Pradesh Power Transmission Corporation Ltd.**
Shakti Bhavan, 14, Ashok Marg,
Lucknow – 226001
21. **UPRVUNL**
Shakti Bhavan, 14,
Ashok Marg,
Lucknow – 226001
- ... Respondents

Counsel for the Appellant ... Ms. Swapna Seshadri
Mr. Anand K. Ganesan
Ms. Parichita Chowdhury
Ms. Neha Garg

Counsel for the Respondent(s)... Mr. Mridul Chakravarty
Mr. Pallav Monga for R-2

Mr. Pradeep Misra
Mr. Manoj Kr. Sharma for R-11

J U D G M E N T

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. Meja Urja Nigam Private Limited, New Delhi (in short, '**Appellant**'), assailing the validity, legality and propriety of the Impugned Order dated 05.10.2017 in Petition No. 203/TT/2016, passed by Central Electricity Regulatory Commission, New Delhi (First Respondent/Central Regulatory

Commission), has filed the instant Appeal, being Appeal No. 6 of 2018, under Section 111 of the Electricity Act, 2013, wherein the first Respondent/Central Regulatory Commission has determined the transmission tariff of 400 kV D/C Meja-Allahabad transmission line along with associated bays at Allahabad under "Transmission System Associated With Meja TPSn Northern Region from its Commercial Operation Date (COD) till 31.03.2019 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

2. The Appellant has sought the following reliefs in the instant Appeal:

- (a) Remand the matter back to the Central Commission for giving a proper and reasoned Order after considering system strengthening aspect of instant line and Indemnification agreement signed between Appellant and Powergrid;
- (b) Allow the appeal and set aside the Order dated 05.10.2017 passed by the Central Commission in Petition No. 203 / TT / 2016 to the extent challenged in the present appeal;
- (ii) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

3. The Appellant has presented this Appeal for considering the following Questions of Law:

- A.** Whether the Central Commission, as the court of first instance can pass a completely non-speaking order without giving any reasons for

its decision to direct the Appellant to bear the transmission charges for the system?

- B.** Whether the Central Commission can ignore the specific stipulations contained in the PPA and the Indemnification Agreement which clearly provide for the liabilities of the respective parties?
- C.** Whether the Central Commission can ignore the clear documents on record to show that the Meja-Allahabad line was conceived not only for power evacuation from the Appellants' generating station but also for other nearby generating stations as well as to integrate the downstream system of UPPTCL with the ISTS ?
- D.** Whether the Central Commission has ignored the Judgment of the Hon'ble Supreme Court in Power Grid Corpn. of India Ltd. v. Punjab State Power Corpn. Ltd., (2016) 4 SCC 797?
- E.** Whether the Central Commission can direct the Appellant to bear the IDC & IEDC of both the circuits of the transmission line from 05.05.2016 to 10.11.2016 and for Circuit II from 10.11.2016 till 09.02.2017 and also pay the transmission charges for the assets from 10.11.2016 till the date of commissioning of first unit of the generating station or operationalization of the LTA when both the parties have signed Indemnification Agreement clearly defining liability of each other, in case of delay?

BRIEF FACTS OF THE CASE:

4. Meja Urja Nigam Private Limited/ Appellant is a joint venture company between NTPC Limited and Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd developing a 1320 MW coal-based generating station at Meja in the State of Uttar Pradesh. The Appellant is in the process of commissioning its first unit.

5. Central Regulatory Commission/first Respondent is the regulator which determines the generation and transmission tariff for Central Government owned or controlled companies including the Appellant.

6. Power Grid Corporation of India Limited/ second Respondent is a transmission company having set up most of the inter-state transmission network in the country. The tariff for the transmission assets of the second Respondent is also determined by the first Respondent/Central Regulatory Commission.

7. Respondents No. 3 – 19 are the beneficiaries (or their predecessors or successors) of the transmission assets being developed by the second Respondent. Respondent No. 20/UPPTCL is the transmission company in the State of Uttar Pradesh and Respondent No. 21/UPRVUNL is the Generating Company in the State of Uttar Pradesh which are necessary for deciding the issue raised in the present appeal.

