

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

Appeal No. 07 of 2016

Dated: 23rd March, 2018

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

In the Matter of:

Godawari Power & Ispat Ltd.
Through its Authorized Signatory
Shri Y.C. Rao, S/o Late Shri Y. Mandali,
Regd. Office: 428/2, Phase-I, Industrial Area
Siltara, Dist. Raipur
Chhattisgarh – 493 111

.... Appellant

Versus

1) Chhattisgarh State Load Despatch Centre,
Through its Executive Director (LD),
Chhattisgarh State Power Transmission Co. Ltd.,
Dagania, Raipur,
Chhattisgarh - 492 013

.... Respondent No. 1

2) Chhattisgarh State Electricity Regulatory
Commission,
Through its Secretary,
Irrigation Colony, Shanti Nagar,
Raipur, Chhattisgarh – 492 001

.... Respondent No. 2

Counsel for the Appellant(s) : Mr. Raunak Jain
Mr. Vishvendra Tomar

Counsel for the Respondent(s) : Mr. Apoorv Kurup for R-1
Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Neha Garg
Mr. Sandeep Rajpurohit for R-2

J U D G M E N T

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The present appeal has been filed by M/s. Godawari Power & Ispat Ltd, Chhattisgarh (“**Appellant**”) under section 111 (1) of the Electricity Act 2003, challenging the Order dated 29.10.2015 (Part 07 of 20) passed by the Chhattisgarh State Electricity Regulatory Commission (“**State Commission/Respondent No. 2**”) in Petition No. 70 of 2013 (M) (“**impugned Order**”), in the matter concerning alleged non-compliance of Backing Down Instructions (“**BDis**”) issued by Chhattisgarh State Load Despatch Centre (“**SLDC / Respondent No. 1**”) to the Appellant, during the period April 2012 to June 2012 and imposed a penalty of Rs. 50,000/- on the Appellant.
2. The Appellant herein is a captive generating company having an integrated steel plant and a co-located generation facility of 73 MW, out of which 43 MW is generated through waste heat recovery boiler, while remaining 33 MW is generated through AFBC route.
3. The Respondent No. 1, The State Load Despatch Centre is a statutory body created under the Electricity Act. Section 32 of the Electricity Act mandates that the SLDC is the apex body to ensure integrated operation of the power system in a State.
4. The Respondent No. 2, is the Electricity Regulatory Commission for the State of Chhattisgarh exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.

5. **Facts of the Case:**

The facts of the case are as under –

- 5.1 The State Commission on 30.12.2011 notified the Chhattisgarh State Electricity Grid Code, 2011 specified under Section 86 (1) (h) of the Electricity Act, 2003. The relevant provisions of the State Grid Code for adjudication of the present appeal are extracted below –

(i) ***1.3 Definitions:***

9. ***"Backing Down" means the instructions of SLDC or WRLDC conveyed through SLDC, for reduction of generation of a generating unit under abnormal conditions such as high frequency, low system demand or network constraints;***

.....

(ii) ***4.4 General principles and conditions for grid connectivity: -***

Grid connectivity shall be generally provided subject to the following conditions: -

1. All Intra-state users or prospective users are treated equitably.

.....

12. For scheduling and despatching of demand / drawl / bilateral exchanges etc, the CGPs will be treated at par with the other generators.

.....

(iii) ***CHAPTER – 5: OPERATING CODE***

5.1 Operation Policy:

1. *The primary objective of integrated operation of the State grid is to enhance the overall operational economy and reliability of the entire electric power network spread over the geographical area of the State. The operation of the transmission system shall be consistent to IEGC, 2010 and its modification(s), if any. The Intra-state user shall however be subject to the grid discipline prescribed by the SLDC.*

2. *Overall real time operation of the State grid shall be supervised by the SLDC. The role of SLDC and STU shall be in accordance with*

the provisions of the Act and CSERC (Intrastate open access and connectivity) Regulations, 2011. All intra State entities shall comply with these operational guidelines and coordinate with each other, for deriving maximum benefits from the integrated operation and for equitable sharing of obligations. Every generating company and transmission licensee shall provide written operating instructions for each equipment and operating procedure for sequence of operations of power system equipment in their control room. The operating instructions followed shall not be inconsistent with the manufacturer's instructions. The operating instructions and procedures may be revised by the generating company or transmission licensee, as the case may be.

3. *A set of detailed internal operating procedures for the State grid shall be developed and maintained by the SLDC in consultation with the intra State entities, RLDC which shall be consistent with State Grid Code and IEGC, 2010 and its amendments. These internal operating procedures shall include the following:*

- i) Black start procedures.*
- ii) Load shedding procedure as approved by the Commission.*
- iii) Islanding procedure.*
- iv) Any other procedure considered appropriate by the State Load Despatch Centre.*

All operational instructions given by Regional Load Despatch Centres and State Load Despatch Centres through telephone, Fax, e-mail, etc shall be given a unique operating code number. State Load Despatch Centre shall maintain a voice recorder for recording and reproduction of conversation with time tag or stamp. The record of instructions shall be kept for at least six months.

