

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

Appeal Nos. 278 of 2006 & 89 of 2007

Dated : 09th January, 2008

**Present : Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member**

In the matters of:

A.No. 278/06:

M/s. Hind Metals & Industries Pvt. Ltd.
K-1, Kalpana Area,
Bhubaneswar – 14

... Appellant

Versus

1. M/s. Nava Bharat Ferro Alloys Pvt. Ltd.
Kharagprasad, Distt. Dhenkanal
Orissa
2. M/s. Orissa Power Transmission Corp. Ltd.
Janpath, Bhubaneswar,
Orissa
3. Orissa Electricity Regulatory Commission
Bidyut Vinayak Bhawan,
Unit-VIII, Bhubaneswar,
Orissa

...Respondents

Appeal No. 89/2007:

M/s. Nava Bharat Ventures Ltd.

P.O. Khadagaprasad,
Near Meramundali Railway Station,
Dhenkanal.

... appellant

Versus

1. **Orissa Power Transmission Corp. Ltd.**

Bhubaneswar, Dist. Khurda

2. **M/s. Hind Metals & Industries Pvt. Ltd.**

K-1, Kalpana Area,
Bhubaneswar-14.

3. **Orissa Electricity Regulatory Commission**

Bidyut Nimayak Bhavan, Unit-VIII,
Bhubaneswar – 751 012.

... Respondents

For A.No. 278/06:

For the appellant : Mr. Anoop Choudhary, Sr. Advocate
Mr. Suresh Tripathy, Advocate

For the respondents: Mr. R. K. Mehta, Advocate
Ms. Suman Kukrety, Advocate
Mr. Shobhit Jain, Advocate (for OPTCL)

Mr. K. Gopal Choudary, Advocate
(Resp.No.1)

Mr. M. G. Ramachandran, Advocate
Mr. Anand K. Ganeshan, Advocate (for
CERC)

For A.No.89/07:

For the appellant : Mr. K. Gopal Choudary, Advocate

For the respondents : Mr. Raj Kumar Mehta, Advocate
Ms. Suman Kukrety, Advocate
Mr. Shobhit Jain, Advocate
Mr. Suresh Tripathy, Advocate

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

This judgment deals with two appeals. The appeal No. 278 of 2006 has been preferred by Hind Metals & Industries Pvt. Ltd., herein referred to as 'Hind Metals'. The appeal No. 89 of 2007 has been preferred by Nav Bharat Ventures Ltd. which had been earlier known as Nav Bharat Ferro Alloys Ltd. and Nav chrome Ltd. and being referred to as 'Nav Bharat' in the judgment. Nav Bharat is respondent No.1 in appeal No.278/2006. Hind Metals is respondent No.2 in appeal No.89/2007. The other party in both these appeals is the Orissa Power Transmission Corp. Ltd. which is a successor of Orissa State Electricity Board and is a transmission utility in the State of Orissa. The Orissa Electricity Regulatory Commission is respondent No.3 in both these appeals.

Appeal No. 278 of 2006

We will first deal with appeal No.278/2006 which challenges two orders namely dated 06.06.06 and 19.08.06 in Case No. 7 & 23 of 2006 passed by Orissa Electricity Regulatory Commission (OERC for short). The matter revolves round the feeder to the premises of the respondent No.1, namely Nav Bharat Ferro Alloys Pvt. Ltd. which the respondent claimed to be a dedicated feeder for the exclusive use of respondent No.1. The respondent No.1 had asked for power supply to its ferro alloys unit located at Kharagprasad, Distt. Dehenkanal, Orissa in the year 1995. The Orissa State Electricity Board proposed vide letter dated 15.07.1995 to release 29 MW/34 MVA at 132 KV to the respondent No.1 subject to the condition that (1) the power would be made available from the proposed 400 / 220 / 132 KV sub-station at Meramundali, (2) that the power supply would be through a dedicated 132 KV feeder from Meramundali upto factory premises and (3) the estimated cost of bay extension and the cost of dedicated feeder would be borne by Nav Bharat. Yet another letter was written by OSEB on 11.12.95 proposing : (1) 29 MW at 132 KV would be made available from the proposed sub-station at Meramundali, (2) power supply would be made available to 132 KV from Meramundali sub-station to factory premises, (3) in case of non completion of sub-station work at Meramundali, the operational power would be available from the

