

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

**Appeal No. 120 of 2009**

**Dated: 18th February, 2011**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

**In the matter of:**

**Chhattisgarh State Power Distribution  
Co. Ltd.**

**... Appellant(s)**

**Versus**

**Godawari Power & Ispat Ltd.**

**... Respondent(s)**

Counsel for the Appellant (s) :

Mr. K. Gopal Choudary  
Mr. Arun Bhatnagar  
Ms Sikha Ohri

Counsel for the Respondent(s) :

Mr. M.G. Ramachandran  
Mr. V.K. Munshi, Mr. Manoj  
Sharma and  
Mr. Sumit Bharadwaj for R.1  
Ms. Swapna Seshadri &  
Ms. Ranjitha Ramachandra  
for CSERC  
Mr. K. Ganesan  
Mr. Kapil Kaushik

## **JUDGMENT**

**PER HON'BLE JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON**

Chhattisgarh State Power Distribution Co. Ltd. is the Appellant herein. Godawari Power & Ispat Ltd. is the 1<sup>st</sup> Respondent. Chhattisgarh State Commission is the 2<sup>nd</sup> Respondent.

2. Challenging the order passed by the State Commission on 6.6.2009 in Petition No.22/2008 as against the Appellant, the present Appeal has been filed before this Tribunal. The relevant facts are as follows:

3. The Chhattisgarh State Power Distribution Co. Ltd., the Appellant herein, is the successor of the

Chhattisgarh State Electricity Board with respect to the distribution of electricity with effect from 1.1.2009.

4. M/s Godawari Power & Ispat Ltd., the 1<sup>st</sup> Respondent herein, is engaged in the manufacture of sponge iron, steel billets, H.B. Wires and in the generation of power. It has installed TG-1 and TG-2 of the 10 MW each which were synchronized for parallel operation with the grid in the 2002 and the year 2003. TG-3 of 10 MW was synchronized for parallel operation in January, 2006. TG-4 of 30 MW was synchronized for parallel operation on 5.2.2007. There is also another TG of 25 MW which was synchronized for parallel operation on 14.9.2007.

5. On 17.5.2007, the Chief Vigilance Officer of the State Electricity Board, the predecessor of the Appellant inspected the premises of the Godawari Power & Ispat Ltd., the Generator. During the inspection, it was found that the total synchronized/installed capacity of the TG sets was found to be 75,000 kVA, whereas the billing for parallel operation charges was made only for 33,333 kVA. It is stated by the Chief Vigilance Officer in his report that differential amount of parallel operation charges, from December, 2005, amounting to Rs.34.64 lakhs has to be recovered from the 1<sup>st</sup> Respondent. Accordingly, the supplementary bill was issued for the recovery of

Rs.34.64 lakhs towards the difference of the parallel operation charges.

6. On 20.6.2008, Godawari Power & Ispat Ltd. informed the Electricity Board that the cable connections at both the ends for TG-1 and TG-2 have been disconnected by them and requested that the same may be inspected and suitable action may be taken for revising the parallel operation charges. So, the inspection was carried out on 30.6.2008. In that inspection, it was found that the power cable connections of the two TG Sets were removed and that the said generators were found to be out of service. Consequently, the parallel operation charges on the said Units were discontinued.

7. On 13.10.2008, Godawari Power & Ispat Ltd., the generator, 1<sup>st</sup> Respondent herein filed a petition before the State Commission questioning the supplementary billing amount of Rs.34.64 lakhs. Through this Petition, the prayer was made by the 1<sup>st</sup> Respondent that the State Electricity Board be directed to refund the said amount. The State Electricity Board filed a reply in the said Petition contending that the State Commission has no jurisdiction and the redressal of the billing dispute was in the jurisdiction of the Consumer Grievance Redressal Forum and, therefore, the petition is not maintainable.

8. During the pendency of the said petition, the State Commission issued Notification dated 19.12.2008 under the State Electricity Board Transfer Scheme Rules, 2008 investing the powers in the Appellant, namely, Chhattisgarh State Power Distribution Co. Limited with reference to the distribution of electricity treating the Appellant as the successor of the erstwhile State Electricity Board. Thereupon, the Appellant as a successor of the Petitioner before the State Commission filed additional written submissions. Ultimately, the State Commission passed the impugned order dated 6.6.2009 holding that the State Commission has got the jurisdiction to resolve the dispute in question and directed the 1<sup>st</sup> Respondent to refund the excess amount billed from December, 2005.