4. *The control rooms of the SLDC, Power Plants and EHV substations and any other control centres of all State entities shall be manned and maintained round the clock by qualified personnel with adequate training.*

(iv) 5.2 System Security Aspects:

.....

11. All Intra-state user(s) shall make all possible efforts to ensure that the grid frequency always remains within the 49.5–50.2 Hz band as per IEGC, 2010 as amended from time to time. However,

generator should have operating capability to give MCR output under Grid Frequency Variation of -5% to +3% (47.5 to 51.5) as per CEA technical standard.

(v) 5.4 Demand Management:

This section is concerned with the provisions to be made by SLDC to effect a reduction of demand in the event of insufficient generating capacity, and inadequate transfers from external interconnections to meet demand, or in the event of breakdown or congestion in intra-state or inter-state transmission system or other operating problems (such as frequency, voltage levels beyond normal operating limit, or thermal overloads, etc.) or overdrawl of power vis-à-vis of the regional entities beyond the limits mentioned in UI regulation of CERC.

1. Demand Disconnection:-

(v) All Intra-state users, distribution licensee or bulk consumer shall comply with direction of SLDC and carry out requisite load shedding or backing down of generation in case of congestion in transmission system to ensure safety and reliability of the system. The procedure for application of measures to relieve congestion in real time as well as provisions of withdrawal of congestion shall be in accordance with Central Electricity Regulatory Commission (Measures to relieve congestion in real time operation) Regulations, 2009 as amended from time to time.

.....

(vi) 5.10 Event Information:

This part deals with reporting procedures in writing of reportable events in the system to all Intra-state user(s) and SLDC. The objective of this section is to define the incidents to be reported, the reporting route to be followed and information to be supplied to ensure consistent approach to the reporting of incidents/events.

.....

5.10.3 Reporting Procedure:

.....

(ii) Written reporting of events by SLDC to intra-State users

In the case of an event which was initially reported by SLDC to a user orally, the SLDC will give a written weekly report to the user in accordance with this section.

5.10.4 Form of Written Reports:

A written report shall be sent to SLDC or a Intra-state user(s), as the case may be, and will confirm the oral notification together with the following details of the event:

- (i) Time and date of event.*
- (ii) Location*
- (ii) Plant and / or Equipment directly involved*
- (iv) Description and cause of event*
- (v) Demand and / or Generation (MW) interrupted and duration*
- (vi) All relevant system data including copies of records of all recording instruments including Disturbance Recorder, Event Logger, DAS etc.,*
- (vii) Sequence of trippings with time.*
- (viii) Details of Relay Flags.*
- (ix) Remedial measures.*

(vii) 6.2 Responsibility of Scheduling and Dispatch:

.....

6.2.3 The State generating station shall be responsible for power generation generally according to the daily schedule advised to them by the SLDC on the basis of the drawl schedules received from the beneficiaries / bulk consumers. However, the generating plants may deviate from the given schedules depending on the plant and system conditions. In particular, they would be allowed / encouraged to generate beyond the given schedule under deficit conditions. Deviations from the ex-bus generation schedules shall be appropriately priced by Commission.

Provided that when the frequency is higher than 50.2 Hz, the actual net injection shall not exceed the scheduled dispatch for that period. Also while the frequency is above 50.2 Hz, the generating plants may (at their discretion) back down without waiting for an advice from SLDC to restrict the frequency rise. When the frequency falls below 49.7 Hz, the generation at all stations (except those on peaking duty) shall be maximized, at least up to the level which can be sustained, without waiting for an advice from SLDC. Notwithstanding the above, the SLDC may direct the generating plants/beneficiaries to increase/decrease their generation/drawl in case of contingencies e.g. overloading of lines / transformers, abnormal voltage, threat to system security. Such directions should immediately be acted upon.

.....

6.2.5 *For all outages of generation and transmission system, which may have an effect on the State grid, all users shall cooperate with each other and coordinate their actions as per the procedures finalized separately. In particular, outages requiring restriction of generation which beneficiary can receive (and which may have a commercial implication) shall be planned carefully to achieve the best optimization.*

(viii) **6.20 Non-compliance of Operational Issues:**

(i) *SLDCs shall report to the Commission instances of serious or repeated violation of any of the provisions of the State grid Code and incidences of persistent non-compliance of the directions of the SLDCs issued in order to exercise supervision and control required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the state.*

(ix) **11.1 Reportable Incidents:**

11.1.1 All events in the transmission system shall be notified by STU/transmission licensee to SLDC and the intra-state users, whose systems are affected.