8. The first Respondent/Central Regulatory Commission has directed the Appellant to pay IDC & IEDC for the period of delay in commissioning of Meja-Allahabad line caused due to non readiness of Meja end bays and the

transmission tariff of the Meja–Allahabad line from 10.11.2016 till the Commercial Operation Date of the first unit of the Generating Station of the Appellant or the operationalisation of the Long Term Access whichever is earlier.

9. It is the case of the Appellant that, the said Order passed by the first Respondent/Central Regulatory Commission is completely cryptic and non-speaking and needs to be set aside on this ground alone.

10. Further, it is the case of the Appellant that the impugned Order dated 05.10.2017 passed by the first Respondent/Central Regulatory Commission is bereft of any reason whatsoever and is a non-speaking order. While passing the impugned Order, the first Respondent/Central Regulatory Commission has failed to consider the relevant material placed by the Appellant on record and has also not provided any analysis or reasons whatsoever for the decision that it has arrived at and presented this Appeal.

11. Learned counsel appearing for Power Grid Corporation of India Limited (second Respondent herein) has raised the preliminary objection on questioning the correctness of the impugned Order dated 05.10.2017 passed by the first Respondent/Central Regulatory Commission which cannot be sustainable on the ground that the first Respondent/Central Regulatory Commission, after thorough evaluation of the entire material available on record and, also after considering the submissions of the learned counsel for both the parties, has passed a detailed, well-reasoned and a speaking order and also rightly justified in directing the Appellant to pay IDC and IEDC for 400kV D/C Meja – Allahabad

transmission line and its associated bays. It is most respectfully submitted that, the first Respondent/ Central Regulatory Commission has rightfully determined and directed the recovery of transmission charges from the date of COD of the transmission asset and payment of IDC & IDEC for the period of mismatch when the asset was kept idle due to delay in commissioning of generating station of the Appellant. Therefore, the Appellant is not entitled for any relief sought in the instant Appeal.

12. The second Respondent/Power Grid Corporation of India Ltd, is a Central Transmission Utility (CTU) as envisaged under Section 38 of the Electricity Act, 2003 and is engaged in planning, execution and grant of open access to Inter-State transmission corridors throughout the Country.

13. The Appellant contended that the bills raised by the second Respondent, in accordance with directions contained in the impugned Order should be stayed and the matter be remanded back to the first Respondent/Central Regulatory Commission. The second respondent has submitted that the Appellant has failed to make a prima-facie case for setting aside the impugned Order and the question of remanding back the Order to the Central Regulatory Commission does not arise for the reasons that the first Respondent/Central Regulatory Commission, after appreciation of the entire material available on record and by assigning the valid and cogent reasons, has passed the impugned Order dated 05.10.2017. Therefore, on this ground, the instant Appeal filed by the Appellant is liable to be dismissed as devoid of merits.

14. Being aggrieved by the impugned Order dated 05.10.2017 passed by the first Respondent/Central Regulatory Commission, the Appellant herein, felt necessitated to present this Appeal.

SUBMISSIONS OF LEARNED COUNSEL, MS. SWAPNA SESHADRI, APPEARING FOR THE APPELLANT:

15. The principal submission canvassed by learned counsel, Ms. Swapna Seshadri, appearing for the Appellant is that, the first Respondent/Central Regulatory Commission has erred in directing the Appellant to pay the transmission charges for the Meja-Allahabad line by a non-speaking Order without giving any reasons or rationale and without considering the material placed on record by the Appellant. Therefore, the matter needs to be remanded back to the first Respondent/Central Regulatory Commission on this ground alone.

16. The first Respondent/Central Regulatory Commission, as a court of first instance, has to pass a reasoned Order which has to be capable of being taken in appeal by persons aggrieved. The first Respondent/Central Regulatory Commission has not even dealt with a single document relied on by the Appellant before the first Respondent/Central Regulatory Commission and has simply issued a directive to the Appellant to pay the transmission charges.

17. The first Respondent/Central Regulatory Commission has also failed to appreciate that this is not a fit case to direct that the transmission charges are to be paid by the Appellant alone either till its first unit of generating station is commissioned or till the LTA is operationalized. The Appellant has not assumed

any responsibility qua transmission of power. The sale of power in terms of the PPAs entered into by the Appellant is at the bus bar of the generating station and thereafter it is for the beneficiaries to deal with the second Respondent/Powergrid.