existing 132 KV line from Chainpal to Dhenkanal with L.I.L.O arrangement subject to cost of L.I.L.O. and other associated works being borne by the consumer (4) estimated cost of bay extension from sub-station and the cost of 132 KV dedicated feeder would be borne by Nav Bharat. Subsequently on 03.09.96 OSEB again wrote to respondent No.1 that the advance money of Rs.189 Lacs would be liable to be adjusted against the monthly consumption bills after power supply was affected. The respondent No.1 deposited an amount of Rs.189 Lacs on 21.03.96. The respondent No.1 entered into two agreements with the OSEB on 22.03.96 and 01.02.97. Subsequently, GRIDCO, which agreed to supply NTPC power to Nav Chrome wrote to respondent No.1 that the deposit made by it be treated under 'deposit scheme' and not under 'peoples participation scheme' and that the deposit made would not be adjusted against energy bills and in case NTPC power was subsequently withdrawn, the respondent would not have any claim for the re-fund of the amount deposited by it. The respondent No.1 agreed to the letter and responded vide a letter dated 13.05.97. GRIDCO, however, made an alternative supply by making T off arrangement of 132 KV SC line from the Chainpal to Dhankanal and indicated that the construction of the dedicated line would be completed only by June 2000. The respondent No.1 wrote a letter dated 20.11.00 for re-fund of the money as the construction work was getting delayed. Subsequently, on 24.11.04, the GRIDCO also accepted the appellant's (Hind Metal's) request for supply of power to its ferro

alloys plant from the existing DC towers at 132 KV line from Meramundali sub-station to the Railway Traction Sub Station through the 132 KV SC line on DC tower upto the switch yard of the appellant's plant. The Hind Metal was required to carry out construction of a switching station etc. One of the conditions of the proposed supply was that the differential cost of construction of a 132 KV SC line from switching station to M/s. Nav Bharat and above over the earlier proposal of GRIDCO for connecting Nav Bharat through an independent SC line from Meramundali sub-station including all modification and shut-down work would have to be borne by Hind Metal. The Nav Bharat objected to the proposal which involved the sharing of the dedicated line by Hind Metal and conveyed its objections vide letters dated 24.02.2005 and 14.02.2006. The dedicated feeder was eventually provided to Nav Bharat only in June 2005. The Nav Bharat filed Case No. 7 of 2006 praying that proposal of GRIDCO to extend the dedicated line for supply of power to Hind Metal be not implemented. Hind Metal contested the Case No.7 of 2006. The OPTCL allayed the apprehension of Nav Bharat about the adverse impact of using the said dedicated line contending that the power supply would not be affected as the same would be continued to be monitored through SLDC. OPTCL also offered to isolate the Nav Bharat's plant in the event of any fault or abnormal condition. The Commission in the impugned order in Case No.7/2006 found that the feeder of Nav Bharat was entitled to the status of exclusive feeder. The

Commission at the same time found that the feeder could be used by all including the Hind Metal. The Commission further directed that OPTCL would be responsible to be in charge of the switching station. The Commission further directed that the cost of the portion of total circuit from Meramundali to the switching station including cost of bay at Meramundali Grid sub-station had to be shared by all consumers.

2) The appellant filed a review petition, being Case No. 23 of 2006 suggesting that cost to supply i.e. cost of construction of the total circuit be borne by OPTCL, respondent No.1. The Commission dismissed the review petition but passed certain further orders in respect of apportionment of the cost and imposing a liability of the cost of the 3rd conductor from the Meramundali sub-station to its switching station on Hind Metal.

3) The Hind Metal challenges the orders in Case No. 7 as well as 23 of 2006 on the following grounds :

- 1) the Commission had no jurisdiction to adjudicate the dispute raised by respondent No.1 as the dispute did not pertain to a generating company
- 2) The Commission's order rested on connection conditions of the Orissa Regulations which came into force on

01.05.2006 and applied to the new connections and not to the existing ones.

