

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

APPEAL NO. 94 of 2009

Dated: 11th January, 2010

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H.L. BAJAJ, Technical Member**

In the matter of:

- 1. Karnataka Power Transmission Corporation Ltd.,
Kavery Bhawan, K.G. Road,
Bangalore-560 009.**
- 2. Ms. G. Latha Krishna Rao,
Managing Director,
Karnataka Power Transmission Corporation Ltd.,
Kavery Bhawan, K.G. Road,
Bangalore-560 009.**

...Appellants

Versus

- 1. Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001.**
- 2. Southern Regional Load Despatch Centre,
No./ 29, Race Course Road,
Bangalore.**

... Respondents

Counsel for the Appellant(s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Sumeet Pushkarna

Counsel for the Respondent (s): Mr. Nikhil Nayyar,
Mr. Ambuja Agarwal for Resp. No. 1
Mr. Jyoti Prasad, GM, Law, SRLDC
Mr. S.R. Narsimhan, GM, NRLDC
Mr. Manoj Kumar, NRLDC.
Mr. V. Suresh, SRLDC, PGCIL.

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

Judgment

1. Appellant No. 1 Karnataka Power Transmission Corporation Ltd. (KPTCL) is a transmission licensee. The Appellant No. 2 is its Managing Director. The Appellant is performing the statutory functions of the State transmission utilities as well as the function of the SLDC for the State of Karnataka.
2. The Central commission by the order dated 06.05.2009 found both of them guilty of violation of the provisions of the Indian Electricity Grid Code (Grid Code) for overdrawl of electricity and consequently imposed penalty on them under Section 142 and 149 of the Electricity Act, 2003 (hereinafter the 'Act' in short). Challenging the same this Appeal has been filed by both the Appellants.

3. The necessary facts leading to the filing of this Appeal are as follows:

A. Southern Regional Load Dispatch Centre (SRLDC) submitted a Report before the Central Commission complaining that the Appellant made overdrawl of electricity on the number of instances from the Regional Grid at the frequency below 49 Hz in violation of the provisions of the Grid Code from the period between 31.12.2008 and 07.02.2009.

B. On receipt of the said Report, the Central Commission by the order dated 17.03.2009 issued a show cause notice to both the Appellants directing them to explain about their overdrawl during the said period in violation of the provisions of the Grid Code and asking them as to why the penalty under Section 142 and 149 of the Act be not imposed upon them.

C. A common reply was filed on 01.04.2009 on behalf of the Appellants giving explanation stating that the details given in the Report submitted by the Regional Dispatch Center on the basis of the meter readings of the Special Energy Meters is not correct and the SCADA data alone can be relied upon and as per the SCADA data there were only some occasions where the

overdrawl was made when the grid frequency was below 49 Hz and even on those occasions the Appellant immediately resorted to physical disconnection of certain feeders to curtail the overdrawl and gave instructions to the other feeders as well and by this process they brought the frequency level back at 49 Hz and above and, therefore, they are not liable to be penalized under Section 142 and 149 of the Act.

D. Accepting the claim of the Appellant, the Central Commission without relying upon Special Energy Meter reading, relied upon the SCADA data and, however, found the Appellants guilty for the violation of Grid Code finding that Appellant had overdrawn on 17 occasions from the Regional Grid at frequency below 49 Hz and imposed the penalty on both of them under Section 142 and 149 of Act. Hence this Appeal.

4. Mr. M.G. Ramachandran, the learned counsel appearing for the Appellant would submit the following points in assailing the order impugned.

A. The show cause notice issued to the Appellant was based upon the Special Energy Meters as projected by the SRLDC

charging that there was a violation of about 516 time blocks, but the final order is not passed on the basis of the Special Energy Meters but on the basis of the SCADA data as claimed by the Appellants but even then the Central Commission found that there were only 17 time blocks during the relevant period and imposed penalty on the Appellants. So, the findings rendered by the Central Commission is not on the basis of the materials referred to in the show cause notice but on the basis of the materials placed before the Commission by the Appellant even though, they were not mentioned in the show cause notice. Further show cause notice relates only to the frequency below 49.5 Hz and 49 Hz but in the final order it has been found that the violation by the Appellant by overdrawing at the frequency below 49 Hz. Therefore, the impugned order is not in consonance with the show cause notice and as such the final order is not valid.