18. Further, the first Respondent/Central Regulatory Commission has failed to appreciate that the Meja –Allahabad line was not developed only for evacuation of power from the generating station of the Appellant but also as a system strengthening and integration scheme and the Central Regulatory Commission has given no finding on the Indemnification Agreement by which the Appellant and Powergrid have decided to deal with their obligations qua one another. There are both positive and negative covenants in the Indemnification Agreement on what would be the liability of the Appellant and second Respondent Powergrid in case of delay and what would be the limitation of such liabilities. The Central Regulatory Commission has completely ignored the provisions of the Indemnification Agreement dated 17.04.2013.

19. The first Respondent/Central Regulatory Commission has also erred in ignoring the decision of the Hon'ble Supreme Court in *Power Grid Corpn. of India Ltd. v. Punjab State Power Corpn. Ltd.*, (2016) 4 SCC 797 wherein the Hon'ble Supreme Court has clearly held that any claim which can be raised by a transmission licensee qua a generating company is to be in terms of law and which, in the present case, is captured by the Indemnification Agreement.

20. To substantiate her submissions, as stated supra, learned counsel appearing for the Appellant has placed reliance on the judgment of the Hon'ble Apex Court in the case of *Rama Varma BharathanThampuram v State of Kerala &Ors. (1979) 4 SCC 782* and *Mohinder Singh & Anr. v State of Haryana &Ors. [1991 Supp. (2) SCC 207]* and vehemently contended that it is a well settled principle of law that an order passed by a statutory body should speak for itself, and cannot be supplemented later with fresh reasons. This principle was laid down by the Hon'ble Supreme Court in the case of *Mohinder Singh Gill &Anr. v Chief Election Commissioner, New Delhi &Ors. (1978) 1 SCC 405*.

21. Further, she placed reliance on this Tribunal's judgment dated 16.07.2018 passed in Appeal No. 281 of 2016 and Appeal No. 81 of 2017 [*NHPC Limited v Power Grid Corporation of India Limited & Ors*] and specifically placed reliance on Issue No.1 at page 71 and findings of this Tribunal at para 12.4 at page 74 where it is held that it is accordingly necessary to take full cognisance of the indemnification agreement and its applicability in the present case in the interest of justice and equity.

22. Learned counsel for the Appellant submitted that, it is not correct on the part of the second Respondent/Power Grid to add reasons for the purpose of justifying the Impugned Order when the Order itself does not contain the said reasons. The parties affected by an order must be able to understand the reasons behind such an Order. This is imperative because such orders affect the rights of the parties, and in the dearth of reasoning, the Order would be construed as arbitrary and bad in law. Therefore, she submitted that, there is no

merit in the submissions of learned counsel for the second Respondent/Power Grid and the matter needs to be remanded to the first Respondent/Central Electricity Regulatory Commission on the short ground of there being no finding recorded on any of the contentions raised by the parties for fresh consideration with the direction to the first Respondent/Central Regulatory Commission to consider the matter afresh and pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the parties and all the contentions of both the parties may kindly be left open.

SUBMISSIONS OF LEARNED COUNSEL, MR. MRIDUL CHAKRAVARTY, APPEARING FOR THE SECOND RESPONDENT

23. *Per-contra*, learned counsel, Mr. Mridul Chakravarty, appearing for the second Respondent/Power Grid vehemently submitted that, the first Respondent/Central Electricity Regulatory Commission, after due appreciation of the entire material available on records and the stand taken by the Appellant in the reply, has considered the issue of sharing of transmission charges in para 58 of the impugned Order and after evaluation of the material available on record, by assigning valid and cogent reasons, has opined in para 59 of the impugned Order, strictly in consonance with the relevant provisions of the Electricity Act, 2003 and Regulations, with regard to sharing of the transmission charges from 10.11.2016, Meja Urja Nigam Private Ltd., to bear the transmission charges till COD of 1st unit of Meja Generating station or date of start of LTA whichever is earlier. Therefore, the charges from 10.11.2016 to COD of 1st unit of Meja project or date of start of LTA, whichever is earlier, will be borne by Meja Urja Nigam Private Ltd. and, thereafter, the transmission

