

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

**APPEAL NO. 38 OF 2009**

Dated: 25th September, 2009

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

**In the matter of:**

Powerlinks Transmission Ltd.  
Registered Office:  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi – 110016

Corporate Office  
4<sup>th</sup> Floor, Kanchajunga Building,  
18, Barakhamba Road  
New Delhi-110016

Appellant

*Versus*

1. Central Electricity Regulatory Commission  
Chandralok Building, 3<sup>rd</sup> and 4<sup>th</sup> Floor,  
Janpath, New Delhi
2. Power Grid Corporation of India Ltd.  
Suadamani, Plot No. 2, Sector 29,  
Gurgaon-122001, Haryana
3. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur-302005, Rajasthan
4. Ajmer Vidyut Vitran Nigam Ltd.  
400 KV GSS Building (Ground Floor)  
Ajmer Road, Heerapura, Jaipur

5. Jaipur Vidyut Bitran Nigam Ltd.  
400 KV GSS Building (Ground Floor)  
Ajmer Road, Heerapura, Jaipur
6. Jodhpur Vidyut Bitran Nigam Ltd.  
400 KV GSS Building (Ground Floor)  
Ajmer Road, Heerapura, Jaipur
7. Punjab State Electricity Board  
The Mall, Patiala-147001
8. Haryana Bidyut Prasaran Nigam Ltd.  
Shakti Bhavan, Sector-6, Panchkula-134109
9. Uttar Pradesh Power corporation Limited  
Shakti Bhawan, 14, Ashoka Road,  
Lucknow-226001
10. Power Development Department  
Government of Jammu & Kashmir  
Mini Secretariat, Jammu
11. Delhi Transco Limited  
Shakti Sadan, Kotla Road,  
New Delhi – 110002
12. Himachal Pradesh State Electricity Board  
Vidyut Bhavan, Kumar House,  
Complex Building II, Shimla 171004
13. Chandigarh Administration  
Sector -9, Chandigarh-160009
14. Uttranchal Power Corporation Ltd.  
FRI Complex, Kalagarh, Dehradun-248001
15. North Central Railway  
Allahabad-211003
16. BSES Yamuna Power Limited  
Shakti Kiran Building

- Karkardooma, Delhi – 110092
17. BSES Rajdhani Power Limited,  
BSES Bhavan, Nehru Place  
New Delhi -110019
  18. North Delhi Power Limited  
33 KV S/Stn. Building  
Hudson Lines, Kingsway Camp, Delhi – 110019
  19. West Bengal State Electricity Board,  
Vidyut Bhawan, Salt Lake, Kolkata – 700091
  20. Damodar Valley Corporation  
DVC Tower, VIP Road,  
Kolkata – 700054
  21. Bihar State Electricity Board  
Vidyut Bhawan, Balley Road,  
Patna – 800021
  22. Grid Corporation of Orissa Ltd.  
Vidyut Bhawan, Janpath  
Bhubaneshwar – 751007
  23. Power Department  
Government of Sikkim, Gangtok – 737101
  24. Jharkhand State Electricity Board,  
Engineering Bhawan, HEC  
Dhurwa, Ranchi – 834004

Respondents

- Counsel for the Appellant(s) : Mr. M. G. Ramachandran  
Mr. Anand K. Ganesh  
Ms. Swapna Seshadri
- Counsel for the Respondent (s): Mr. R.B. Sharma for Resp. 2  
Mr. Suraj, Singh for UPPCL  
Mr. Aditya Madan for Resp. 4-6.

Mr. Pradeep Misra  
Mr. Daleep K. Dhyani  
Mr. Manoj Kumar Sharma  
for Pradeep Mishra  
Mr. B. Sreekumar, for Resp. 1

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

**JUDGMENT**

1. Power Links Transmission Ltd. is the Appellant herein
2. Aggrieved by the order dated 27.11.2008 passed by the Central Commission declining to relax the norms with regard to the Operation and Maintenance expenses of the transmission system of the Appellant, the present Appeal has been filed.
3. Short facts of the case are as follows:
  - A. The Appellant is a transmission licensee. It has constructed inter-state transmission lines associated with the Tala H.E.P. East-North Inter Connector. In 2004 the Central Commission notified the Regulations 2004 under which the tariff based upon the capital cost of transmission project shall be determined by the Central Commission.

B. On 18.06.2004 the Appellant filed a petition before the Central Commission for the Review of the order seeking for the reduction of return on equity from 16% to 14% and also for a change in methodology for the calculation of Operation and Maintenance expenses. This Review petition was rejected by the Central Commission on 08.07.2004. Again another Review petition was filed in August, 2004 to consider the issue relating to the inadequate Operation and Maintenance charges. Again the Central Commission vide order dated 01.10.2004 dismissed the 2<sup>nd</sup> review.

