

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

**Appeal No. 88 of 2006**

Dated: September 28, 2006

UP Power Corpn. Ltd. ... Appellant

Versus

Northern Region Load Despatch Centre;

Central Electricity Regulatory Commission ..... Respondents

**Present: Hon'ble Mr Justice. Anil Dev Singh, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

Counsel for the appellant(s) : Mr. Sunil Gupta &  
Mr. Shailendra Kr. Singh

Counsel for the respondent(s) : Mr. M.G. Ramachandran  
with Ms. Taruna S.Baghel  
for Resp 1.

**JUDGMENT**

**Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson**

This appeal is directed against the order of the Central Electricity Regulatory Commission (for short 'CERC') dated May 9, 2006, in Petition No. 25/06, whereby CERC while

invoking the provisions of Section 142 of the Electricity Act, 2003 (for short the 'Act') has imposed a penalty of Rupees one lakh on the Uttar Pradesh Power Corporation Ltd. for indisciplined over-drawal of electricity from the Northern Grid, when frequency was below 49 Hz and also appointed an Adjudicating Officer under Section 143 of the Electricity Act, 2003 to enquire into the instances of non-compliance of the instructions of the Northern Regional Load Despatch Centre (for short 'NRLDC') by the appellant in violation of the provisions of Section 29 of the Act by Uttar Pradesh Power Corporation Ltd. (for short 'UPPCL') during the month of April 2006. The facts leading to this appeal are as follows:-

2. On January 13, 2006, the NRLDC filed a petition, being Petition No. 4/2006, for seeking rationalization of Unscheduled Interchange (UI) price vector and establishment of payment mechanism for UI charges. During the course of the proceedings, it transpired that there has been a gradual deterioration in the frequency regime of the Northern Region and the situation during the month of April, 2006 had taken a

turn for the worst. The CERC taking cognizance of the worsened situation passed the following order:-

*“12. Considering the seriousness of the matter of sustained low frequency which is precursor for grid failure leading to collapse of large Power Systems and its disastrous consequences, we issue the following directions:*

*(a) Stringent penal action shall be taken against State Electricity Boards/its successors, Distribution Utilities responsible for endangering the grid security by overdrawing, in violation of the Grid Code and disobeying the instructions of the Regional Load Despatch Centres (RLDCs). RLDCs are at liberty to place before the Commission the instances of undisciplined over-drawals so that the Commission could deal with the situation, wherever warranted in accordance with law”.*  
.....”

3. The aforesaid order can be divided into two parts. As is evident, the first part of the order contains a direction to the State Electricity Boards, Distribution Utilities that stringent penal action shall be taken against them for endangering the grid security by overdrawing electricity in violation of the Grid Code and disobeying the instructions of the Regional Load

Despatch Centres (for short 'RLDCs'). The second part of the order grants liberty to the Regional Load Despatch Centres to bring to the notice of the Commission the instances of indisciplined over-drawals of electricity so that the Commission could deal with the situation in accordance with law.

4. Pursuant to the aforesaid order of the CERC, the NRLDC on May 1, 2006 filed a petition, being Petition No. 25/06, wherein it was pointed out that the Uttar Pradesh system has been the largest contributor to indisciplined over-drawal of power. It had overdrawn 119 MU in 23 days when frequency was below 49.5 Hz. The data-wise drawals for the period April 1, 2006 to April 23, 2006 and for the period April 24, 2006 to April 30, 2006 was annexed with the aforesaid petition as Annexures-III and IV thereto. It appears from Annex-III to the petition that over-drawal by the UPPCL was of the order of 200 MW to 500 MW. SOS messages were sent by the NRLDC through SMS to the mobile telephones of the senior officials of

the UPPCL with regard to the over-drawal by it. These messages were listed in Annex-VI of the petition. Besides, messages and letters from the ED NRLDC, the Director (Operation), POWERGRID and the CMD POWERGRID to senior officials of the UPPCL and the Ministry of Power have also been placed on record of the petition as Annex. VII.