charges shall be shared as per Regulation 43 of the 2014 Tariff Regulations. These charges shall be recovered on monthly basis and the billing collection and disbursement of transmission charges shall be governed by provisions of Central Electricity Regulatory Commission (Sharing of Interstate Transmission Charges and Losses) Regulations, 2010 as amended from time to time. The said analysis and views of the first Respondent/Central Regulatory Commission are strictly in consonance with the pleadings and relevant material available on record and the stand taken by the parties. Therefore, interference by this Court, in the well considered Order passed by the first Respondent/ Central Regulatory Commission, does not call for. Hence, the instant Appeal filed by the Appellant, is liable to be dismissed as devoid of merits.

SUBMISSIONS OF LEARNED COUNSEL, MR. PRADEEP MISRA APPEARING FOR THE RESPONDENT NO. 11

24. Learned counsel, Mr. Pradeep Misra, appearing for the Respondent No.11, *inter alia*, contended and substantiated that the Impugned Order passed by the first Respondent/Central Regulatory Commission is sound and reasonable and interference by this Court is not justiciable. Further, he submitted that, the Respondent No.11 is a proforma party and no specific relief, as such, has been sought against it. Therefore, the instant appeal filed by the Appellant may be disposed of against this Respondent.

Respondent Nos. 3 to 10 and 12 to 21, though served, are unrepresented.

25. After careful consideration of the submissions of learned counsel for the Appellant and learned counsel of the Respondent Nos. 2 and 11, and after perusal of the impugned Order dated 05.10.2017 in Petition No. 203/TT/2016, passed by the first Respondent/Central Regulatory Commission and after going through the reply filed by learned counsel for the second Respondent and rejoinder filed by the Appellant, the only issue that arises for our consideration in the instant Appeal is:

Whether the impugned Order passed by the first Respondent/Central Regulatory Commission regarding sharing of transmission charges is sustainable in law?

26. Learned counsel, Ms. Swapna Seshadri, appearing for the Appellant, fairly submitted that, the only core issue that arises here for consideration of the Tribunal is regarding sharing of transmission charges. The first Respondent/Central Regulatory Commission has failed to consider the case made out by the Appellant and the material produced by it has neither been looked into nor appreciated and no valid reason has been assigned. The reasoning given in para 59 of the impugned Order bereft the case made out by the Appellant. To substantiate her submission, she quick to point out the consideration of the first Respondent/ Central Regulatory Commission regarding sharing of transmission charges at para 58, vide affidavit dated 31.01.2017 filed by the Appellant as extracted at para 58(a) to (f) sub-paras (d). In response, the Petitioner (2nd Respondent herein), vide affidavit dated 30.03.2017, has submitted the reply vide para 58(g) sub-paras (a) to (c). The first Respondent/Central Regulatory Commission has not at all considered the case

made out by the Appellant and the second Respondent and, therefore, the reasoning assigned in paragraph 59 of the Impugned Order is liable to be set aside.

27. It is manifest on the face of the analysis and views in paragraph 59 that there is no discussion, no reasoning and no finding, as such, coming forth and in short, it is not a speaking order. Therefore, she submitted that, the impugned Order passed by the second Respondent/Central Regulatory Commission, is liable to be set aside and the matter may kindly be remitted back for consideration afresh in accordance with law and in the light of the well settled law laid down by the Hon'ble Apex Court and by this Tribunal in the host of judgments, as referred above.

28. **Per-contra**, learned counsel, Mr. Mridul Chakravarty, appearing for the second Respondent/PGCIL vehemently submitted that, the Appeal filed by the Appellant is liable to be dismissed at threshold on the ground that the first Respondent/Central Regulatory Commission after duly considering the entire material available on record and after appreciation of the case made out by the learned counsel for the Appellant and learned counsel for the second Respondent, has rightly justified in passing the just and reasonable Order and the Appellant has failed to make out any case to interfere in the well considered Order passed by the first Respondent/Central Regulatory Commission. Therefore, interference by this Tribunal does not call for.