Aggrieved by this order of the State Commission, the Appellant, the successor of the State Electricity Board has filed the present Appeal.

9. The learned Counsel for the Appellant while assailing the impugned order dated 6.6.2009 has urged the following contentions:

- (i) The dispute with regard to the parallel operation charges is an individual consumer dispute between the licensee and a consumer. Therefore, the State Commission had no jurisdiction to entertain and adjudicate upon the same. This dispute has to be resolved only by the Consumer Grievance Cell and not by the



State Commission. Therefore, the petition filed by the 1<sup>st</sup> Respondent before the State Commission was not maintainable.

- (ii) The parallel operation charges are to be charged on the installed capacity of Captive Power Plant which has to be reckoned as the aggregate of the name plate capacity of all the generators connected to the State Electricity Board Grid in parallel operation.

10. On these points, elaborate arguments were advanced by the learned Counsel for the Appellant. In reply to the said submissions, the Learned

Counsel for the Respondents had made the following submissions:

- (i) The 1<sup>st</sup> Respondent is the Captive Power Plant (CPP). This plant is being operated in parallel with the Grid. There is no connected load of the 1<sup>st</sup> Respondent agreed with the Distribution Licensee at the place where the Captive Power Plant is situated. The relationship in regard to the parallel operation with the Grid is between the Captive Power Plant, the 1<sup>st</sup> Respondent herein, and the Distribution Licensee, the Appellant herein. Therefore, there is a dispute between the Generating Company and the

Licensee within the meaning of Section 86(1) (f) of the Electricity Act, 2003. Therefore, the State Commission had got jurisdiction as there is no consumer dispute in the present case.

- (ii) The parallel operation charges are payable on the installed capacity of the Captive Power Plant. A Captive Power Plant (CPP) consists of a number of machines, equipments of which the steam boiler forms a part. The Captive Power Plant can produce only such quantum of electricity based on steam which is dependent on the capacity of the steam boilers installed. In other words, the capacity of the Captive

Power Plant cannot be considered in isolation of one or two equipments, but in a comprehensive manner taking into account the limitations or restrictions of one or more equipments such as boilers providing steam. Considering the capacity of the boilers to generate steam which is ultimately fed into the turbine generators for the purpose of power generation, the State Commission has determined the capacity of the Captive Power Plant as 40 MW for levy of parallel operation charges.

11. We have heard the Learned Counsel for the parties and carefully considered the same. In the

light of the rival contentions, the following questions would arise for consideration:

- (I) Whether the nature of dispute between the Respondent No.1 (CPP) and the Appellant is that of consumer dispute and, therefore, not subject to the jurisdiction of the State Commission?
- (II) Whether the capacity of the Respondent No.1 should be considered as 60 MW instead of 40 MW?

12. Let us discuss the above issues. The 1<sup>st</sup> issue is relating to the jurisdiction. According to the learned Counsel for the Appellant, the State Commission has no jurisdiction or authority to

adjudicate on consumer disputes; the dispute in the present case in respect of the parallel operation charges is a billing dispute; therefore, this dispute can be resolved only by the Grievance Redressal Forum under Section 42(5) of the Electricity Act, 2003 and this dispute cannot be adjudicated upon by the State Commission under Section 86(1) of the Electricity Act, 2003.

13. In order to substantiate this plea, the learned Counsel for the Appellant has cited judgments of this Tribunal in appeal Nos.125, 126 and 127 of 2006 in Chhattisgarh State Electricity Board Vs. M/s Raghuvir Ferro Alloys Ltd wherein the Tribunal had held that the Commission had no jurisdiction to adjudicate on the consumer dispute.

14. It is not disputed that the 1<sup>st</sup> Respondent in the capacity of Captive Power Plant filed the Petition before the State Commission under Section 86(1)(f) of the Electricity Act, 2003. As a Captive Power Plant, the 1<sup>st</sup> Respondent is not only engaged in the manufacture of iron and steel but also engaged in the generation of power. The following aspects which are not in dispute are relevant:

- (i) In the present case, there is no connected load of Respondent No.1 agreed with the Distribution Licensee, the Appellant at the place where the Captive Power Plant is situated.