B. The Central Commission has merely proceeded on the basis that there was overdrawl of electricity when the frequency

fell below 49Hz, but the Central Commission has not taken into consideration the steps and endeavour which were taken immediately taken by the Appellant to curtail the over drawl and to bring back frequency level at 49 Hz within a short time. In this case the fall in frequency below 49 HZ was only momentary. On all these occasions immediate instructions were given by the Appellant to the distribution companies and consequently immediate action was taken by them to restore the frequency to 49 Hz and above. The very fact that there was no violation 'C' message issued to the Appellant by the Regional Dispatch Center would show that when the frequency level fell below 49 Hz, the steps were taken to restore to 49 Hz with immediate effect. This aspect has never been considered by the Central Commission.

C. Under Section 32 and 33 of the Electricity Act, the Appellant being the SLDC is only vested with the functions of monitoring the grid operations and exercising the supervision within the State. They are merely required to ensure that the injection and drawl of electricity from the

grid are not done by the distribution companies in a manner so as to endanger the grid frequency. The Central Commission has formulated the availability based tariff mechanism fixing the permissible limits. This permissible limit ranges from 50.05 to 49.0 Hz. Up to this limit the Distribution Companies or the entities are permitted to operate. Thus the responsibility of the Appellant does not extend to manual disconnection on its own at the frequency 49 Hz or above. At that stage, the responsibility of the Appellant is only to give directions to the Distribution companies to adhere to the schedule. The Appellants should resort to load shedding only when the frequency falls below 49 Hz after taking efforts to bring back the normalcy and not before. In this case, immediate action was taken by the Appellant to undertake manual load shedding and consequently grid frequency was restored to 49 Hz within a few minutes. The particulars of the efforts and steps which were taken by the Appellant to bring back the frequency at 49 Hz have been furnished to the Central Commission. The

Central commission totally ignored those materials and gave a wrong finding. Hence the order is not valid.

5. In reply to the above submissions Mr. Nikhil Nayyar learned counsel appearing for the Central Commission would make the following submissions.

- A. As per clause 5.4.2 and 6.4.4 of the Grid Code, it is the duty of the Appellant being SLDC to exercise such supervision as may be required to curtail the overdrawl as soon as it finds that the frequency is dropped below 49 Hz. Merely because some action had been taken by the Appellant which resulted in frequency being restored to 49 Hz, it cannot be stated that the Appellant is not liable for any action for the overdrawl from the grid when the frequency falls below 49 Hz. In this case the Appellant has not discharged its burden to show that it has taken pro-active and adequate steps to curtail the overdrawl when the frequency goes below 49 Hz.

B. Even though the show cause notice was relied upon the Special Energy Meters, the Appellant filed the details of the over drawl at frequency below 49 Hz based on the SCADA data requesting the Central Commission not to rely upon the Special Energy Meters. Accordingly, the Central Commission accepted the same. That apart the Appellant themselves admitted in their reply that there was overdrawl on 17 occasions when the frequency fell below 49 Hz between the period 31.12.2008 to 07.02.2009. On this basis the Central Commission rightly found the Appellants guilty for having over drawn on 17 occasions during the said period.

C. The Appellant is statutorily bound to comply with the directions issued by the Regional Despatch Centers under Section 33 of the Act. The Regional Despatch Center gave direction to the Appellant to the effect that whenever any distribution licensee is involved in over drawl, the Appellant has to use the facility to disconnect the identified feeders by remote operations through SCADA from the SLDC under unified load dispatch scheme. But this was not done by the Appellant. Even momentary over

drawl of electricity at frequency below 49 Hz amounts to violation of Grid Code. It is not correct to contend that action has to be taken by the SLDC only after the frequency falls below 49 Hz and not when the frequency is at or above 49 Hz. When the frequency is likely to fall below 49 Hz the emergency action of all the constituents are warranted for manual cuts on immediate basis. When the system frequency operates below 49 Hz the emergency situation will arise. Immediately the SLDC is expected to act in the responsible manner for regulating its own drawl from the Regional Grid by disconnecting the load in order to maintain the grid discipline. Admittedly this was not done. Hence the impugned order is legal.