- 3) Further there was an arbitration clause in the agreement between respondent No.1 and OSEB and therefore, the dispute should have been resolved through arbitration.
- 4) The Commission should not have assumed jurisdiction to decide the dispute in the name of facilitation and promotion as is warranted under Section 30 of the Electricity Act 2003.
- 5) The Commission's finding that the respondent No.1 could use the feeder exclusively is opposed to the OERC's Distribution (Conditions of Supply) Code 1998 of which Section 27 prescribed that the entire service line, not withstanding that pole or portion thereof was paid for by the consumers shall be the property of licensee and shall be maintained by the licensee and the licensee had the right to use it for supply of energy to any other person unless the line had been provided for the exclusive user through any special arrangement entered into in writing.

- 6) The agreement of 1996 and 1997 did not indicate that the service line was meant to be used for the exclusive use of respondent No.1.
- 4) The first question to be tackled is the point of the jurisdiction of the Commission in adjudicating the dispute between Nav Bharat and the OPTCL. The Electricity Act 2003 does not empower the Commission to deal with disputes between a consumer and a utility. However, the dispute between the generating company and a utility / licensee is within the jurisdiction of the Commission to decide. On behalf of the Nav Bharat it is contended that it has a captive generating station and therefore is a generating company. The generating company as per Section 2(28) means :

“2(28) “generating company” means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;”

- 5) This takes us to definition of a ‘generating station’ which is defined in 2(30) as under:

“2(30) “generating station” or “station” means any station for generating electricity, including any building and plant with step-up transformer, switch-gear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;”

6) Now ‘generate’ as per Section 2(29) is as under:

2(29) “generate” means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;”

7) The mere fact that Nav Bharat owns the captive generating plant does not necessarily mean that it is a generating company. It will depend upon whether it is

generating or producing electricity for the purpose of supplying.

8) Captive generating plant is defined in Section 8, which is as under:

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

9) The captive plant is primarily for the use of the owner of the captive generating plant. The term ‘supply’ has been defined in section 2(70) to mean *“sale of electricity to a licensee or consumer”*. Hence, if the captive generating plant also supplies/sells electricity to others including a distribution licensee, it will also become a generating company. Nav Bharat claims that it is also supplying surplus electricity to the distribution licensee, OPTCL and hence a generating company.

10) The feeder in question, which Nav Bharat claims to be an exclusive feeder, is also, as per claim of Nav Bharat, the feeder

which will be used for evacuation of power from the captive generating plant to the grid. Nav Bharat's case further was that in case the feeder to its premises is shared by others it will create problems in the evacuation of power from this generating plant. Since the dispute revolves round this feeder the Commission has assumed jurisdiction. Further Nav Bharat has, in the manner mentioned above, raised a dispute regarding availability of transmission facility and has therefore invoked the jurisdiction of the Commission under the second proviso to Section 9(2) of the Electricity Act 2003 which says :

“Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the appropriate Commission.”

11) We feel that the above provisions are sufficient to indicate that the Commission did have the jurisdiction to enter into the dispute between the parties in Case Nos. 7 & 23 of 2006.

12) So far as the objections relating to the existence of the arbitration clause is concerned, we find no force in the same. The arbitration clause between respondent No.1 Nav Bharat and Orissa State Electricity Board (OSEB for short) was not invoked by either of them. Both the parties submitted to the

jurisdiction of the Commission. Therefore, the existence of the arbitration clause could not stand in the way of the Commission exercising jurisdiction in the matter.

13) Coming to the merits of the case, the principal issue is whether the feeder from the Meramundali sub-station to the premises of Nav Bharat was to be an exclusive feeder. Admittedly, there is no agreement between Nav Bharat and any of the successive transmission and distribution licensees categorically indicating the feeder to be meant for exclusive use of Nav Bharat. The feeder could be a dedicated feeder because the feeder carried power from the Meramundali sub-station to the factory premises of Nav Bharat directly. This does not necessarily make it exclusive (meaning that the feeder line could not be used for supplying power to any other consumer). At the relevant point of time distribution of power in Orissa was governed by The Orissa State Electricity Board (General Conditions) of Supply Regulations, 1995. This had the following clause in respect of service lines i.e. electricity supply line to a consumer by the Board (OSEB) from distribution mains or directly from the Board-installation to one or more consumers. The obligation of supply of power was subject to availability as given in Regulation 5, as under:

“5. **Supply subject to availability:** *The supply of power required, shall be subject to its availability in the system, technical feasibility of supply, the scheme of supply being remunerative as per the norms fixed by the Board from time to time, the consumer bearing the proportionate charges as required by the Board in case of non-remunerative schemes and the consumer executing agreement in the standard agreement form prescribed by the Board accepting the terms relating to tariff and other conditions of supply of the Board.*

No additional power shall be supplied by the Board unless all arrear charges for existing power supply have either been paid in full or the consumer has obtained instalments facility from the Board for unconditionally paying the arrears within the stipulated time. “

14) Regulation 6 provided that every consumer was required to enter into an agreement in a standard form. Regulation 8 deals with service lines and is important for our purpose and the relevant part of this regulation is as under:

“8. Service Line – (a) *The Engineer, on being satisfied that all preconditions for supply of power are satisfied including payment of security deposit, shall inspect the premises within two weeks from the date of a receipt of security deposit and fix the date of entry of the supply-line into the consumer’s premises (Where the service line extends up to the consumer’s premises). The Engineer shall also fix the position of the service cut-outs/ circuit breaker, meters in consultation with the consumer and or his licensed electrical contractor in case of a feeder (HT/EHT Feeder directly taken to the consumer’s premises for his exclusive use from the supplier’s sub-station, the metering arrangement shall be done at the consumer’s premises or at the supplier’s bus-station itself if mutually agreed. When the metering arrangements are completed at the consumer’s premises, the position or the service cut-outs or circuit breakers and meters shall be so fixed as to permit easy access to the employees of the Board at any time without, as far as possible, disturbing the privacy of the customer.*

(b) ...

(c) ...

(d) ...

(e) The entire service line, notwithstanding that a portion thereof has been paid for by the consumer, shall be the property of the Board and shall be maintained by the Board which shall always have the right to use it for the supply of energy to any other persons unless the line has been provided for the exclusive use of the consumer.”

15) Clause (e) of Regulation 8 is therefore is clear that a feeder or a service line cannot be an exclusive feeder only because a portion of it has been paid for by a consumer. Similarly only because a feeder is dedicated i.e. drawn for a particular premises it does not become a line meant for exclusive use of a consumer. The Regulations do not indicate how to detect whether a line is meant for exclusive use of a consumer. However, it cannot be disputed that a line cannot be exclusive for a consumer unless a licensee gives up its right to use a line for supplying power to any other consumer. The consumer who has paid for the line cannot claim a line to be for his exclusive use unless the transmission / distribution licensee at some point of time has given up its right to use that line. There is no correspondence on record from which it can be determined that either the GRIDCO or the OSEB or OPTCL at any point of time held out that it will not use the feeder

from the Meramundali sub-station to the factory premises of Nav Bharat.

16) The subsequent Regulations known as Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 1998 is more categorical in this respect. Regulation 27 of the OERC Distribution (Conditions of Supply) Code, 1998 makes the following arrangements:

“27. The entire service line, notwithstanding that a portion thereof has been paid for by the consumer, shall be the property of the licensee and shall be maintained by the licensee who shall always have the right to use it for the surplus of energy to any other person unless the line has been provided for the exclusive use of the consumer through any special arrangement agreed to in writing.”

17) As per the 1998 provisions the exclusivity has to be obtained by an arrangement in writing. No such writing has been produced by Nav Bharat. The Orissa Electricity Regulatory Commission Distribution (Conditions of Supply), Code 2004 which came into force on 28th May, 2004 has a similar provision in its Regulation No.27 requiring exclusive

use to be established through an arrangement of an agreement in writing. It has to be remembered that the first connection from Chainpal – Dhenkanal was provided in 1999 and the ‘dedicated feeder’ was provided only in 2005. The two provisions are extracted below:

24. In case of HT or EHT feeder directly taken to the consumers premises for his exclusive user from the licensee’s sub station or from the transmission licensee, the metering arrangement shall be done at the consumers premises or at the licensees sub station itself.”