11.2 Reporting procedure:

11.2.6 SLDC will be responsible for reporting event in line with the procedure set in IEGC.

5.2 On 15.07.2013, the Respondent No. 1, SLDC filed a petition before the State Commission bearing Petition No. 70 of 2013 (M) under Section 33 (1) of the 2003 Act read with Regulations 5.4.1 (v), 5.10.2 (iii) and 6.20 of the Chhattisgarh State Electricity Grid Code, 2011 against 20 different privately owned generating companies for alleged non-compliance of BDIs issued between the period of April 2012 to June 2012 and prayed for imposition of penalty of Rs. 5,00,000/- for each non-compliance event against each of the 20 private generating companies. The Appellant was also arrayed as Respondent No. 7 in the said petition. In the said petition, it was alleged that the Appellant had not complied with 5 BDIs issued by the SLDC during the relevant period.

5.3 On 03.12.2013, the Appellant filed its Preliminary Objections on Maintainability of the Petition, wherein, amongst others, specific objection regarding discrimination in the manner of issuance of BDIs by SLDC only to privately owned generating companies was taken by the Appellant. In the submissions, it was brought out that the petition was liable to be dismissed due to non-joinder of the State owned generating companies, which were also necessary parties.

5.4 Vide its Order dated 23.12.2013, in Petition No. 70 of 2013 (M), the State Commission dismissed the preliminary objections of the Appellant. With regard to the submissions of the Appellant regarding discrimination and non-joinder of State owned generating companies, the State Commission observed as under-

“7. Some other issues like, discrimination and non joinder of State generating companies, are also raised, which are not of preliminary nature and therefore not considered in this order.”

5.5 On 15.05.2014, the Appellant filed its detailed reply on merits before the State Commission. In the said reply, the Appellant has stated that the alleged BDIs issued by SLDC are not as per norms specified under the State Grid Code. The Appellant had submitted that as per Regulation 5.1.3, the SLDC ***“shall maintain a voice recorder for recording and reproduction of conversation with time tag or stamp. The record of instructions shall be kept for at least six months.”*** Under Regulation 5.10.3, in case oral instructions have been issued by the SLDC, the SLDC is required to submit a written weekly report to the user. However, in the present case the Appellant has claimed to not have received a written weekly report regarding events in the transmission system from the SLDC. The burden of proof to produce the voice transcripts is also with the SLDC as per the Grid Code, which remains undischarged. Further, under Regulation 4.4.12 of the State Grid Code, for scheduling and

despatching of demand / drawl / bilateral exchanges etc, “**the CGPs will be treated at par with the other generators**”, whereas in the present case, the Appellant has alleged that BDIs have been issued only to privately owned generating companies and not to State owned generating companies.

5.6 The SLDC further filed another petition bearing Petition No. 44 of 2014 (M) for alleged non-compliance of BDIs issued during FY 2013-14. The present Appellant is also a respondent under the said petition. Further, the SLDC has filed the said petition also against the State owned generating companies in Chhattisgarh, besides the privately owned generating companies. This shows that the State owned generating companies are also to be treated at par with the privately owned generating companies in the matter of issuing BDIs, as contended by the Appellant in Petition No. 70 of 2013 (M) before the State Commission.

5.7 On 29.10.2015, the State Commission has passed the impugned Order in Petition No. 70 of 2013 (M). Vide the said impugned Order, the State Commission has imposed a penalty of Rs. 50,000/- on the Appellant for alleged non-compliance of BDIs issued by the SLDC–

6. Aggrieved by the impugned order, the Appellant has preferred the present Appeal before this Tribunal and has contested only on following two issues:

- i) BDIs have not been issued by the SLDC in accordance with the prescribed conditions of the State Grid Code and the Appellant has not received the alleged BDIs for the period in question.
- ii) The alleged BDIs, as per the details submitted by the SLDC, have been issued only to privately owned generating companies and not to State owned generating companies leading to discrimination and violation of Article 14 of the Constitution of India.

7. **Questions of Law:**

A. Whether the State Commission has failed to consider that the Appellant has not received the alleged BDIs issued by SLDC during the period in

question, due to non-issuance of the said BDIs in accordance with norms specified by the State Commission under the Chhattisgarh State Electricity Grid Code, 2011?

- B. Whether the SLDC has followed the conditions specified under Regulations 5.1.3 and 5.10.3 of the State Grid Code in the manner of issuing the alleged BDIs to the Appellant during the period in question?
- C. Whether the State owned generating companies have to be treated at par with privately owned generating companies in the matter of BDIs issued by SLDC, as per Regulation 4.4.12 of the State Grid Code?
- D. Whether the State Commission has failed to note that the State owned generating companies are the necessary parties and that the SLDC has failed to implead the same in Petition No. 70 of 2013 (M), while the SLDC has duly impleaded the State owned generating companies as respondents in Petition No. 44 of 2014 (M)?
- E. Whether the unjust and arbitrary penalty imposed by the State Commission is liable to be set aside by this Tribunal?