C. Thereupon on 31.10.2006 the Appellant filed a petition for approval of the provisional transmission tariff. By the order dated 16.01.2007 the Central Commission allowed the capital costs as on the date of commercial operation provisionally. Thereafter, the Appellant filed a petition for fixation of the final transmission tariff requesting for the change of methodology for the calculation of Operation and Maintenance charges. Ultimately, by the order dated 30.04.2008 the Central Commission determined the final tariff. In the meantime the Appellant approached the Tribunal and filed an Appeal in Appeal No. 27 of 2005 challenging the tariff order as well as Regulations. Ultimately the Tribunal dismissed the Appeal on

29.08.2006 holding that the Appeal was not maintainable and that the Appellant was at liberty to approach the appropriate forum seeking for the said relief.

D. Therefore, the Appellant filed a Writ Petition in W. P. No. 16042 of 2006 before Delhi High Court challenging the tariff order as well as Regulations. During the pendency of the said Writ Petition, the Appellant filed a Petition before the Central Commission seeking for the relaxation from the norms set out in the Regulations in regard to Operation and Maintenance expenses. This petition was ultimately dismissed on 27.11.2008 on the ground that the Appellant has already challenged the tariff order as well as Regulations before the High Court of Delhi which is pending and no case for exercise of the discretion for relaxation of the regulations in regard to Operation and Maintenance expenses is made out. Aggrieved by the same, this Appeal has been filed.

4. Mr. M. G. Ramachandran, learned counsel for the Appellant would make the following contentions assailing the order impugned:

A. The Appellant approached the Delhi High Court and filed a writ petition and challenged the validity of the Regulations dealing with the

Return On Equity (ROE) only and there is no challenge made with reference to the Clause dealing with Operation and Maintenance expenses. Therefore, the Appellant cannot be restrained from approaching the Central Commission seeking for the relaxation of the norms set out in respect of the fixation of Operation and Maintenance expenses.

B. Even assuming for the sake of argument that the proceedings in the said Writ Petition involve the issue of Operation and Maintenance expenses also, the Appellant is entitled to challenge the refusal on the part of the Central Commission to relax the Operation and Maintenance norms under the special circumstances. In this case the special circumstances placed by the Appellant have not been taken into consideration by the Central Commission in favour of the Appellant who is entitled for relaxation from Operation and Maintenance norms to make good inadequate Operation and Maintenance expenses.

5. The learned counsel Mr. Pradeep Misra and Mr. Sharma appearing for the Respondents strenuously refuted the submissions made by the learned counsel for the Appellant and mainly contended

that the issue with regard to the validity of the Regulations which fixes the norms of Operation and Maintenance expenses is actually pending before the High Court of Delhi and such being so the Appellant cannot be allowed to pursue the same cause of action before two forums and, therefore, the Appellant could not maintain the Appeal before this Tribunal and consequently, the appeal is liable to be dismissed.

6. The learned counsel appearing for the Central Commission submitted in justification of the order of the Central Commission.

7. We have carefully considered the submissions made by the counsel for the parties and perused the records.

8. The main objection urged by the learned counsel for the Respondent is that the very same issue is pending before the High court and, therefore, the said issue cannot be decided either by the Central Commission or by this Tribunal. On the other hand it is contended by the counsel for the Appellant that the issue pending



before the High Court is different from the issue raised before the Central Commission as well as before this Tribunal.

9. In order to ascertain this aspect, we have gone through the writ petition filed before the Delhi High Court which is still pending.

Prayer contained in the writ petition is as follows:

*“In the premise it is most respectfully prayed that Hon’ble Court may be pleased to:*

*(a) pass appropriate writ order or directions quashing tariff order dated 29.03.2004 passed by the Respondent No. 2 (Central Commission) and the Regulations dated 26.03.2004 passed by the Central Commission for the period commencing from April 1, 2004.”*

From this prayer it is evident that the Appellant sought the relief for quashing the Regulations and Tariff order.

10. It is also noticed that in the said writ petition challenging the Regulations notified on 26.03.2004 and the tariff order passed on 29.03.2004 referring to the fixation of the Operation and Maintenance expenses in accordance with the Regulations the Appellant has stated in paragraph 3(xiv) as under:

*“The Respondent No. 2 (the Central Commission) has, while considering the draft Regulations 54(4) in respect of operation*

*and maintenance expenses, taken into consideration the figures given by the Respondent No. 3 (Powergrid Corporation India Ltd.) conclusive and representative of the entire transmission industry and scaled down the Operation and Maintenance charges admissible to the Respondent No. 3, to effective 0.38% from the 1.5%.”*

(Underlined words are added for clarity.)

11. Further, it is clear from the paragraph 10 of the Writ Petition, the Appellant has admitted that it has challenged the orders relating to the tariff dated 29.03.2004 as well as the order rejecting Review Petition dated 08.07.2004 and 29.08.2006 only in the High Court.