“27. The entire service line notwithstanding the whole or portion thereof has been paid for by the consumer shall be the property of the licensee and shall be maintained by the licensee who shall always have the right to use it for the supply of energy to any other person unless the line has been provided for the exclusive user of the consumer through any arrangement agreed to in writing.

18) It has to be noticed that the Code of 2004 makes it categorical that even if the whole of the service line has been

paid for by a consumer the licensee has a right to use it for supply of energy to other consumers. It is only by way of exception i.e. service line can become exclusive by an arrangement in writing. Nav Bharat entered into (i) an agreement with the Orissa State Electricity Board on 22.03.1996 for supply of electrical energy for the purpose of manufacture of ferrochrome under a power intensive industry category and (ii) another agreement with the Grid Corporation of Orissa Ltd. for the same purpose. Both these agreements mention that the Orissa State Electricity Board (General Conditions of Supply) Regulations 1995, as modified from time to time, shall be applicable as a condition of supply. Thus 1998 Regulations and the subsequent Regulations of 2004 would also apply to the agreement for supply of electricity to the appellant. It may be added at the cost of repetition that even before the dedicated line was made available the Code of 2004 had come into force.

19) The Commission, in Case No.7 of 2004, noted the above provisions and the GOO/OSEB order dated 11.12.1995 which was an assurance that on deposit being made by Nav Bharat, a dedicated line shall be provided to the premises of Nav Bharat.

20) The Commission has considered the argument that a feeder can be declared as an exclusive feeder if it is not to be used for any other consumer and that this condition has to be settled through a special arrangement to be in black and white. The Commission also noticed that there is no agreement in writing giving such exclusivity to the dedicated feeder. The Commission nonetheless says :

“h. The fact remains that OSEB had given a commitment for a dedicated feeder from Meramundali grid s/s upto the factory premises of the petitioner. While agreement exists for the agreement of power supply the conditions precedent to the commencement of power supply shall be deemed to be the terms and conditions on which power supply was extended to the petitioner. As such, there need not be separate written agreement between NBFAL and OSEB to establish that it was an exclusive feeder.

The commitment of Orissa State Electricity Board providing an independent feeder to the Petitioner factory premises based on which a deposit was made by the party shall have the force of agreement

as otherwise the party could not have deposited the amount.

i. The provisions of Supply Code for having an agreement in writing for a feeder to be declared as an exclusive is deemed to have been complied with in of GOO/OSEB order dated 11.12.1995. Therefore, for all intent and purposes there existed an agreement between the parties prior to the commencement of power supply for which the line to the premises of the petitioner is treated as an exclusive feeder.

j. Since money has been paid by the consumer under the deposit scheme and the point of supply for consumer at Meramundali Grid Sub-station, the line upto the petitioner's premises being an exclusive feeder should not have been proposed for utilization for any other purpose.

k. This line also satisfies all the conditions of the dedicated feeder when the same has been utilized by the CGP for the purpose of interconnection to the grid s/s in terms of definition 2(16) of Electricity Act, 2003.”

21) The 1998 Regulation as well as 2004 Regulation clearly provides that an exclusive feeder will be one which has been arranged for by a special agreement in writing. Admittedly, the feeder had not been provided before the Regulation of 1998 or that of 2004 came into existence. As mentioned earlier, a feeder becomes exclusive when licensee gives up its right to use the same for supplying power to any other consumer. Simply because a line has been laid for the consumer or because the metering arrangement is at the premises of the licensee or because the money has been deposited without having any claim of recovery, the line, though dedicated does not become an exclusive feeder and the utility cannot be deprived of its legal right to use the line for supplying power to any other consumer. The GOO/OSEB order also does not indicate any intention of the Govt. or the licensee giving up its right of using the dedicated feeder for supplying electricity to any other consumer. The Commission has arrived at a decision on the basis of certain surmises and conjunctures. It is opposed to the legal position established by the Regulations. We therefore, cannot sustain the finding of the Commission in this regard.