5. In the petition before the CERC and even before us, the first respondent, NRLDC has asserted that in spite of the messages there had been no reduction in the over-drawal of energy by the UPPCL. The petition also mentions that violation of clauses 6.4.4 and 6.4.5 of the Indian Electricity Grid Code (for short '*IEGC*') were brought to the notice of the Member Secretary, Northern Regional Power Committee on several occasions in accordance with clause 1.5 thereof. But the UPPCL continued to overdraw electricity at the cost of endangering the system security. The Northern Regional Load Despatch Centre in the relief clause of the petition presented

before the CERC prayed for the following action to be taken against the appellant herein – respondent in the petition:-

- i. *Take penal action against the Respondent under Section 29 and 142 of the Electricity Act, 2003, wherever warranted.*
- ii. *Issue directions to the Respondent to comply with the provisions of the IEGC in letter and spirit, more particularly section 6.4.5, section 6.4.4 and section 5.4.2.*
- iii. *Issue directions on any other matter as it may deem fit. “*

6. The CERC heard the parties in the petition filed by the NRLDC and passed the impugned order on May 9, 2006. Aggrieved by the impugned order, the appellant, UPPCL has filed the instant appeal.

7. Mr. Sunil Gupta, Learned Senior Counsel appearing for the appellant submitted that the impugned order has been passed in violation of the procedure prescribed by clause 1.5 of the IEGC effective from April 1, 2006. The learned senior counsel pointed out that as per the mandate of clause 1.5, persistent non-compliance of any of the stipulations of the

IEGC by a constituent or an agency is required to be reported by the concerned RLDC or any other agency to the Member Secretary, RPC. On receipt of the report, the Member Secretary, RPC is duty bound to verify the allegations and take up the matter with the defaulting agency for expeditious termination of the non-compliance. Only in the event of inadequate response to the efforts made by the Member Secretary, RPC, the non-compliance is required to be reported to the CERC. Where the matter is reported to the CERC by the Member Secretary, RPC, the CERC after complying with the due process of law can direct the defaulting agency to comply with the requirements of the IEGC, failing which the CERC can take appropriate action. The learned senior counsel canvassed that since the mandatory procedure laid down in clause 1.5 of the IEGC was not followed, the CERC had no jurisdiction to take up the matter by calling upon the NRLDC to place before it, instances of indisciplined over-drawals of electricity by the UPPCL. Mr. Gupta contended that the CERC can deal with the situation created by instances of

indisciplined over-drawal by an agency only after the matter is placed before it by the Member Secretary, RPC.

8. It was further submitted by the learned senior counsel for the appellant that the over-drawal of electricity from the grid per-se is not culpable and there is no strict or absolute liability for over-drawal of electricity, when the frequency falls below 49 Hz. According to the learned senior counsel, it is over-drawal for inadequate reasons that attracts Section 142 and that too after the Member Secretary, RPC reports non compliance of the stipulations of IEGC to the CERC. Mr. Gupta further submitted that the CERC overlooked the fact that the over-drawal was not for inadequate or insufficient reasons. The CERC did not go into the reasons behind the malady and failed to take a holistic view of the matter. He cited the following two reasons mainly responsible for the over-drawals by UPPCL:-

- (i) *Inadequate allocation of power to the State of Uttar Pradesh; and*
- (ii) *about 1500 MW of central sector generating capacity not available due to forced outages.*



The learned counsel asserted that the appellant has done its best and adequately responded to minimize the over-drawal by taking the below mentioned steps:-

- (1) the State was purchasing liquid fuel based power from its own allocation as well as the surrendered allocation of some other States; and
- (2) the appellant had resorted to heavy load-shedding for many hours every day in some districts of U.P.

Thus, according to Mr. Gupta, there was adequate response to the directions of the CERC with regard to over-drawal of electricity by the appellant, but the CERC erroneously held that the aforesaid reasons and steps were not germane to the over-drawal of electricity below frequency of 49 Hz. Mr. Gupta pointed out from the impugned order that the CERC, while noticing the submissions of the learned counsel for the first respondent herein, had quoted its earlier orders wherein previous instances of over-drawal by the appellant were noticed. The learned senior counsel submitted that the impugned order was actually based on the earlier over-drawal by the appellant for which no adverse action could be taken now. It was also canvassed that the appellant has been singled out for hostile treatment by the CERC. Other states, namely Punjab, Haryana, Rajasthan, Delhi and Jammu & Kashmir have been overdrawing power but no action has been taken against them.