12. In those Review Petitions the Appellant sought review of the order dated 29.03.2004 finalizing the Regulations in respect of two issues (1) reduction of Return on Equity and (2) change in the method of calculations of Operation and Maintenance charges from the normative 1.5% of the project cost. These Review Petitions were admittedly, dismissed by the Central Commission on 08.07.2004 and 01.10.2004. Having failed to get the relief from the Central Commission the Appellant had chosen to file a Writ Petition

challenging the Regulations framed on 26.03.2004 and the tariff order dated 29.03.2004 before the High Court.

13. Admittedly when these orders were earlier challenged in the Appeal before the Tribunal in Appeal No. 27 of 2005 with the prayer to set aside the order dated 29.03.2004 and the order dated 08.07.2004, this Tribunal by the order dated 29.08.2006 dismissed the Appeal declining to examine the validity of the Regulations and granted liberty to the Appellant to work out their remedy before the appropriate forum in accordance with law. Only then, the Appellant had filed the Writ Petition No. 16042 of 2006 before the High Court challenging the validity of the 2004 Regulations dated 26.03.2004 as well as the tariff order passed on 29.03.2004. So, the comprehensive issue whether the Regulations were framed in accordance with law and whether the tariff order is valid in law is pending before the High Court.

14. While the said writ petition was pending, the Appellant without pursuing the same had filed the Petition No. 92 of 2008 before the Central Commission for relaxation of norms related to the Operation

and Maintenance expenses forming part of transmission tariff and the transmission system. The Central Commission by its order dated 27.11.2008 rejected the prayer of the petitioner for relaxation of the norms for Operation and Maintenance expenses on the ground that the earlier orders passed and Regulations framed by the Central Commission have been challenged in the High Court and the same is pending.

15. In this Appeal the Appellant while challenging the order impugned dated 27.11.2008 passed by the Central commission has actually raised the substantive issue with regard to determination of norms for Operation and Maintenance expenses by the Commission which was made in accordance with 2004 Regulations.

16. Admittedly, the Appellant has challenged 2004 Regulations by which the norms were specified for Operation and Maintenance expenses in the Writ Petition before the High court. If the reliefs sought for by the Appellant are granted by the High Court, the prayer, which the Appellant is making before the Central Commission as well as before this Tribunal, will become infructuous. Similarly, during the

pendency of the writ petition if the norms relating to the Operation and Maintenance expenses are relaxed either by the Central Commission or by the Tribunal it would render the relevant provision of 2004 Regulations which is being challenged in the High Court infructuous. Therefore, we are of the view that the Appellant cannot be allowed to pursue the same cause of action before two forums at the same time. In other words, we are to state that we do not find any illegality in the order impugned dated 27.11.2008 passed by the Central Commission.

17. One other aspect could be noticed in this case. As a matter of fact in the impugned order the Central Commission has clearly mentioned that the Appellant is at liberty to approach them for revision of the Operation and Maintenance expenses based on actual employees costs consequent to revision of pay and allowances with effect from 01.01.2007. It is also found by the Central Commission that in this case the petitioner/ appellant had not given any details to show the special circumstances to seek for the revision of the actual Operation and Maintenance expenses. It is further stated by the Central Commission that the Appellant/petitioner at later stage could

approach the Commission with full details seeking for the said relief. The relevant portion of the said observations made by the Central Commission are as follows:

*“The exercise of power of relaxation is discretionary and is to be based on good and sufficient reasons. In our considered view, no case for exercise of discretion for relaxation of O&M expenses norms specified under the 2004 regulations in the present case is made out. ....”*

*As noted above, the Commission has already granted liberty to the petitioner to approach the commission for revision of O&M expenses based on actual employees cost, consequent to revision of pay and allowance w.e.f. 1.1.2007. The petitioner has reiterated and relied upon the revision of pay and allowances of employees as a ground to seek refund of actual O&M expenses, without any details. In case the petitioner is similarly placed as the public sector undertakings, it can make an appropriate application before the Commission in terms of the liberty already granted. The application, when made, will be considered on its own merits in accordance with law. No relief*

*can be granted to the petitioner on this count at this stage when the petitioner has not furnished even the basic data of impact of the proposed revision of pay and allowances of employees of the public sector undertaking, on its own O&M expenses.”*

18. In the light of the above observations that the Appellant could approach the Central Commission at a later stage with the relevant data and also the finding that there is no special case made out to relax the clause or norms of the Regulations relating to Operation and Maintenance expenses, we do not deem it fit to interfere in the order impugned.

19. For the discussion made in the foregoing paragraph we are of the considered opinion that the order impugned does not suffer from any infirmity and consequently we dismiss the Appeal as devoid of merits. No order as to costs.

**(H.L. Bajaj)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated:     September, 2009

REPORTABLE / NON – REPORTABLE