22) The Commission itself did not maintain its own findings when it proceeded to hold that a part of the exclusive feeder

could “be used in the over all interest of the consumer including the petitioner”. In case a feeder was exclusive to the petitioner/Nav Bharat and Nav Bharat had specifically objected to the feeder being used for supplying electricity to any other consumer, the Commission could not have infringed into that right and allow supply of electricity from the same to any other consumer.

23) The Commission took note of the fact that it has become necessary to shift the interconnection of some feeders from Meramundali grid sub-station to the proposed switching station of OPTCL to ensure development of an efficient coordinated and intra state transmission line. The Commission directed that the line meant for RTSS (Railway Traction sub-station) as well as Nav Bharat on 132 KV double circuit tower shall be terminated at the switching station from where power supply shall be extended to Hind Metals, RTSS and Nav Bharat. It then says that the EHT line from switching station to the factory premises of the petitioner shall be an exclusive feeder to the petitioner. The Commission finally concluded that the cost of the portion of double circuit from Meramundali upto the switching station including the cost of bay at Meramundali sub-station as per the original estimate has to be shared by all the users and Nav Bharat has to be compensated for the money locked with the licensee.

24) The Commission's direction that the cost of the double circuit from Meramundali grid sub-station upto the switching point has to be shared by all users and that Nav Bharat has to be compensated for the money locked with the licensee follows from the Commission's earlier opinion that NBFL was being deprived of the exclusive use of its feeder and therefore those who are being benefited by this deprivation should compensate the NBFL.

25) None of the counsel appearing before us could show from the Regulations and from the various other laws relating to supply of electricity which allows this kind of compensation to be ordered by one consumer to the others on account of a dedicated feeder being used for supply to the subsequent consumer in that area.

26) Aggrieved by this portion of the impugned order dated 06th June, 2006, the appellant Hind Metals filed the review petition. It contended in the review petition, Case No. 23 of 2006, that it had already incurred the cost of construction of the switching station on behalf of OPTCL which was Rs.5.22 Crores and that the additional expenditure which was required to be incurred as per direction of the Commission should be borne either by Nav Bharat or by OPTCL as both were to get

benefit on account of the revised plan directed by the Commission.

27) The Commission did not categorically spell out in the first order dated 06th June, 2006 as to how Nav Bharat had to be compensated. Nor did it specify how the different parties were to share for the additional cost. The Commission observed that to this extent the order was silent and therefore passed the second impugned order dated 19th August, 2006. The Commission then came out with the dispensation in this regard which included a direction that Hind Metal should bear the cost of the third conductor from Meramundali sub-station to their switching station. It simultaneously directed Nav Bharat to comply with the demand of OPTCL for bearing the cost of one set of PLCC equipment in addition to the earlier amount of Rs.1.89 Crore. It also noted that Railways had prayed for one bay at Meramundali grid sub-station and transmission line.

28) Hind Metals has challenged that part of the impugned order which requires it to bear cost of the third conductor from Meramundali sub-station to their switching station. The question that has arisen in this appeal, so far as this impugned order is concerned, is whether there is any provision in any Act or Regulation allowing the Commission to

direct Hind Metals to bear the cost of the third conductor from the Meramundali sub-station to the switching point. No provision could be located by any of the two counsel appearing for the OPTCL and Nav Bharat under which such an order could be passed. The only provision in the Regulation 13(2) in the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004 which is as under :

“Licensee’s Obligation to Supply and power to recover expenditure:

13. (1)
- (2) *In case the scheme of supply is not remunerative, as above, the applicant shall be required to bear the portion of charges to make the scheme remunerative.*
- (3) ”

29) However, this rule has not been pressed into service for passing the impugned order. The alternative in the original plan has been ordered by the Commission for the general improvement of the electricity supply conditions in the locality. The infrastructure stipulated to be created will belong to the OPTCL and OPTCL will reap rich benefits out of it. In this view of the matter also there is no reason why the appellant Hind Metals should be made to bear the expense of the third

conductor from Meramundali sub-station to the switching station built by it for OPTCL.

30) In view of the above findings, we allow the appeal and set aside the direction of the Commission to Hind Metal to bear the cost of the third conductor from Meramundali sub-station to the switching station built by the appellant for the OPTCL.