9. On the other hand, Mr. Ramachandran, the learned counsel for the first respondent submitted that there has been

no violation or non-compliance of any of the provisions of the Grid Code or the Act either by the NRLDC or the CERC. According to him, the penalty of Rs. One lakh imposed on the appellant for indisciplined withdrawal from the Northern Grid, when the frequency fell below 49 Hz, is in consonance with the provisions of Section 142 of the Act. The appointment of Inquiry Officer by the CERC u/s 143 of the Act for inquiring into the alleged non-compliance of the instructions of the NRLDC also does not suffer from any legal infirmity whatsoever. The learned counsel pointed out that NRLDC had asked the appellant to stop the over-drawal of electricity from the grid, when the frequency had fallen below 49.5 Hz. The matter was also reported to the Member Secretary, RPC for action but the appellant continued to overdraw energy. This situation could lead to the collapse of the grid. In order to avert grid collapse, the CERC took cognizance of the indisciplined over-drawal of energy by the appellant.

10. The learned counsel for the first respondent referred to clause 6.4.4 and 6.4.5 of the IEGC and submitted that the

SLDCs/ STUs are required to regularly carry out necessary exercises for estimating short term and long term demand for their respective States, to enable them to plan in advance as to how they would meet their load without overdrawing from the Grid. Besides, the State Utilities through their SLDCs are required to restrict their net drawals from the grid to be within their respective drawal schedules, whenever the system frequency is below 49.5 Hz. In case the frequency falls below 49 Hz, the utilities must resort to requisite load shedding to curtail the over-drawal. As a sequitur, the learned counsel for the first respondent submitted that since the provisions of clause 6.4.4 and 6.4.5 of IEGC were not complied with by the appellant, the Grid was in danger of a total collapse on several occasions. Therefore, action was rightly taken against the appellant by the CERC.

11. In the light of the rival contentions, the main question which arises for determination is whether the CERC had the jurisdiction & justification to take cognizance of the issue relating to the over-drawal of electricity by the UPPCL, in

absence of any report from the Member Secretary, RPC regarding non-compliance of any of the stipulations of the IEGC by the UPPCL and to pass the impugned order. In order to determine the question, it will be necessary to refer to Sections 142 and 143 of the Act and Clauses 1.5, 6.4.4 and 6.4.5 of the IEGC.

12. Sections 142 and 143 of the Act and Clauses 1.5, 6.4.4 and 6.4.5 of the IEGC read as follows:-

***“142. Punishment for non-compliance of directions by Appropriate Commission-*** *In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”*

**“143. Power to adjudicate – (1)** For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government ,after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.”

**“Clause 1.5 of IEGC : Non –compliance:**

In case of a persistent non compliance of any of the stipulations of the IEGC by a constituent or an agency (other than RPC and RLDC), the matter shall be reported by any agency/ RLDC to the Member Secretary, RPC. The Member Secretary, RPC, shall verify and take up the matter with the defaulting agency for expeditious termination of the non compliance. In case of inadequate response to the efforts made by the Member Secretary, RPC, the non compliance shall be reported to CERC. CERC, in turn after due process, may order the defaulting agency for compliance, failing which the CERC may take appropriate action.

RPC shall maintain appropriate records of such violations.

In case of non compliance of any of the stipulations of the IEGC by RLDC or RPC, the matter shall be reported to the CERC.”

**Clause 6.4.4 of IEGC:** *Provided that the States, through their SLDCs, shall always endeavour to restrict their net drawal from the grid to within their respective drawal 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-drawal.*

**Clause 6.4.5 of IEGC :** *The SLDCs/ STUs shall regularly carry out the necessary exercises regarding short-term and long-term demand estimation for their respective States, to enable them to plan in advance as to how they would meet their consumers' load without overdrawing from the grid.”*

13. As is clear from Section 142 of the Act, the Commission is empowered to take cognizance of the contravention of any direction issued by it or any of the provisions of the Act or the Rules or Regulations made thereunder, either suo-moto or on a complaint filed before it by any person. After allowing the defaulter an opportunity of being heard in the matter, the commission is empowered to direct him to pay by way of penalty a sum not exceeding one lakh rupees for each contravention. In a case where there is continuous failure on the part of the defaulter to comply with the directions of the Commission, provisions of the Act or Rules or Regulations made thereunder, an additional penalty up to Rs. Six

thousand rupees for every day during which the failure continues after violation of the first such direction can be imposed by the Commission.

14. Under Section 143 of the Act, the appropriate Commission is also vested with the jurisdiction to appoint any of its Members to be an adjudicating officer for holding an inquiry. The Inquiry officer is required to give reasonable opportunity of being heard to the person concerned for the purpose of imposing any penalty.