8. **The following are the gist of submissions made by Shri Raunak Jain, the Ld. Counsel for the Appellant:**

- 8.1 The Appellant has not received the alleged BDIs issued by the SLDC during the period in question. The State Commission has recorded the submission of the Appellant that the SLDC has not issued the alleged BDIs in accordance with the provisions of the State Grid Code in paras 11 and 25 of the impugned Order as given below:

“10. M/s Godawari Power & Ispat Ltd., Raipur, Respondent vide his reply dated 15.05.2014 submitted that they have always complied with the directions given by the utilities and there have been no purposeful omissions, including the alleged instances pointed out by the petitioner. The Respondent submitted that they have not received any BDI from SLDC on the specified date and time. They have submitted that the Petitioner has also not borne in mind any economic efficiency factors while issuing BDIs which is an important consideration under the Electricity Act, 2003. There are instances where prima facie, the grid frequencies have remained within permissible limits (49.5-50.2 Hz), yet BDIs have been admittedly issued.

25. It is also submitted that the Respondent did not receive the BDI instructions issued by SLDC which is contrary to the submissions by the Respondent and data retrieved through SCADA. So, it cannot be considered for an excuse in non-compliance of BDI. Non-compliance has been observed in all five instances, but in two instances it cannot be treated as non-compliance of BDI because of technical reasons as analysed above”.

- 8.2 The Commission has failed to give any finding on the said critical issue and has simply proceeded on the information submitted by the SLDC and presumed that the Appellant has received the alleged BDIs and has thereafter violated the same. The said approach of the Leaned Commission is patently illegal and contrary to record. The burden of proof lies upon the SLDC to prove that the alleged BDIs have been issued as per norms laid down in the State Grid Code, which has not been discharged, and resultantly there cannot be any imposition of penalty on the Appellant for non-compliance of alleged BDIs issued by the SLDC during the period in question.
- 8.3 The SLDC has failed to abide by Regulations 5.1.3 and 5.10.3 of the State Grid Code, in respect of reporting procedures to be followed by SLDC and the voice recordings of the BDIs issued to the intra-state entities by the SLDC. The Appellant has specifically alleged that it has never received any written weekly reports as contemplated under Regulation 5.10.3 and further no voice recordings have ever been produced by the SLDC before the State Commission. In view of the said submissions, unless the weekly written reports and the voice recordings are produced by the SLDC which would be conclusive proof of the issuance of BDIs, there cannot be any imposition of penalty for alleged non-compliance of BDIs.
- 8.4 As per Regulation 4.4.1 of the State Grid Code, all the intra-state users or prospective users of the grid are required to be treated equitably. Further, as per Regulation 4.4.12, for the purposes of scheduling and despatching

of demand / drawl / bilateral exchanges etc, the CGPs will be treated at par with the other generators. This means that in the case of BDIs, the SLDC has to treat the State owned generating companies at par with privately owned generating companies. In fact, no BDIs have been issued to the State owned generating companies by the SLDC during the period in question and the entire burden of maintaining grid discipline has been unfairly cast and left entirely on the privately owned generating companies. This has also led to discrimination; pick and choose policy adopted by the SLDC and violation of Article 14 of the Constitution of India. It may be noted that the State owned generating companies have large generators installed and the size of their operation is also very large. Thus, the slightest variation in their injection and schedule could have a large impact on the grid operations. The State Commission has failed to consider the aforesaid submissions of the Appellant and has not at all dealt with the same.

- 8.5 In the second petition instituted by the SLDC before the State Commission for alleged non-compliance of BDIs during FY 2013-14 being Petition No. 44 of 2014 (M), it is relevant to note that the State owned generating companies have been made parties as respondents, including the present Appellant. The SLDC has also issued the BDIs during the relevant period to the privately owned generating companies as well as State owned generating companies. This fortifies the contention of the Appellant that the State owned generating companies are also the necessary parties in Petition No. 70 of 2013 (M) and the SLDC is required to show the action taken against the said State owned generating companies for non-compliance of alleged BDIs during the period of April 2012 to June 2012. The failure of the SLDC to issue BDIs to State owned generating companies and failing to implead those strikes at the root of the matter and no penalty could be imposed under these circumstances.

- 8.6 There cannot be any question of imposition of penalty on the Appellant as the Appellant has not received the alleged BDIs issued by the SLDC during the period in question. The SLDC has failed to prove that it has communicated the alleged BDIs to the Appellant as per requirements under the State Grid Code. Unless the burden of proof is discharged, the question of penalty does not arise. There also cannot be any presumption drawn that the Appellant has received the alleged BDIs, as has been done by the Leaned Commission in the instant case. Resultantly, the penalty of Rs. 50,000/- imposed by the State Commission is unjust and completely arbitrary and is required to be set aside by this Tribunal.
- 8.7 The Appellant has not admitted in any manner non-compliance of instructions which were issued as per SLDC/Answering Respondent, neither has Appellant received the alleged BDIs issued by the SLDC during the period in question as per the State Electricity Grid Code. The measures taken by SLDC are to deviate the attention of this Tribunal from the incongruous procedure adopted and ignorance shown towards the mandatory procedure mentioned in the State Electricity Grid Code 2011.
- 8.8 The Appellant has consistently maintained that it has not received the BDIs for the period of April 2012 to June 2012. The other periods are not in question in the present dispute. Further, if at all the BDIs are stated to have been issued by the SLDC, it is submitted that they have not been received by the Appellant for the period in question since they have been issued contrary to the procedure laid down under the Grid Code. It is for the Respondent SLDC to satisfy that the BDIs have been issued in compliance to the Regulations framed by the State Commission, which has not been done in the present case, prior to imposition of penalty.
- 8.9 The Respondent SLDC has failed to abide by Regulations 5.1.3 and 5.10.3 of the State Grid Code, in respect of reporting procedure to be