Appeal No. 89 of 2007

31) This appeal has been filed by Nav Bharat challenging an order of the Commission in Case No. 12 of 2007 which was passed on an application filed by Nav Bharat. In order to carry out the order of the Commission dated 06.06.06 passed in Case No. 7/2006 and order dated 19.08.06 in Case No. 23/2006, the OPTCL was required to terminate the line meant for RTSS and Nav Bharat on 132 KV DC tower at the switching station near Nav Bharat's plant on 132 KV between Meramundali to the factory of Nav Bharat. The OPTCL issued a letter to Nav Bharat to communicate their consent for taking a shut-down of the 132 KV Meramundali Nav Bharat feeder on any day within the period of 01.04.2007 to 05.04.2007 so as to plan a shut-down programme. Nav Bharat replied that they had entered into an agreement for short term open access

intra state transmission from 01.04.07 to 30.06.07 and as the above transaction was in operation the proposed shut-down on 132 KV NBVL – Meramundali feeder would affect evacuation of their power and therefore, the shut-down was not possible before 01.07.07. Nav Bharat also opposed the proposed action as being not in conformity with the orders of the Commission in Case No. 7/2006 and 23/2006. Nav Bharat approached the Commission with the petition, being No.12/2007, complaining that OPTCL was asking for a shut-down without the other parts of the earlier orders in case No. 7 & 23/2006 being complied with, and so far as the order directing sharing of cost of the double circuit from Meramundali sub-station upto the switching station including the bay at the Meramundali sub-station and of compensation to the Nav Bharat, had not been complied with. Nav Bharat prayed that the OPTCL and Hind Metals be directed to implement the orders of the 06th June and 19th August in the two Cases Nos. 7/2006 and 23/2006 and till then the OPTCL be restrained from connecting 132 KV line from the switching station at Hind Metal with 132 KV Meramundali feeder.

32) During the course of the hearing before the Commission, the representative of Nav Bharat admitted that there would be no difficulty if the feeder was routed through the switching station. The Commission observed that the Nav Bharat had

failed to cooperate with OPTCL to avail shut-down and that had caused avoidable delay of energizing the switching station. It directed OPTCL to take appropriate and prompt action for implementation of Commission's orders and said that the Nav Bharat should not obstruct the shut-down which was required only for six hours. It observed that Nav Bharat should not have opposed the shut-down which was required for six hours. It also observed that the Nav Bharat could not be permitted to have a vested interest in continuance of the status quo whatever be the financial gain it may be having because of non-implementation of Commission's order. Accordingly the petition of the Nav Bharat was rejected. OPTCL was allowed to take shut-downs in the line to make connection to switching station after due notice to the Nav Bharat and Hind Metals as well as RTSS. The Commission also directed OPTCL to prepare an action plan for compliance of the rest of the directions of the Commission in a time bound manner and to inform the other parties about the same. In the appeal No. 89 of 2006 Nav Bharat prays for a direction on the OPTCL to fully comply with the directions of the Commission dated 06.06.06 and 19.08.06 within a reasonable time and to remit the case to the Commission for the purpose of monitoring and enforcing the compliance with the orders and to initiate such action in accordance with law as may be called for in case of non-compliance. It is understood that the shut-down required

by OPTCL has since been obtained and the necessary connection has been made. The petition No.12/2007 to that extent has become infructuous. The prayer made in this appeal, for directing OPTCL to comply with the direction of the Commission, is in the nature of an execution petition. This Tribunal is an Appellate forum and cannot be approached for compliance with the direction of the Commission. Nor does Nav Bharat has any cause of action for the direction to the Commission to monitor and enforce the compliance with its earlier orders. This Tribunal is not a forum for seeking such reliefs.

33) However, the respondent No.1, OPTCL has submitted an affidavit with an action plan with time schedule and detailed break up of the work as per the order of Orissa Electricity Regulatory Commission. The OPTCL intends to complete the projects by August 2008. We need not say anything further. The appeal No. 89 of 2006 is thus disposed of.

Pronounced in open court on this **09th day of January, 2008.**

(Justice Manju Goel)
Judicial Member

(A.A. Khan)
Technical Member

The End