

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

**Dr. Pramod Deo, Chairperson**

**Shri S. Jayaraman, Member**

**Shri V.S. Verma, Member**

**Shri M. Deena Dayalan, Member**

**Petition No. 4/MP/2012**

**Date of Hearing : 20.3.2013**

**Date of Order : 9.5.2013**

**In the matter of:**

Petition under section 79 (l) (c) and (f) and 142 of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Short-term Open Access in inter-State Transmission) Regulations, 2008.

**And in the matter of:**

M/s Aarti Steel Ltd, Cuttack

Petitioner

Vs

1. Orissa State Load Despatch Centre, Bhubaneswar

2. GRIDCO Limited, Bhubaneswar

3. Indian Energy Exchange, New Delhi

4. National Load Despatch Centre, New Delhi

Respondents

**Parties Present**

1. Shri Sanjay Sen, Senior Advocate, ASL

2. Shri Rajiv Yadav, Advocate, ASL

3. Shri R.B. Sharma, Advocate, GRIDCO

4. Shri R.K. Mehta, SLDC, Odisha

**ORDER**

The petition has been filed under clause (c) read with clause (f) of sub-section (1) of Section 79 of the Electricity Act and Regulation 26 of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (hereafter "the Open Access Regulations") with the following specific prayers:

*"(a) pass an order, directing Respondent Nos. 1 and 3 to immediately provide open access to the Petitioner for schedule of power through Indian Energy Exchange:*

*(b) pass an order, directing Respondent No. 1 to pay a sum of 3,05,80,846/- (Rupees three Crore five lakh eighty thousand eight hundred forty six only) to the Petitioner, being the financial loss suffered by the Petitioner on account of denial of open access;*

*(c) pass such other order(s), as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."*

2. The facts, in brief, leading to filing of the present petition are narrated in the succeeding paras.

3. The petitioner entered into MoU dated 7.2.2009 with the State Govt. of Odisha for setting up a thermal power plant with total capacity of 500 MW in Cuttack District of the State. The MoU *inter alia* provides that depending upon whether coal blocks are allocated to the petitioner within or outside the State of Odisha the petitioner is required to sell 14% or 12% of its exportable generation output to the State Government or any agency nominated by the State Government at variable cost and the petitioner can sell the balance power to any person of its choice. Further, in accordance with the MoU, the petitioner can sell the power output earmarked for the State to any person of its choice, whether within the State or outside, in the event of the agency nominated by the State Government not fulfilling terms and conditions of the MoU. GRIDCO Ltd, the second respondent, (hereafter "GRIDCO"), the agency designated by the State Government entered into a Power Purchase Agreement (PPA) dated 24.10.2009 with the petitioner in accordance with the MoU signed between the State Government and the petitioner. It is stated that the PPA was limited to the State Government's mandatory share of 14% or 12%, as applicable.

4. One generating unit of the power plant with capacity of 50 MW was commissioned on 5.3.2010 and was declared under commercial operational with effect from 24.4.2010. The entire output of exportable power was supplied by the

petitioner to GRIDCO. Orissa Electricity Regulatory Commission (hereafter “State Commission”) by its order dated 13.9.2011, fixed a final tariff of ₹3.02/kWh for the power supplied by the petitioner to GRIDCO. The petitioner has stated that it has preferred an appeal against the State Commission’s order of 13.9.2011 (Appeal No. 191/2011) which is said to have been admitted by the Appellate Tribunal vide order dated 14.12.2011.

5. The petitioner has alleged that since recovery of dues for the power supplied to GRIDCO had been a subject matter of dispute, it explored the possibilities of selling power to other entities. The petitioner has stated that it signed a Member-Client Agreement dated 17.3.2011 with M/s Instinct Infra and Power Ltd., an inter-State trading licensee and member of the Indian Energy Exchange, the third respondent (hereafter “IEX”). M/s Instinct Infra and Power Limited are said to have applied for inter-State open access for sale of power generated by the petitioner. However, vide its letter dated 31.3.2011 State Load Despatch Centre, Odisha (hereafter “SLDC”) refused to give concurrence/No objection/prior standing clearance on the ground that the petitioner had committed to supply its entire generation to the State and therefore, there was no available surplus for sale outside the State. The petitioner has alleged that since it was not able to recover its cost of generation from GRIDCO it shut down the power plant on 21.6.2011.