6. We have heard the learned counsel for both the parties and carefully considered their respective submissions. We also perused the records. In the light of the above rival contentions, the main question that will arise for consideration is as follows:
 - (i) Whether the Central Commission was right in coming to the conclusion that the Appellant had violated the Grid Code by over

drawing the electricity on 17 occasions, when the frequency fell below 49 HZ, even though the materials placed by the Appellant before the Central Commission would show that the Appellants had taken immediate steps required to bring back to 49 Hz?

7. Let us now refer to the relevant clauses of the Grid Code which are said to be violated.

Clause 5.4.2 deals with the manual demand disconnection. The same is provided as under:

“(a) As mentioned above the utilities shall endeavor to restrict their net drawl from the grid to within the respective drawl schedule whenever the system frequency is below 49.5 Hz. When the frequency falls below 49 Hz requisite load shedding(manual) shall be carried out to curtail the over drawl.”

8. This clause would refer to two stages (a) The utilities shall endeavor to restrict their net drawl when the frequency is between 49.5 Hz and 49 Hz. (b) The requisite load shedding shall be carried out to curtail the over drawl when the frequency falls below 49 Hz.

9. Now we refer to the clause 6.4.4 which deals with the Demarcation of the Responsibilities. Clause 6.4.4 of the Grid Code provides thus “the States, through their SLDCs, shall always endeavour to restrict their net drawl from the grid to within their respective drawl schedules, whenever the system frequency is below 49.5 Hz. When the frequency falls below 49.0 Hz, requisite load shedding shall be carried out in the concerned State(s) to curtail the over-drawl.” This clause also give two responsibilities to the SLDCs.
- (a) It shall endeavor to restrict their net drawl whenever the frequency was between 49.5 and 49.0 Hz and (b) whenever the frequency falls below 49.0 Hz, the SLDCs shall carry out load shedding to curtail the over drawl.
10. The Appellant is performing the functions of the SLDC in the State of Karnataka. On noticing that there were a number of instances of over drawl when the frequency level fell below 49 Hz, the Regional Load Dispatch Centre sent a Report to the Central Commission requesting for taking suitable action as against the Appellant which is responsible for the said act. In pursuance of this Report the Central Commission issued show cause notice on

17.03.2009 to both the Appellants directing them to explain the over drawl during the period in violation of the provisions 5.4.2 and 6.4.4 of the Grid Code under Section 142 and 149 of The Act.

11. Let us now refer to the show cause notice dated 17.03.2009

“ In exercise of powers conferred under Section 178 of the Electricity Act, 2003 (the Act), the Central Electricity Regulatory Commission (the Commission) has specified Indian Electricity Code (the Grid Code). Paras 5.4.2(a) and 6.4.4 of the Grid Code enjoin upon the State Utilities to endeavor to restrict their net drawl from the grid to their respective drawl schedule whenever the system frequency is below 49.5 Hz. Extract of relevant paras of the Grid Code are reproduced below:

5.4.2 Manual Demand Disconnection

(a) As mentioned elsewhere, the constituents shall endeavour to restrict their net drawl from the grid to within their respective drawl schedules whenever the system frequency is below 49.5 Hz. When the frequency falls below 49.0 Hz, requisite load shedding (manual) shall be carried out in the concerned State to curtail the over-drawl”

6.4 Demarcation of responsibilities:

4. Provided that the States, through their SLDCs, shall always endeavour to restrict their net drawl from the grid to within their respective drawl schedules, whenever the system frequency is

below 49.5 Hz. When the frequency falls below 49.0 Hz, requisite load shedding shall be carried out in the concerned State(s) to curtail the over-drawl.

2. Keeping with the above noted provisions of the Grid Code, manual load shedding has to be carried out to curtail over-drawl when the grid frequency falls below 49.0 Hz.