OUR CONSIDERATION & CONCLUSION:

29. The first Respondent/Central Regulatory Commission after due consideration of the case made out by learned counsel for the Appellant and learned counsel for the second Respondent, in paragraph 59 has analysed the issue of sharing of transmission charges and expressed its views on the same.

It is worthwhile to reproduce the same hereinunder:-

“Analysis and views

59. We have considered the submissions of the petitioner and respondents. With regard to sharing of the transmission charges from 10.11.2016, MUNPL to bear the transmission charges till COD of 1st unit of Meja Generating station or date of start of LTA whichever is earlier. Therefore, the charges from 10.11.2016 to COD of 1st unit of Meja project or date of start of LTA whichever is earlier will be borne by Meja Urja Nigam Private Ltd. and thereafter the transmission charges shall be shared as per Regulation 43 of the 2014 Tariff Regulations. These charges shall be recovered on monthly basis and the billing collection and disbursement of transmission charges shall be governed by provision of Central Electricity Regulatory Commission (sharing of Interstate Transmission Charges and Losses) Regulations, 2010 amended from time to time.”

[Emphasis Supplied]

30. As rightly pointed out by learned counsel for the Appellant, no discussion and reasoning regarding the case made out by the Appellant and the Respondents is coming forth. It is significant to note that, in view of the well settled law laid down by the Hon’ble Apex Court and by this Tribunal in host of the judgments, it is categorically held that it is a settled principle of law that an order passed by a statutory body should speak for itself, and cannot be

supplemented later with fresh reasons and that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out as held in the case of Mohinder Singh Gill & Anr. v Chief Election Commissioner, New Delhi & Ors. (1978) 1 SCC 405.

31. Further, it is noteworthy to consider the well settled law laid down by the Hon'ble Apex Court in the case of *Commissioner of Police, Bombay v Gordhandas Bhanji*, [AIR 1952 SC 16] wherein it is held as under:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

[Emphasis Supplied]

32. In the instant case, it is manifest on the face of the analysis and views in paragraph 59 that there is no discussion, no reasoning and no finding, as such, coming forth towards the case made out by the Appellant and the second Respondent except extracting the affidavit dated 31.01.2017 filed by the Appellant and the affidavit dated 30.03.2017 filed by the second Respondent but there is no consideration at all. Therefore, we are of the considered view that, in the analysis and views in paragraph 59 of the Impugned Order, there is no

discussion, no reasoning and no finding, as such, coming forth and in short, it is not a speaking order. Therefore, on this ground alone, the impugned Order dated 5.10.2017 in Petition No. 203/TT/2016 passed by the first Respondent/Central Regulatory Commission is liable to be vitiated.

33. After thorough microscopic evaluation of the entire material on record at threadbare, it is manifest that the reasoning assigned in paragraph 59 of the Impugned Order cannot be sustainable in law and hence is liable to be set aside and the matter requires to be considered afresh by the first Respondent/Central Regulatory Commission on the basis of the case made out by the Appellant and the second Respondent.

ORDER

34. For the foregoing reasons, as stated supra, the instant Appeal filed by the Appellant is allowed in part. The impugned Order dated 05.10.2017 in Petition No. 203/TT/2016 passed by the first Respondent/Central Regulatory Commission, so far it relates to sharing of transmission charges, is hereby set aside.

The matter stands remitted back for reconsideration afresh by the first Respondent/Central Regulatory Commission to pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the Appellant and the second Respondent/PGCIL as expeditiously as possible, at any rate, within a period of six months from the date of appearance of the parties.

The Appellant and the second Respondent herein are directed to appear personally or through their respective counsel before the Central Regulatory Commission on **October 31st, 2018**, without further notice, to collect necessary date of hearing. All the contentions of both the parties are left open.

IA NO. 27 OF 2018

In view of the Appeal No. 6 of 2018 on the file of the Appellant Tribunal for Electricity, New Delhi being disposed of, the relief sought in the instant IA does not survive for consideration and hence the same stands disposed of as having become infructuous.

No order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 28TH DAY OF SEPTEMBER, 2018.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

√ **REPORTABLE**

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