followed by SLDC and the voice recordings of the BDIs issued to the intra-state entities by the SLDC. The State Commission has also recorded the submission of the Appellant that the SLDC has not issued the alleged BDIs in accordance with the provisions of the State Grid Code in Paras 11 and 25 of the impugned Order. However, it has failed to give any finding on the said critical issue and has simply proceeded on the information submitted by the SLDC and presumed that the Appellant has received the alleged BDIs and has thereafter violated the same. The said approach of the Learned Commission is patently illegal and contrary to record. The burden of proof lies upon the SLDC to prove that the alleged BDIs have been issued as per norms laid down in the State Grid Code, which has not been discharged, and resultantly there cannot be any imposition of penalty on the Appellant for alleged non-compliance of alleged BDIs issued by the SLDC during the period in question.

- 8.10 As per Regulation 4.4.1 of the State Grid Code, all the intra-state users or prospective users of the grid is required to be treated equitably. Further, as per Regulation 4.4.12, for the purposes of scheduling and despatching of demand / drawl / bilateral exchanges etc, the CGPs will be treated at par with the other generators. This means that in the case of BDIs, the SLDC has to treat the State owned generating companies at par with privately owned generating companies.
- 8.11 For FY 2013-14, the Respondent SLDC had instituted Petition No. 44 of 2014 (M) before the Learned State Commission. This petition was also filed on similar lines to impose penalty upon the generators for non-compliance of BDIs issued by the Respondent SLDC. It is most important to note that the State owned generating companies have been made parties as respondents. The SLDC has also issued the BDIs during the relevant period to the privately owned generating companies as well as State owned generating companies, while in the Petition No. 70 of 2013

(M), only privately owned generating companies have been issued BDIs, thereby resulting in discrimination, bias and arbitrariness in the manner of issuance of BDIs by the Respondent SLDC. This further fortifies the contention of the Appellant that the State owned generating companies are also the necessary parties in Petition No. 70 of 2013 (M). It is important to mention that no BDIs have been issued to the State owned generating companies by the SLDC during the period in question in the present appeal and the entire burden of maintaining grid discipline has been unfairly cast on the privately owned generating companies. This has also led to discrimination; pick and choose policy adopted by the SLDC and violation of equality of generators under the Grid Code. It may be noted that the State owned generating companies have large generators installed and the size of their operation is also very large. Thus, the slightest variation in their injection and schedule could have a large impact on the grid operations.

8.12 The State Electricity Grid Code, 2011 has been notified by the State Commission in exercise of powers under Section 86(1) (h) read with Section 181(ZP) of the Electricity Act, 2003. Thus, the State Electricity Grid Code has been framed by the State Commission in exercise of its legislative powers. All the entities specified under the Grid Code are bound by the provisions of the same. Regulations 5.1.3 and 5.10.3 of the State Grid Code, in respect of reporting procedure to be followed by SLDC and the voice recordings of the BDIs issued to the intra-state entities by the SLDC, are the mandatory provisions to be followed by the SLDC. Only because it is a State utility, it cannot be said that the Regulations framed by the State Commission are not applicable upon the SLDC and the SLDC is free to follow its own procedure in variance with the procedure laid down by the State Commission.

8.13 The Appellant has prayed for the following relief before this Tribunal:

- a) Quash/set aside the impugned Order dated 29.10.2015 passed by the State Commission in Petition No. 70 of 2013 (M);
- b) Set aside the penalty imposed by the State Commission on the Appellant for alleged non-compliance of alleged BDIs issued by the SLDC for the period April 2012 to June 2012;
- c) Pass any further order(s)/direction(s) that this Tribunal may deem fit in the interest of justice, equity and good conscience.

9. **Per Contra, the following are gist of the submissions made by Shri Apoorv Kurup, the Learned Counsel for the SLDC, Respondent No. 1:**

9.1 The Appellant has made mutually conflicting statements. On the one hand, the Appellant states that BDI were arbitrarily issued to only private generating stations, thereby admitting the issuance and receipt of instructions. On the other hand, the Appellant claims that no instruction was allegedly received from the answering Respondent during the relevant period '*since they have not been issued as per the prescribed norms.*' Reading both these defences together leaves no room for doubt that the BDI issued by the answering Respondent during the relevant period were received by the Appellant and that the defence of the appellant is basically that it chose to ignore those instructions because they were allegedly not in accordance with the procedure stipulated in the Grid Code. In the event strict action is not taken against such blatant non-compliance with instructions that were issued by the SLDC/ answering Respondent in discharge of its statutory obligations, it would tantamount to condoning action that patently compromised grid safety and security.