15. Clause 1.5 of the IEGC deals with the case of a persistent non-compliance of any of the stipulations of the IEGC by a constituent or an agency. In the event of such non-compliance, the matter is required to be reported by any agency/RLDC to the Member Secretary, RPC. On receipt of the report the Member Secretary, RPC is required to verify the allegations and take up the matter with the defaulting agencies for termination of the non-compliance. In case the defaulting constituent or an agency does not respond

adequately to the efforts of the Member Secretary, RPC, the non-compliance is required to be reported to the CERC. On receipt of the report from the Member Secretary, RPC, the CERC, after following due process of law, can direct the defaulting agency for compliance of the stipulations of the IEGC. In the event of failure to comply with the stipulations, the CERC is authorized to take appropriate action.

16. The procedure prescribed under clause 1.5 of the IEGC cannot control the exercise of statutory power by the CERC under Sections 142 and 143 of the Act. The exercise of power by the CERC is based on legal foundation of Sections 142 and 143 of the Act. The power conferred on the CERC by Sections 142 and 143 has not been made subject to the Grid Code, which was specified by the CERC under Section 179(1) (h) of the Act. The original power of the CERC conferred on it under Section 142 of the Act has not been and cannot be diluted by clause 1.5 of the IEGC. A provision having merely a statutory flavour cannot replace the statute itself.



17. Section 142 of the Act applies not only when any person contravenes the Act or Rules or Regulations but also when any person contravenes any direction issued by the Commission. It needs to be noted that the CERC by its order dated April 27, 2006 had made abundantly clear that the SEBs, their successors, distribution utilities who are endangering the grid security by overdrawing electricity in violation of the Grid Code and instructions of the Regional Load Despatch Centres shall be liable for penal action. In fact Order dated April 27, 2006 was in the nature of a direction to the Boards, their successors, distribution utilities etc. not to endanger the grid security. RLDCs were given liberty to place before the Commission the instances of indisciplined over-drawals.

18. In spite of the order dated April 27, 2006 of the CERC, the appellant kept on overdrawing power from the grid even when the frequency was below 49 Hz. The data downloaded from the SCADA, which has been placed on record, shows the

over-drawal by the appellant on April 28, 2006 and April 29, 2006 as under:-

<b>Date</b>	<b>Time (Hrs)</b>	<b>Freq. at Dadri</b>	<b>UP</b>		
			<b>Sch. (SD) (MW)</b>	<b>Over-drawal (MW)</b>	<b>OD as a % of SD</b>
28/04	14.40.31	48.36	2468	-52	-2.1
28/04	18:24:33	48.95	2433	308	12.7
28/04	19:26:57	48.97	2442	173	7.1
29/04	00:11:51	48.33	2473	11	0.4
29/04	08:18:10	48.88	2468	-52	-2.1

19. Thus, it is clear that when the frequency on the aforesaid days was below 49.0 Hz, the appellant was still overdrawing from the grid, which reflects that the appellant was impervious to the danger to the grid. In case one state overdraws electricity, it adversely affects the transmission to the other states connected to the grid. This indiscipline needs to be controlled and eradicated.

20. Section 79(1) (c) of the Act empowers the Electricity Regulatory Commissions to regulate inter-state transmission of electricity and Section 142 thereof provides teeth to the CERC to secure implementation of the provisions of the Act, and Rules & Regulations framed thereunder and the directions issued by the CERC from time to time by authorizing it to impose penalty on the violators. In the instant case, the CERC, exercising its statutory power under Section 142 of the Act, took cognizance of the indisciplined withdrawals from the grid. The Commission cannot be a mute spectator to any danger to the grid and wait for a report being lodged by the Member Secretary, RPC under Clause 1.5 of the grid code in a situation where urgent action was required to save the grid from a total collapse. By requiring the Member Secretary, RPC to verify the persistent non compliance of any of the stipulations of the IEGC by a constituent or an agency and to take up the matter with the defaulting agency for expeditious termination of the non compliance, the CERC has not denuded itself of the power conferred on it under section 142 of the Act to take action in a suitable case. It is well settled that

authority delegating power to a delegate does not denude itself of that power.