3. It has been reported by Southern Regional Load Despatch Centre (SRLDC) that on a number of occasions during 31.12.2008 to 7.2.2009, the first respondent had over-drawn electricity during a number of time blocks. The necessary details of over-drawl are contained in the Annexure A attached. Time blocks during which the first respondent continued to overdraw at frequency of 49.0 Hz or below (through shown as 49 Hz by the Special Energy Meters since these meters record the frequency as 49.0 Hz even when it is below 49.0 Hz are contained in Annexure B attached.”

12. The words contained in the show cause notice as referred to above would indicate the act alleged against the Appellant is that the Appellants had overdrawn the electricity at frequency below 49 Hz in contravention of the provisions of the Grid Code. Admittedly, the show cause notice did not deal with any aspect in regard to the frequency between 49.5Hz and 49.0 Hz, with reference to the first part of the responsibility as contained in Clause 5.4.2 and 6.4.4. In

other words there is no allegation in the show cause notice that the Appellant acted in violation of the Grid Code in regard to the drawl in the State of Karnataka when the frequency was between 49.5 and 49 Hz. It is also not mentioned in the show cause notice that the Appellant has not taken any steps or endeavor when the frequency was hovering around 49 Hz nor was it mentioned that the Appellant failed to prevent the frequency from falling below 49 Hz. As such there is only allegation in the show cause notice with regard to continued over drawl of the electricity when the frequency fell below 49 HZ.

13. It is an undisputed fact that in the show cause notice which was issued by the Central Commission seeking for the explanation was only with reference to the over drawl during 516 time blocks as found in the Special Energy Meters reading. In its explanation for the show cause notice the Appellants specifically contented that the violation alleged in the show cause notice at frequency below 49 Hz as 516 times blocks as per the Special Energy Meters was wrong and there was over drawl only on 17 occasions as per SCADA data. In the very same reply, the Appellants have also

given the details as to why on those occasions frequency fell below 49 Hz and how those frequencies were brought back to 49 Hz with immediate effect through the effective steps taken by the Appellants. The Central Commission though accepted one portion of the reply with reference to the correctness of the SCADA meters showing that there were only over drawl for 17 occasions, had found the Appellant guilty of violation of Grid Code without analyzing the materials giving the details of the endeavor and efforts taken by the Appellants to rectify the situation and to bring back the frequency at 49 Hz within a few minutes.

14. It is the contention of the learned Counsel for the Appellant that the frequency in 15 time block out of 17 time blocks below 49 Hz was within the range of 0.06 Hz of the target of 49 Hz. The Central Commission has not chosen to consider the quantum of the margin namely 0.06 which is so insignificant in the matters of alleged violation. It is also noticed and admitted by the Appellant furnished details before the Central Commission about the steps taken when the frequency fell below 49 Hz to bring back the frequency to 49 Hz. This included the load shedding carried out in

respect to the some feeders. When the Appellants had taken those required steps as contemplated in clause 5.4.2 and 6.4.4 of the Grid Code to curtail the over drawl the Central Commission ought to have dealt with the said plea of the Appellants and considered the materials relating to the steps taken to bring back the frequency level at 49 Hz with immediate effect. In this context it is worthwhile to refer to the relevant observations made by the Central Commission in the impugned order.

“11. Without going in detail into the points raised by the respondents as the reply of SRLDC, we are of the view that the charge of over-drawl at frequency below 49.0 Hz and thereby contravention of the provisions of the Grid Code extracted above, stands established of the respondents’ own admission and the data placed on record by them along with the reply, and even by taking SCADA data as the basis. The respondents with their reply have filed the details of over-drawl at frequency below 49.0 Hz based on SCADA data. These details have been compiled in the statement appended as Annexure II to this order. A perusal of these details reveals that the first respondent over-drew from the regional grid

at frequency below 49.0 Hz on the following 17 occasions when quantum of over-drawl exceeded 50 MW, namely:

.....

.....

12. As mentioned by the SRLDC, there may be an insignificant difference of 0.06 Hz between SCADA data but it is clear that the first respondent had over-drawn from the grid when frequency was low and it was supposed to restrict drawl in obedience of the provisions of the Grid Code. Thus, in the reply, over-drawl at frequency below 49.0 Hz during 31.12.2008 to 7.2.2009 has been admitted. It is mentioned that the obligations under the law to serve the consumers within the State have to be discharged by the first respondent through legal means. The first respondent does not have the liberty to put the grid in precarious state, in order to meet the demand of the consumers of electricity in the State. The default is deliberate and willful. On all these considerations, the offence of non-compliance of the provisions of the Grid Code by the first respondent has been proved to the hilt.”