9.2 None of the questions of law presented by the Appellant merit adjudication by this Tribunal. The only issue before the Learned State Commission was whether the Appellant had deliberately ignored operating instructions/ BDI issued by the SLDC/answering Respondent

herein. Since the Appellant's grievance was and is limited to the *form* of the instructions, the receipt of the instructions and directions to back down generation were not even disputed. In any event, the questions of law have been answered along with the grounds raised by the Appellant.

9.3 The Appellant received the instructions but chose to ignore the same and thereby compromised the safety and reliability of the entire grid operations. Thereafter, when a petition was filed by the answering Respondent for taking action for such non-compliance with the instructions issued, the Appellant raised specious pleas such as non-joinder of parties, non-maintenance of voice recorder etc. These pleas were belated attempts to justify non-compliance with the BDIs issued by the SLDC in discharge of its statutory obligations. Moreover, except for the period for which the petition was filed by the SLDC/answering Respondent before the Learned State Commission, the Appellant has never disputed receipt of instructions and has in fact complied with those instructions which were issued in the very same manner as the BDIs now being disputed by the Appellant. It is therefore incredible that except of the period in question, the Appellant has received BDIs issued by the answering Respondent for every other period despite the fact that the BDIs were issued in the same very form. Needless to state, such specious objections and pleas were rightly rejected by the Learned State Commission.

9.4 All averments of the answering Respondent before the Learned State Commission were duly supported by an affidavit. Under section 94 of the Electricity Act, the Appellant could have lead evidence and denied receipt of the instructions in question, but it consciously chose not to do so since it would have been held liable for perjury for furnishing false evidence. It is submitted that infrastructural constraints at the SLDC

leading to technical non-compliance of procedural aspects cannot be a basis of disregarding the instructions that were actually issued, or to claim that such instructions were not received at all.

- 9.5 The Appellant has alleged differential treatment between the private Generating Stations and the government Generating Stations, but has not substantiated its claim. The Appellant has also failed to give specific example(s) when such private and state owned Generating Stations were treated differently and discriminatorily. The Appellant's allegations are merely based on conjectures and surmises and are therefore baseless. Since the petition before the Learned State Commission contended that the Appellant had failed to comply with the answering Respondent's instructions, the issue as to whether those instructions were required to be given, or whether those instructions could have been given to other generators (include State Generating Stations) as well are irrelevant. The fact that the BDI issued by the answering Respondent were not complied with was a matter of record and was not rebutted by evidence adduced by the Appellant. Therefore, the penalty imposed by the Learned State Commission in terms of section 33(5) of the Electricity Act was justified.
- 9.6 Contrary to the claims of the Appellant, the initiation of proceeding against State Generating Stations is adequate evidence of the fact that the SLDC/answering Respondent does not discriminate between the private Generating Stations and government Generating Stations. As and when instructions issued by the SLDC are not complied with, the answering Respondent takes appropriate action against the defaulting party.
- 9.7 The Appellant has not disputed receipt of instructions in any period other than the period for which the petition was filed by the answering Respondent before the Learned State Commission. In fact, instructions that were issued by the answering Respondent both prior to as well as

after the period in question were received and complied with by the Appellant. Thus, the Appellant is wrong in contending that only the 5 BDIs issued during the period for which the answering Respondent filed a petition before the Learned State Commission were not received. Clearly, the Appellant pleas before the Learned State Commission and before this Tribunal are nothing but a belated attempt to justify its non-compliance of the instructions that were validly issued by the SLDC/ answering Respondent.

- 9.8 The Appellant's conduct and its pleadings betray the fact that the Appellant failed to comply with the BDIs that were validly issued by the answering Respondent and is now attempting to justify its non-compliance on one pretext or another. The Learned State Commission was therefore correct in penalizing the Appellant for compromising grid security and stability. Therefore, the present appeal deserves to be dismissed with costs.
10. **We have heard at length the learned counsels for the rival parties and considered carefully their written submissions, arguments put forth during the hearings, etc. The following issues arise in the present appeal:**

Issue No. 1: Whether BDIs for the period in question have been issued by the SLDC and the Appellant has not complied with the same in accordance with the prescribed conditions of the State Grid Code?

Issue No. 2: Whether the alleged BDIs have been issued only to privately owned generating companies and not to State owned generating companies leading to discrimination & disparity?

11. **Our Findings and Analysis on the above issues**

Issue No. 1:

- 11.1 The Appellant, Godawari Power & Ispat Ltd. has made particular allegation that they did not receive the BDIs for the period in question and also never received any written weekly report as indicated under

Regulation 5.10.3 of the State Grid Code. It has further stated that no voice recordings have been produced by the SLDC before the State Commission to produce any conclusive proof for issuance of BDIs. As per the Appellant, the SLDC has failed to abide by the Regulations 5.1.3 and 5.10.3 of the State Grid Code in respect of reporting procedures to be followed relating to issuance and compliance of the BDIs. Hence, there cannot be any imposition of penalty on the Appellant for alleged non-compliance of BDIs.