6. The petitioner has stated that it was granted concurrence/No Objection/standing clearance for inter-State open access for the period from 10.10.2011 to 31.10.2011 and from 1.2.2012 to 31.5.2012.

7. The petitioner has stated that vide letter dated 22.10.2011, it applied to SLDC for grant of concurrence/No Objection/prior standing clearance for sale of power

through IEX during November 2011. The petitioner has stated that as it did not get response from SLDC, it informed SLDC vide letter dated 29.11.2011 that concurrence/No Objection/prior standing clearance for the open access is deemed to have been granted in accordance with the Open Access Regulations and it would be scheduling power through IEX. However, the petitioner has stated that GRIDCO by letter dated 30.11.2011 offered to purchase the petitioner's entire generation quantum at the rate approved by the State Commission in its order dated 13.9.2011 *ibid*. This offer was not accepted by the petitioner since, according to the petitioner, its cost of generation far exceeded the tariff approved by the State Commission. By letter dated 1.12.2011 the petitioner informed GRIDCO accordingly and also requested that till such time the decision to buy power was taken by GRIDCO, the petitioner be permitted to sell power through open access. The petitioner has stated that it also informed SLDC that since it was not given concurrence/No Objection/prior standing clearance it had to shut its power plant during November 2011.

8. The petitioner has stated that it made a fresh application dated 23.11.2011 for grant of concurrence/No Objection/prior standing clearance for open access for sale of power through IEX during December 2011. Since its application for grant of concurrence/No Objection/prior standing clearance for inter-State open access was neither accepted nor rejected by SLDC, it became entitled to seek open access on the basis of deemed concurrence/No Objection as provided under the Open Access Regulations. Accordingly, the petitioner claims to have submitted a notarised affidavit dated 7.12.2011 in the prescribed form to IEX through M/s Instinct Infra and Power Limited. However, it has been alleged that the petitioner's power was not scheduled. SLDC, vide letter dated 8.12.2011 informed the petitioner that since GRIDCO had expressed its intention to procure the entire quantum of power generated by the

petitioner, the application for concurrence/No Objection/prior standing clearance "is not considered".

9. The petitioner claims to have submitted another application dated 30.12.2011 requesting SLDC to accord concurrence/No Objection/prior standing clearance for open access during January 2012. SLDC vide letter dated 31.12.2011, informed the petitioner that its application for open access was not being considered because GRIDCO intended to procure all the power generated by the petitioner. The petitioner was further advised that "If there is any disagreement between the IPP and GRIDCO for procurement of power, a clearance from the Government of Orissa may be obtained for sale of power outside the State." In view of the aforesaid, the petitioner's application for concurrence/No Objection/prior standing clearance for inter-State open access for the month of January 2012 also stood rejected. As a result of alleged denial of open access, the petitioner claims to have suffered financial loss to the tune of ₹3,05,80,846/- as fixed costs associated with the power plant, without being able to generate any revenues.

10. From the petitioner's prayers extracted at para 1 above, it is seen that the petitioner not only seeks open access for sale of power through IEX but also seeks compensation for the losses allegedly suffered on account of denial of concurrence/No Objection/prior standing clearance for the inter-State open access by SLDC for sale of power generated by the petitioner through the power exchange. Though the replies have been filed by all the respondents, SLDC and GRIDCO have raised preliminary objections on maintainability of the petitioner's prayers, in particular the claim for monetary compensation. Therefore, in the present order only the preliminary objections on maintainability of the petitioner's claim are being

examined and the replies on merits of the petitioner’s claim are not being referred to for the present.