- (ii) Captive Power Plant of the Respondent No.1 is being operated in parallel with the Grid. This means that Captive Power Plant is deriving Grid support from the Distribution Licensee.
- (iii) The parallel operation charges are payable in terms of the tariff order applicable.

15. In the context of the above aspects, it is clear that the relationship with regard to the parallel operation and Grid support between the Appellant and the 1<sup>st</sup> Respondent is between the Distribution Licensee and the Captive Power Plant (CPP) respectively. CPP is a Generating Company within the meaning of Section 2(8) read with Section 2(30) which defines Generating Station.



16. This is not a dispute between the Appellant as a Distribution Licensee and the Respondent No.1 regarding the supply of any power by the Appellant to the Respondent No.1 as a consumer of electricity. This is a dispute regarding the levy of parallel operation charges to be levied from the 1<sup>st</sup> Respondent CPP which is a generator.

17. The parallel operation is a facility in the nature of a Grid support to the Captive Power Plant. The Captive Power Plant gets the following advantages owing to the parallel operation with the Grid:

- (i) The fluctuations in the load of CPP are absorbed by the utility grid in the parallel operation mode. This will reduce the

stresses on the captive generator and equipments. The CPP can operate his generating units at constant power generation mode irrespective of his load cycle.

- (ii) Absorption of harmonics.
- (iii) Negative phase sequence current is generated by unbalance loads. The magnitude of negative phase sequence current is much higher at the point of common coupling than at generator output terminal. This unbalance current normally creates problem of overheating of the generators and other equipments of CPP, if not running in parallel with grid. When they are connected to the grid, the

negative phase sequence current flows into the grid and reduces stress on the captive generator.

- (iv) Captive Power Plants have higher fault level support when they are running in parallel with the grid supply. Because of the higher fault level, the voltage drop at load terminal is less when connected with the grid.
- (v) The grid provides stability to the load of Captive Power Plant to start heavy loads like HT motors.
- (vi) The variation in the voltage and frequency at the time of starting large motors and heavy loads, is minimized in the industry,

as the grid supply acts as an infinite bus. The active and reactive power demand due to sudden and fluctuating load is not recorded in the meter.

(vii) The impact created by sudden load throw off and consequent tripping of CPP generator on over speeding is avoided with the grid taking care of the impact.

(viii) The transient surges reduce the life of equipment of the CPP. In some cases, the equipment fails if transient is beyond a limit. If the system is connected to the grid, it absorbs the transient surges. Hence, grid enhances the life of CPP equipments.

18. In short, the gain to the Captive Power Plant is quite substantial in case there is grid support. Owing to the above said substantial gains to the Captive Power Plant by operating in parallel with the grid, the parallel operation charges are levied from the Captive Power Plant.

19. Therefore, the State Commission is empowered to deal with the question as to whether the levy of parallel operation charges is permissible or not. This aspect has been dealt with by this Tribunal in judgment dated 12.9.2006 in Appeal No.99 of 2006. In the said judgment, this Tribunal upheld the levy of parallel operation charges by the State Commission. The relevant observations of the Tribunal are as follows:

“11. Next we shall take up points C & D together, as the discussions overlap each other. The parallel operation is definitely a service that the second respondent renders to all the CPPs like the appellant. It is the contention of the appellant that no charges could be levied or collected for the said service. As rightly pointed out by the Expert who appeared for the second Respondent, the parallel operation is a service which extend support to the system and at the same it causes voltage dip in he system, harmonics, injection, additional reactive power requirement etc. By parallel operation the CPP gains more and hence it is liable to pay the charges for the service.