11.2 The Appellant has further claimed that unless the burden of proof is discharged by the Respondent, the question of penalty does not arise. The penalty cannot be imposed by the Ld. Commission merely on any presumption drawn that the Appellant had received the alleged BDIs issued by the SLDC. The Appellant has also stated that they have not admitted in any manner non-compliance of instructions which were issued by the SLDC as per State Electricity Grid Code and pointed out the incongruous reporting procedure adopted by SLDC ignoring the mandatory requirements as per the State Grid Code, 2011.

11.3. **Per Contra**, The Respondent, SLDC has submitted that the Appellant has made conflicting statements as on one hand, it states that BDIs were arbitrarily issued to only private generating stations thereby, admitting the issuance and the receipt of BDIs and on the other hand, it claims that no instructions were received by them for the period under question. Prima facie, the Appellant has tried to allege that BDIs have not been issued as per the prescribed norms. The SLDC has brought out that while reading both these defences together of the Appellant, there is no room for doubt that BDIs were issued and were received by the Appellant. In fact, there is no doubt that BDIs were issued/received but the Appellant chose to ignore those instructions because they were allegedly not in accordance with the procedures stipulated in the Grid Code. It is amply clear that the

Appellant received the BDIs but chose to ignore the same and thereby, compromised safety and security of the entire grid. In the event, strict action is not taken against such non-compliance with the instructions being issued by the SLDC in the discharge of its statutory obligations, it is tantamount to condoning the action resulting into danger to grid safety and security.

- 11.4 SLDC has pointed out that when the petition was filed before the State Commission for taking action on such non-compliance with the BDIs, the Appellant made efforts to divert the main issue of non-compliance by raising spacious pleas such as non-maintenance of voice recorder, non-joinder of parties, written information on weekly reports, etc. The SLDC has further submitted that instructions have been/are being issued in the same manner but the Appellant has never disputed the receipt of instructions and, in fact, complied with the same. It is, therefore, incredible that except for the period in question, the Appellant has received BDIs issued by SLDC for every other periods despite the fact that the BDIs were issued in the same very form. The SLDC has further brought out that the infrastructural constraints at the SLDC of procedural aspects (voice recorder, etc.) cannot be a basis for disregarding the instructions that were actually issued, or to claim that such instructions were not received at all.

Our Findings

- 11.5 The State Commission in exercise of its powers under Section 86(1) (h) read with Section 181(ZP) of the Electricity Act, 2003 has notified the State Electricity Grid Code, 2011 to be applicable throughout the State of Chhattisgarh. All the entities specified under the Grid Code are bound by the provisions of the same. The primary objective of the Grid Code is to achieve the integrated operation of the State Grid Code so as to enhance the overall operation and reliability of the entire electrical network spread

over all parts of the State. The SLDC is the Statutory Body created under the Act and Section 32 of the Act mandates that the SLDC shall be an apex body to ensure integrated operations of the State Grid and grid discipline among all the entities so as to make the State Grid fully safe and secure.

11.6 Among other functions, the issuance of Backing Down Instructions (BDIs) by SLDC is an important function which results into reduction of generation of a generating unit under abnormal conditions such as high frequency, low system demand or network constraints, etc. The BDIs issued by SLDC are to be complied with by all the generators without fail to ensure the Grid security apart from operation of the State Grid in an efficient & optimum manner. In the instant case, the Appellant has alleged that the reference BDIs were not received by them and also, the instructions were not issued in line with the provisions for reporting procedures under the Grid Code. On the other hand, the SLDC has reiterated that while going through the arguments presented by the Appellant, it is very much clear that the BDIs were issued and also received by the Appellant but it chose to ignore those instructions alleging not being issued in accordance with the procedure stipulated in the Grid Code. It is relevant to note that there are infrastructural/communication constraints at the SLDC as far as maintenance of voice recorder, etc. is concerned and the instructions are being issued over telephone or in person. This practice has continued in the past and also being continued presently but the Appellant has not questioned such issuance of BDIs for the other periods except the reference one. We also note that BDIs have been issued at five occasions in the instant case and complied with by the Appellant except at two occasions for which a fine of Rs. 50,000 has been imposed by the State Commission.