The above observations would indicate that the Appellants were found guilty by the Central Commission purely on the basis of the admissions of the Appellants with regard to the over drawl on 17 occasions when the frequency fell below 49 Hz. In other words the Central Commission did not at all refer to the efforts and endeavour taken by the Appellants to bring back the frequency at 49 Hz which resulted in the rectification of the situation immediately. Unless there is any material to show that the Appellant did not take any step to curtail the drawl nor has he not started the process of load shedding by identifying the feeders which has over drawn from the grid, we cannot blindly accept the proposition that whenever there is a fall in frequency below 49 Hz the SLDC has to be held responsible for the same.

15. As pointed out by the learned counsel for the Appellant a perusal of the show cause notice quoted above will show that the violation alleged only the continued drawl when the frequency fell below 49 Hz. As indicated above there is no allegation in the show cause notice with reference to the violation of the Grid Code when the frequency was between 49.5 Hz and 49.0 Hz. In other words the

Central Commission has never proceeded on the basis that the Appellants did not endeavor to keep the frequency above 49 Hz nor did it not take any step to ensure that it did not fall below 49 Hz.

16. Strangely, the Central Commission has now attempted to project a new case before this Tribunal to the effect that the Appellants did not take steps when the frequency was hovering around 49 Hz nor to ensure that it did not fall below 49 Hz. We are to emphatically state that we are not concerned with the charge relating to the nature of steps taken by the Appellants when the frequency was between 49.5Hz and 49.0Hz. We are only confined to the charge with reference to the 2nd part of the 5.4.2 and 6.4.4 namely responsibility on the part of the SLDC to curtail the over drawl by resorting to the load shedding when the frequency falls below 49 Hz.

17. In the light of the said charge the Central Commission is called upon only to look into the materials as to what steps have been taken by the Appellants to resort to the load shedding to curtail the

over drawl. Admittedly, as indicated above the details of the Action taken for resorting to the load shedding have been furnished by the Appellant but even then they have never been considered by the Central Commission.

18. According to the show cause notice, the Appellant had over drawn electricity during the number of time block when the frequency falls below 49 Hz. In reply to the show cause notice the Appellants filed the details of over drawl at frequency below 49 Hz based on the SCADA data. On perusal of the said data the Central Commission found that the Appellant had over drawn on 17 occasions at frequency below 49 Hz and that the said facts of having over drawn at 17 occasions between the period from 31.12.2008 to 07.02.2009 has been admitted by the Appellant himself in the reply and on that basis the Central Commission came to the conclusion that the contravention of the provisions of the Grid Code by the Appellant have been proved. The show cause notice sent to the Appellant, the reply sent by the Appellant to the Central Commission and the impugned order passed by the Central Commission would only reflect the charge that the Appellant had

over drawn from the grid on 17 occasions at frequency below 49 Hz. But before this Tribunal, it is argued by the learned counsel for the Central Commission, that though the Appellant gave details with regard to the action taken by it when the frequency fell below 49 Hz to rectify the said situation the Appellant has not placed any material before the Central commission as to what action had been taken by the SLDC, the Appellant, when it was between 49.5 Hz and 49.0 Hz to prevent the drop of the frequency below 49 Hz. This is the new case. In fact the learned counsel for the Central Commission, the Respondent, has reiterated in his written submissions at paragraph 5.1 page 14 which is as follows:

“5.1 It is further relevant to note that along with the reply to the said show-cause notice, Appellant No. 1 gave details in Annexure ‘D’ thereto with regard to the action taken by it when the frequency fell below 49.0 Hz. No material whatsoever was placed as to show what action had been taken between 49.5 and 49.0 Hz to prevent the drop of the frequency below 49.0 Hz.”

19. From the arguments advanced by the learned counsel for the Central Commission and its written submissions, it is clear that the Appellant gave details of the action taken by it when the frequency fell below 49 Hz but no details have been given with respect to the action that was taken when the frequency was between 49.5 Hz and 49 Hz. This stand is the new stand taken by the learned counsel for the Central Commission before this Tribunal as stated earlier.