12. *The contention that no charges at all is payable for parallel operation or transmission system cannot be sustained and such a claim is contrary to factual position. There is no escape for CPP to pay charges for parallel operation by which parallel operation the CPP gains while the transmission system of the second respondent is affected apart from the admitted fact the transmission grid is strengthened by the power injected by CPP. Hence the contention that no charges at all is payable by CPP to the second respondent for parallel operation is not acceptable nor such a claim could be sustained.*

13. *Concedingly for the past several years, CPPs were paying at the rate of Rs. 16/= per KVA per month and in the absence any scientific data placed or objection by the appellant and other CPPs, the commission just followed the same scale and fixed the same tariff viz Rs. 16/= per KVA per month. On a review the commission has slashed the said rate and fixed it at Rs. 10/= per KVA per month. This works out approximately paisas 2 to 3 per unit per month, a negligible rate when compared to services rendered by second respondent. The rates of parallel operation charges so fixed are till the next tariff fixation, which is under progress.*



14. *It is strongly contended by the learned senior counsel that in the absence of scientific data and particulars the fixation is arbitrary and on the higher side. Per contra the second respondent while contending that the appellant could have very well placed the datas to show the fair rate of charges for such parallel operation.*

15. *We are informed by either side that the first respondent commission is seized of the very issue and the respondent after study and sample survey has placed required datas, which will enable the Regulatory commission to fix parallel operation charges on a scientific basis and on the materials and datas placed before it.”*

20. The above observations of the Tribunal would make it evident that the State Commission is empowered to fix the parallel operation charges payable. In this case, the State Commission has observed that the capacity of the Captive Power Plant is to be considered for levy of parallel operation charges as 40 MW. So, in these circumstances, we are of the view that this is not a mere dispute between the consumer and the Licensee. It is a dispute between the Generator and the Licensee with regard to the levy of parallel operation charges. Therefore, in respect of the 1<sup>st</sup> issue, we hold that the State Commission has got jurisdiction to inquire into the dispute raised in the Petition filed by the 1<sup>st</sup> Respondent before the State Commission and as such, the finding rendered by

the State Commission on the issue of jurisdiction is upheld.

21. Now let us go into the 2<sup>nd</sup> issue. According to the Appellant, the parallel operation charges are to be charged on the installed capacity of the Captive Power Plant which is to be reckoned as an aggregate of the nameplate capacity of all the generators connected to the State Electricity Board grid in parallel operation and, therefore, the State Commission is not justified in taking the operational capacity and holding that the parallel operation charges shall be for 40 MW only and not for 60 MW. The State Commission in the impugned order has decided that the capacity of the Captive Power Plant be considered for levy of parallel

operation charges as 40 MW. The claim of the Respondent No.1-Godawari Power & Ispat Ltd. was that the capacity of the Captive Power Plant should be considered as 30 MW but the claim of the Appellant who is the successor of the State Electricity Board was that the capacity should be considered as 60 MW being sum of the installed capacity of the turbine generators, which can inject electricity into the system, although the boilers which provide steam to generate the electricity can only generate steam to the extent for generating 40 MW of electricity. In regard to this issue, the State Commission has given the detailed reasons in the impugned order for arriving at such a conclusion. They are as follows:

*“5. We have gone through the submissions, rejoinders and arguments of the petitioner and respondent. The installed capacity of a generator is the fixed designed capacity at specific operational parameters which are specified by the manufacturer as name plate details on the generator. The petitioner in his submission has made a reference to our Non-Conventional Energy Regulations notified on 22.05.08 as per which the installed capacity of a generator is decided from its name plate details, which is in line with the contention of respondent. Hence we are in agreement with the respondent that the MVA capacity of the generating plant shall*

*be worked out on the basis of designed power factor which is recorded in the name plate of the generator, if the generator capacity is recorded in MW and not in MVA in name plate.*

*6. While going through the monthly statement in Form-G submitted by the petitioner to the Electrical Inspector, copies of which has been submitted by the petitioner, it is observed that 10 MW generators have also been operated along with T-4 (30 MW) generator and have generated energy during some months. As already mentioned both the 10 MW and 30 MW generators remained connected to grid.*

*As per submission of the petitioner the total steam available from the 3 boilers translate to a generating capacity of 35 MW and capacity of his new generator is 30 MW only. Hence it also concludes that additional steam which can generate 5 MW power over and above the quantity of steam to generate 30 MW of power is utilized in any of a 10 MW generator though it has to run under capacity. Moreover, during the site inspection by CSPDCL 1X30 MW and 1X10 MW generating sets were found connected with the CSEB's grid, on the basis of which billing of parallel operation charges for 2X10MW (de-rated to*