21. In *Ishwar Singh Vs State of Rajasthan & Ors.* (2005) 2 SCC 334, the Supreme Court held that 'delegation of power' does not imply parting with authority. The delegating body will retain not only the power to revoke the grant, but also power to act concurrently on matters within the area of delegated authority except in so far as it may already have become bound by an act of its delegate.

22. In case the argument of the learned Sr. counsel for the appellant is accepted, it will have a lethal effect. There may be a situation where Member Secretary, RPC fails to take action under Clause 1.5 of the IEGC. The consequence of such delay or inaction could be disastrous. In case the power of the CERC depends upon filing of the report by the Member Secretary, RPC, the CERC will be helpless in averting danger to the grid. Such an interpretation of the provisions of Sections 142 and 143 of the Act and Clause 1.5 of the IEGC

cannot be accepted. Powers of CERC under sections 142 and 143 cannot be made dependent on the receipt of a report from Member Secretary, RPC. Otherwise, the statutory power will be stifled or rendered *otiose*.

23. Therefore, we hold that Clause 1.5 of the IEGC does not and cannot place any restriction upon the exercise of power by the CERC under Sections 142 and 143 of the Act.

24. In the instant case, NRLDC had requested the Member Secretary, RPC to take action for termination of the non compliance of the IEGC by the appellant, but nothing came out of the request.

25. There is no dispute at all that during the month of April, 2006, the grid frequency was suffering from instability. The frequency was below 49 Hz and it even dipped to 48.6 Hz on 1502 occasions. The NRLDC issued directions under section 29(1) to regulate the drawal of power from the grid by the states within their respective drawal schedules. These

directions were issued to regulate drawal within a band of 49.0 Hz– 50.5 Hz for ensuring grid security and stability and were required to be carried out by every licensee, generating company, generating station and substation and any other person connected with the operation of the power system. It is the case of the first respondent that the directions were not complied with by the appellant, thus contravening the provisions of Section 29(2) of the Act. Not only the directions were conveyed to SLDCs, but several letters and fax messages were also sent to the Managing Director of the appellant company.

26. By letter dated April 24, 2006, the NRLDC invited the attention of the chairman of the appellant company to several requests made for minimizing the over-drawals and pointing out that the situation of the northern grid continued to be critical owing to persistent over-drawals by the constituents. Considering the precarious situation of the grid and the problems faced during December, 2005 and January 2006 in reviving the units under black start condition, it was

requested that all systems required for the black start operation of the units be kept in operating condition.

27. During the month of April, 2006, the appellant had overdrawn energy to the tune of 163 MUs when the frequency of the grid was low. The appellant has not disputed that it was overdrawing power even at a frequency below 49 Hz, but its grievance relates to the procedure followed by the CERC to impose the penalty and order enquiring into the alleged violation of the directions of NRLDC. It appears that the appellant did not have any substantial ground to urge against the impugned order passed by the CERC except that procedure under clause 1.5 of IEGC was not complied with and the powers under section 142 and 143 could not be exercised by the Commission till such time the procedure prescribed by Clause 1.5 of the IEGC was followed.

28. When the appellant has admitted that there was overdrawal of power at a frequency below 49 Hz, it cannot then take shelter of the technicalities. Procedure is merely

handmade of justice. It cannot be allowed to stifle justice and create impediments for exercise of the statutory power.

29. The past conduct of the appellant has been referred to by the CERC in the impugned order, while recording the submissions of the first respondent. It shows the propensity of the appellant to break the grid discipline. In this regard some of the earlier orders passed by the commission need to be taken note of.

Order Dt. July 8, 2004 in Petition No. 38/2004:

*“ In the first instance, we are inclined to invoke our powers under the Electricity Act, 2003 for imposition of penalty for disobedience of the directions of the petitioner and also the Commission for overdrawing the power at low frequency and not making timely payments of UI charges. However, we were persuaded by the learned counsel for the respondent to defer the decision on imposition of penalty for a week.”*

Order Dt. August 9, 2004 in Petition No. 38/2004:

*“During the hearing it came to the notice that the respondent was not only overdrawing but also defaulting in making payments towards UI charges for over-drawal from the regional grid. This compounded the culpability of the respondent. This was an extra ordinary situation which require extra ordinary remedy.”*

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*“Therefore, we had thought of invoking the powers available to us under the law to enforce discipline and if necessary by leaving penalty or fine. However, after initial dithering, assurances were made on behalf of the respondent to curtail over-drawals from the regional grid and also to settle the UI energy account operated by the petitioner on behalf of NREB. In view of these assurances, we had deferred a decision to invoke the penal provisions.”*