20. As indicated above, it is not the charge either in the show cause notice or in the findings by the Central Commission in the impugned order that no action had been taken when the frequency was between 49.5 Hz and 49.0 Hz to prevent the drop of frequency below 49 Hz. But the charge is as per second part of clause 5.4.2 and 6.4.4, the Appellant did not take any action by resorting to the load shedding when the frequency fell below 49 Hz.

21. It is further stated in the written submission filed by the Central Commission that the Appellant in his reply sent a Tabular Statement filed alongwith the reply has given particulars of the

efforts made for restricting the over drawl during the violation time blocks and for carrying out the load shedding. The learned counsel appearing for the Central Commission having admitted that those documents have been filed before the Central Commission by the Appellant to show that some action had been taken would submit that the said action was inadequate to curtail the over drawl completely. This is also the new case. Let us now see the relevant grounds mentioned the written submissions filed by the Central Commission.

“5.1

1. *Appellant No. 1 made efforts on 31.12.2009 and 01.01.2009 for restricting the over drawl during the violation blocks short listed by the Central Commission. But the frequency hovered around 49.0 Hz for considerable period of time due to inadequate efforts as reflected by the over drawl quantum. From the data submitted by the Appellant No. 1 it is evident that though some load shedding was carried out, but it was not adequate to curtail the over-drawl completely. Thus, as the over-drawl continued, the*

Appellant No. 1 failed to ensure requisite load shedding to curtail the over-drawl which amounted to contravention of provisions 5.4.2 (a) of the Grid Code.

2. *The time blocks during which Appellant No. 1 had effected load shedding / action for restricting over drawl on 02.01.09, 06.01.09, 07.01.09, 08.01.09, 05.02.09 and 07.02.09 are much different from the violation time blocks short listed by the Central Commission. It indicates that Appellant No. 1 failed to effect necessary action during the short listed time blocks and continued to over draw at a frequency less than 49 Hz.*
3. *Appellant No. 1 did not furnish the details of specific action taken for restricting the drawl on 21.01.2009 and 30.01.2009.”*

22. As indicated above the Central Commission merely observed that since there were over drawl of electricity from the grid when the frequency fell below 49 Hz, the Appellant must be held guilty of the contravention. The Central Commission did not analyse the

materials that were admittedly placed by the Appellant to find out as to whether any action had been taken to restrict the over drawl when it was below 49 Hz, nor had it gone into the question as to whether the said action or effort was adequate or not. Thus it is clear that the learned counsel for the Central Commission has introduced a new ground to show that the Appellant failed to effect adequate action during the said period and continued to overdraw at the frequency below 49 Hz. As stated above the Central Commission without referring to the materials placed by the Appellant and without analyzing those materials with reference to the credibility of those materials to show that requisite action was taken by the Appellant to carry out load shedding, had simply held that there was over drawl at frequency below 49 Hz and therefore, the Appellant are liable.

23. In this context the question would arise as to whether mere with over drawl at frequency below 49 Hz during the period would automatically attract Section 142 of the Act. Our answer is emphatic 'No'.

24. The provisions of the Grid Code would specifically provide that whenever the frequency falls below 49 Hz there shall be load shedding to ensure that the frequency is restored. This action can be taken only when the frequency falls below 49 Hz and not when the frequency is at or above 49 Hz. The Grid code used expression “when frequency falls below 49 Hz requisite load shedding should be carried out to curtail the over drawl.” In this case the Appellant has placed some material in order to show when the frequency fell below 49 Hz in any time block the Appellant immediately took steps to rectify the same to bring back the frequency level above 49 Hz.
25. Admittedly, the Central Commission has not considered those materials. If the Central Commission, after considering those materials, found that those materials are inadequate or found that the reliance can not be placed on those materials, then it would have been different matter altogether. But this is not the case here. In this case as referred to earlier the finding rendered by the Central Commission to the effect that the Appellant was guilty was purely on the basis of the admission made by the Appellants

through their reply to the effect that there were overdrawl on 17 occasions when the frequency fell below 49 Hz. At this point of time, it has to be reiterated that the question of penalizing any person per se for frequency falling below 49 Hz would not at all arise unless it is established through reasonings that there was no action or no load shedding exercise was not at all carried out to restore the frequency above 49 Hz.