*9 MW each) has been discontinued w.e.f. 30.06.08.*

*7. Looking to the above, the Commission comes to the conclusion that from the quantum of steam generated by the three boilers installed in the premises of the power plant of the petitioner, only one 10 MW generating plant can run at a time along with 30 MW power plant. It is also proved from the statement G submitted by the petitioner. Thus, the effective connectivity of generating plant with grid is 40 MW and not 60 MW. Hence, we are of the view that the petitioner should legitimately be billed for parallel operation charges for 40 MW only and not for 60 MW*



*w.e.f. December, 2005. The excess amount billed be refunded /adjusted in their future bills. Further, for the purpose of arriving of MVA capacity, if not specifically recorded in name plate of the generator, the designed power factor of the individual generator recorded on their name plate may be considered.”*

22. The above observations contained in the above paragraphs would reveal that the State Commission has come to the above conclusion on the basis of the fact that from the quantum of steam generated by the 3 boilers, only one 10 MW Generating Plant can run at a time along a 30 MW power plant and thus, the effective connectivity of

Generating Plant with the grid is only 40 MW and not 60 MW.

23. The parallel operation charges are payable on the installed capacity of the Captive Power Plant. The Captive Power Plant consists of number of machines, equipments of which the steam boiler forms a part. The Captive Power Plant can produce only such a quantum of electricity based on the steam which is dependent on the capacity of the steam boilers installed. Even if the Captive Power Plant has multiple turbine generators for delivering the electricity of a substantially higher quantum of power, in case the boilers providing steam for electricity generation are of capacity less than the sum of capacity required for the turbine generators,

then the ultimate capacity of the Captive Power Plant will be less than the sum of rated capacity of the generators and will be in accordance with the capacity of the boilers to provide steam. In other words, the capacity of the Captive Power Plant cannot be considered in isolation of one or two equipments but in a comprehensive manner taking into account the limitations or restrictions of one or two equipments such as boilers providing steam.

24. Considering the capacity of the boilers to provide steam, it will ultimately fed into the turbine generators for the purpose of generation, the State Commission has correctly decided the capacity of Captive Power Plant as 40 MW for levy of parallel operation charges.

25. In view of the discussion, we are of the view that the finding given by the State Commission with regard to the capacity of the Captive Power Plant as 40 MW for levy of parallel operation charges is perfectly valid.

SUMMARY OF OUR FINDINGS:

**26. (1) The 1<sup>st</sup> Respondent, Godawari Power & Ispat Ltd. is the Captive Power Plant. This plant is being operated in parallel with the grid. The relationship in regard to the parallel operation with the grid is between the Captive Power Plant, the 1<sup>st</sup> Respondent herein and the Appellant, the Distribution Licensee. This is not a dispute between the Appellant a**

**Distribution Licensee and the Respondent No. 1 as a consumer of the electricity. This is a dispute regarding the levy of parallel operation charges to be levied and collected by the Appellant being a Distribution Licensee from the 1<sup>st</sup> Respondent, Captive Power Plant which is a generator. Therefore, the State Commission has got the jurisdiction to entertain and adjudicate upon this dispute under Section 86(1)(f) of the Electricity Act, 2003.**

**(2) The parallel operation charges are payable on the installed capacity of the Captive Power Plant. The Captive Power Plant consists of a number of machines and equipments. Then capacity of Captive Power Plant cannot be**

**considered in isolation of one or two equipments. MVA capacity of generating plant shall be worked out on the basis of designed power factor which is recorded in the nameplate of the generator. From the quantum of the steam generated by the three boilers installed in the premises of the 1<sup>st</sup> Respondent, only one 10 MW generating plant can run at a time along with the 30 MW power plant. Thus, the effective connectivity of generating plant with the grid is 40 MW and not 60 MW. Therefore, the 1<sup>st</sup> Respondent should be billed for parallel operation charges for 40 MW only and not for 60 MW.**

27. In the light of the above findings, we conclude that there is no merit in the Appeal. The State Commission has dealt with the issues raised in this case in the appropriate manner and as such, the impugned order does not call for interference. The Appeal is dismissed as devoid of merits. However, there is no order as to cost.

**(Justice P.S. Datta) (Rakesh Nath) (Justice M.Karpaga Vinayagam)**  
**Judicial Member      Technical Member      Chairperson**

**Dated: 18th February, 2011**

**REPORTABLE/NON REPORTABLE**