Order Dt. October 20, 2005 in Petition No. 99/2005:

*“It has been submitted that the first respondent namely, UPPCL has been recklessly overdrawing power from the Northern Regional Grid in violation of the provisions of IEGC and despite the inspection to the contrary from the petitioner. It is alleged that first respondent’s conduct has the tendency to endanger the grid security, and has the propensity to cause irreparable damage.”*

30. The previous conduct of the appellant may show its inclination or tendency to break the grid discipline but the penalty imposed on the appellant by the CERC is not based on its past conduct. Past conduct is not the foundation of the impugned order. We do not agree with the plea of the appellant that the impugned order passed by the CERC was actually based on the earlier instance of indiscipline of the appellant.

31. We also do not agree with the submission of the learned counsel for the appellant that over-drawal of energy from the grid at a frequency below 49 Hz was not actionable for the reasons advanced by the appellant, including its assertion of some load shedding during the period of low frequency, purchase of liquid fuel and over-drawal in view of the serious law & order problem for prevention of crime and the plea that it is only in case of inadequate reasons for over-drawal that punishment can be imposed under section 142 of the Act.

32. It appears to us that the over-drawals of electricity in critical situation are dangerous to the grid and cannot be justified on the grounds pressed into service before us. Besides no contemporaneous record has been produced to show that over-drawal was being resorted to for preventing crime or for combating any law & order situation in the State.

33. According to clause 6.4.4 of the IEGC, States through their SLDCs are required to make endeavor to restrict their net drawal from the grid to be within their respective drawal schedules, when the system frequency is below 49.5 Hz, but when the frequency falls below 49 Hz, requisite load shedding is required to be carried out in the concerned state to curtail the over-drawal. The word “shall” has been used in Clause 6.4 to signify that it is mandatory to resort to load shedding to curtail the over-drawal, when the frequency falls below 49 Hz.

34. Clause 6.4.5 requires the SLDC/ STU to regularly carry out the necessary exercise regarding short term and long term demand estimation for their respective States, to enable them to plan in advance as to how they would meet the load of their consumers without overdrawing from the grid. In view of the aforesaid clauses, over-drawal must be curtailed and drawal must be brought within its ‘drawal schedule’. But the appellant, in spite of its assertion of load shedding, failed to

bring the drawal of electricity from the grid within the drawal schedule.

35. The learned senior counsel for the appellant also submitted that over-drawal should be left to be controlled by UI mechanism.

36. It appears that this submission of the learned senior counsel is purportedly based on Clause 6.4.7 of IEGC, which, inter-alia, provides that deviations from the ex-power plant generation schedules shall be appropriately priced through the UI mechanism. But the learned senior counsel for the appellant overlooked the mandate of clause 6.4.4, which prescribes that when the frequency falls below 49 Hz requisite load shedding shall have to be carried out to curtail the over-drawal. Up to a frequency of 49.0 Hz, system can be controlled by UI but below that it must be controlled by the stringent provisions of section 142 of the Act, as the safety and the security of the grid cannot be jeopardized since it affects the other beneficiaries.

37. In view of the aforesaid discussion, we hold that the CERC had the jurisdiction and justification to take cognizance of the indisciplined over-drawal of electricity by the appellant and to pass the impugned order.

38. We will now deal with the submission of Mr. Gupta that the appellant was not the only one overdrawing from the grid and there were others as well who were sailing in the same boat but the appellant has been singled out for hostile treatment in as much as no action has been taken by the CERC against the over-drawal by the other states. We have considered the contention of Mr. Gupta but we are of the view that the plea of discrimination cannot come to the rescue of the appellant. A wrong doer cannot be heard to say that he should not be punished till such time the other wrong doers are taken to task and punished appropriately. In such matters, the submission based on Article 14 of the

Constitution cannot be pressed into service. We, accordingly, reject the argument. Having rejected the submission, we would, however, require the commission to deal with all the violators of the Grid Code appropriately and adequately so that the grid is not endangered and is saved from collapse.

39. In the result the appeal fails and is hereby dismissed.

**(Justice Anil Dev Singh)**  
**Chairperson**

**(A.A. Khan)**  
**Technical Member**

Dated: the September 28, 2006