26. It is the consistent stand of the Appellant that it has resorted to the load shedding through physical disconnection of certain feeders to curtail over drawl when the frequency was below 49 Hz and due to the steps taken the frequency was brought back. This aspect has not at all been considered by the Central Commission.
27. Thus the Central Commission proceeded on the wrong concept that the moment the frequency falls below 49 Hz, then the Appellants in discharge of functions of the SLDC shall automatically be held liable for punishment regardless of the fact that the action on the part of the Appellant was taken or not. In our view, this approach is not legally permissible.

28. Under Section 32 and 33 of the Act, the State Load Dispatch Central (SLDC) is vested with the function of monitoring the grid operation and to exercise supervision and to control to ensure the integrated grid operation in the States. As per these provisions, the Appellants are required to monitor the grid situation and to ensure that the injection and drawl of electricity are not done by the stake holders in a manner so as to endanger the grid frequency. This function has to be exercised by the Appellant consistent with the provisions of the grid code and the regulations formulated by the Central Commission. In fact the Central Commission has formulated the availability based tariff (ABT) mechanism for operation of the grid and to act as self working mechanism to compensate the situation for the operation in the grid frequency up to the permissible limits. As per the ABT mechanism, the beneficiaries or the companies are required to pay compensatory charge i.e. Unscheduled Interchange charges. According to the ABT mechanism, the permissible limit is from 50.05 to 49.0 Hz during the relevant period. In this period the beneficiaries are permitted to operate within this frequency level. So it is clear that

the responsibility of the SLDC will extend to manual disconnection only when the frequency falls below 49 Hz since the regulations permit the utilities to deviate from the schedule by submitting to the compensatory mechanism to draw electricity from the grid up to frequency level of 49 Hz.

29. Under those circumstances the Central Commission can not take a stand before this Tribunal that the Appellant did not endeavor to keep frequency above 49 Hz so as to ensure that it did not fall below 49 Hz. This stand is contrary to the Regulations as well as to the earlier stand. When such being the case, the failure of the Appellant in taking steps to prevent frequency going below 49 Hz does not arise. Moreover, as indicated above, as per charge in the show cause notice we are only concerned with the inaction of the Appellant when the frequency falls below 49 Hz and so we are not concerned with the action or inaction when the frequency is at 49 Hz or above 49 Hz.

30. In this context it would be worthwhile to refer to one clause contained in Grid Code namely Clause 6.4.3

“3. the above flexibility has been proposed in view of the fact that all States do not have all requisite facilities for minute to minutes on-line regulation of the actual net drawl from the regional grid. Deviations from net drawl schedule are however, to be appropriately priced through the Unscheduled Intercharge (UI) mechanism.”

31. This clause would make it clear that the Central Commission at its own wisdom chose to allow the drawl at frequency up to 49 Hz in terms of clause 6.4.3 of the Grid Code provided for the U.I. mechanism. When that is provided there cannot be any accusation against the Appellant for allowing the frequency to go up to 49 Hz. At any rate that was not the charge as per the show cause notice.

32. The responsibility of the SLDC in such cases when the frequency is at 49 Hz or above 49 Hz is to issue directions to the companies and the beneficiaries to adhere to the schedule to ensure that the grid frequency does not deteriorate to dangerous levels. At this stage they cannot resort to any other action. Only when the frequency goes below 49 Hz the Appellant can resort to load

shedding and shall carry out the load shedding. In this case the Appellant has placed materials about the various actions taken when it falls below 49 Hz including the load shedding but the same was not considered.

33. In view of the discussions made in the above paragraphs, we are of the considered opinion that the order impugned finding the Appellants guilty by imposing penalty on them would suffer from infirmity and the same is liable to be set aside. Accordingly, the same is set aside.

34. The Appeal is allowed. No costs.

(H.L. BAJAJ)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated : 11th January, 2010

REPORTABLE / NON-REPORTABLE