11.7 In fact, to maintain Grid discipline by all the stakeholders is of utmost importance to avoid grid instability or its failure/collapse. The proper facility for reporting and recording of Backing Down Instructions (BDIs) is also necessary but the inadequacy of the same should not be a base of disregarding the instructions issued/communicated by the SLDC, a Statutory Body in the overall interest of grid security. **Thus, the compliance of BDIs, scrupulously, gains much more significance rather than the form of communications/instructions, etc. The State Commission has analyzed all the five nos. BDIs issued to the Appellant and have concluded that non-compliance has been observed in all five instances but in two instances it cannot be treated as non-compliance because of technical reasons and accordingly condoned the two non-compliances. We, therefore, agree with the findings and decision of the State Commission on non-compliance of BDIs by the Appellant and imposition of a notional penalty of Rs. 50,000 against Rs. 5,00,000/- for each non-compliance proposed/prayed by SLDC.**

12. **Issue No. 2**

12.1 The Appellant has alleged that BDIs have been issued only to privately owned generating companies and not to State owned generating companies leading to discrimination and violation of Article 14 of the Constitution of India. They have stated that as per Regulation 4.4.1 of the Grid Code, all the intra-state users or prospective users are required to be treated equitably and as per Regulation 4.4.12, for the purpose of scheduling and despatching of demand/drawl/bilateral exchanges, etc., the captive generating plants will be treated at par with the other generators. The Appellant has contended that BDIs have not been issued to State generating companies by the SLDC during the period in question

and the entire burden to maintain grid discipline has been unfairly cast and left on the privately owned generating companies.

12.2 The Appellant has further brought out that the State owned companies have large generation capacity and size of their operation is also very large. Thus, the slightest variation in their injection and schedule could have a large impact on the grid operations. In other words, the Appellant contemplates that BDIs should be issued mainly to State Generating Companies and other generators having smaller capacities should be exempted. The Appellant has referred the second petition instituted by the SLDC before the State Commission for alleged non-compliance of BDIs during FY 2013-14 being Petition No. 44 of 2014 (M) wherein the State owned generating companies have been made parties as Respondents including the present Appellant. This fortifies the contention of the Appellant that State owned generating companies were also the necessary parties in the Petition No. 70 of 2013 (M). The Appellant has pointed out that SLDC should show the action taken against the State generating companies for non-compliance of BDIs during the period April 2012 to June 2012.

12.3 **Per Contra**, The Respondent, SLDC has contended that the allegation of the Appellant regarding differential treatment between the private generating companies and the government generating companies is without any footing and has not been substantiated by any proof or evidence. No any specific example has been cited by the Appellant where the Private and State owned generating companies were treated differentially and discriminately. The Appellant's allegations are merely based on conjectures and surmises.

12.4 The SLDC has further stated that since the petition before the Ld. State Commission contended that the Appellant had failed to comply with SLDC's instructions, the issue as to whether those instructions were

required to be given, or whether those instructions could have been given to other generators (including State generating stations) as well are irrelevant. In fact, the non-compliance of the BDIs was a matter of record and was not rebutted by evidence adduced by the Appellant. Keeping these facts in view, the Ld. State Commission has imposed penalty in terms of Section 33 (5) of the Electricity Act.

Our Findings

- 12.5 The Appellant has contended that for the period April, 2012 to June, 2012, SLDC has not issued BDIs to State owned generating companies and the entire burden of scheduling has been put on privately owned generating companies which tantamount to discrimination. On the other hand, SLDC has stated that the Appellant has not produced any documentary evidence in support of its allegations of disparity and discrimination and their allegations as such are baseless. We note that in the second petition instituted by the SLDC before the State Commission for alleged non-compliance of BDIs during FY 2013-14 being Petition No. 44 of 2014 (M), the State owned generating companies as well as privately owned generating companies both are parties as Respondents. This implies that SLDC has issued instructions to all entities whether government or private and has accordingly, made the Appeal before the State Commission for non-compliance of BDIs. It is, therefore, not a case of bonafide evidence which can prove the event of disparity or discrimination between the two sets of generating companies, private or government. It could be an incidental event that during the period April, 2012 to June, 2012, there may not have been cases of non-compliance by State generating companies.
- 12.6 In fact, in one of the arguments, the Appellant has indicated that the State owned generating companies are large in capacity and slight reduction in

their generation could compensate the BDIs issued to private generating companies having smaller generating capacity. Such arguments cannot be sustainable as all the companies have to operate & function based on the commercial principles and have to be treated equitably whether government or private, big or small. **The SLDC, being an Impartial Body, cannot be subjected to such questions as why BDIs are being issued and to whom. The ultimate responsibility of SLDC as per Grid Code or the Act, is to maintain Grid discipline so as to ensure Grid security and stability. We, therefore, do not find any merit in the allegation of the Appellant regarding discrimination by SLDC relating to issuance/compliance/non-compliance of BDIs between State generating companies and the private generating companies.**

13. **Summary of Our Findings & Analysis**

13.1 In the light of above facts, we find that the State Commission has exercised prudence in analyzing the issues brought before them in the Appeal No. 70 of 2013 and passed the order on 29.10.2015 in the interest of justice and equity. The instant Appeal lacks merit and liable to be dismissed.

ORDER

We are of the considered opinion that issues raised in the present Appeal are devoid of merit and hence, the Appeal No. 07 of 2016 is dismissed. The Impugned Order dated 29.10.2015 passed by the State Commission is hereby upheld.

No order as to costs.

Pronounced in the open Court on this **23rd day of March, 2018.**

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

REPORTABLE / ~~NON-REPORTABLE~~