11. As the preliminary objections revolves around interpretation of clause (f) of sub-section (1) of Section 79 of the Electricity Act, sub-section (1) to the extent relevant may be noticed at this stage itself and is accordingly extracted below:

**“79. Functions of Central Commission.-** (1) *The Central Commission shall discharge the following functions, namely:-*

- (a) to regulate the tariff of generating companies owned or controlled by the Central Government;*
- (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*
- (c) to regulate the inter-State transmission of electricity ;*
- (d) to determine tariff for inter-State transmission of electricity;*
- (e) .....*
- (f) to adjudicate upon disputes involving generating companies or transmission licensees in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;*
- (g) .....*
- (h) .....*
- (i) .....*
- (j) .....*
- (k) .....*

12. SLDC has submitted that the first prayer of the petitioner being in general terms and without specifying the period for which open access has been prayed for,

the prayer cannot be granted as any person seeking short-term open access has to submit separate application for each month. SLDC has further submitted that in the second prayer the petitioner has sought monetary compensation of ₹3,05,80,846/- for the alleged losses suffered. SLDC has stated that the monetary claim against SLDC is not maintainable in view of provisions of Section 168 of the Electricity Act as it acted in good faith in discharge of its statutory duty. SLDC has next submitted that the monetary claim for the financial loss is not maintainable as it is not supported by any documentary evidence. SLDC has alleged that the petitioner has not come with clean hands as the petitioner was granted concurrence/No Objection vide letter dated 9.11.2011 from 10.11.2011 to 30.11.2011 during which period the petitioner exported 13.33702 MU of power through IEX but the petitioner has averred that the power plant had to be shut down for the entire month of November, 2011 for want of concurrence/No Objection. SLDC has stated that in terms of the minutes of the meeting held between the Government of Odisha and the petitioner on 19.1.2010, the petitioner had agreed to sell the entire 50 MW of power to the State of Odisha. On receipt of reply from the petitioner regarding unwillingness of GRIDCO to purchase entire power at the offered rate, SLDC had issued concurrence/No Objection for the period 10.10.2011 to 31.10.2011.

13. GRIDCO by way of preliminary objection has stated that petitioner has not submitted any document to show that 50 MW generating unit is legitimately an IPP and a generating company within the meaning of sub-section (28) of Section 2 of the Electricity Act and as such the petitioner cannot maintain the present petition. GRIDCO has further submitted that the subject matter of the present petition does not fall under clause (c) read with clause (f) of sub-section (1) of Section 79 of the Electricity Act as clause (c) pertains to regulatory function in connection with inter-

State transmission of electricity and the civil court is the proper for adjudication of the petitioner's claim.

14. We heard learned counsel for the parties.

15. Learned counsel for the petitioner submitted that under clause (f) of sub-section (1) of Section 79 of the Electricity Act, this Commission has been specifically conferred with the power "to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) and to refer any dispute for arbitration" and there is no provision under the law admitting of any limitation on the exercise of general power of adjudication of disputes by this Commission in respect of the matters covered under clauses (a) to (d) of sub-section (1). Learned counsel submitted that open access is 'connected with' regulation of inter-State transmission of electricity under clause (c) and this Commission in the past exercised jurisdiction in disputes involving denial of open access. Similarly, learned counsel argued, the right to claim monetary compensation emanates from wrongful denial of open access and therefore, it cannot be said that such claim is not 'connected with' regulation of inter-State transmission of electricity. Learned counsel contended that a specific provision to confer power to award compensation is not necessary. Referring to the statutory scheme under the Electricity Act, learned counsel submitted that the Electricity Act is a special enactment, providing for a special adjudicatory mechanism through the Central and State Regulatory Commissions. Relying on the judgment of the Hon'ble Supreme Court in **Shiv Kumar Chadha Vs. Municipal Corporation of Delhi [(1993) 3 SCC 161]**, learned counsel submitted that since open access is a statutory right under the



Electricity Act, all issues pertaining to open access, including a claim for compensation for wrongful denial, are to be adjudicated under the Electricity Act. He further submitted that the Hon`ble Supreme Court in **PTC India Limited Vs Central Electricity Regulatory Commission [(2010) 4 SCC 603]** observed that the Electricity Act is an exhaustive code on all matters concerning electricity. Apart from **PTC India Ltd**, learned counsel relied upon the judgment of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Limited v. Essar Power Limited [ (2008) 4 SCC 755]**, involving interpretation of clause (f) of sub-Section (1) of Section 86 of the Electricity Act which confers power of adjudication upon the State Commission. Learned counsel contended that the power to regulate is of wide import and deserves to be liberally construed. In support of his contention, learned counsel relied on Hon`ble Supreme Court judgment in **U.P Coop. Cane Unions Federations Vs. West U.P Sugars Mills Association [(2004)5SCC 430]**. He further submitted that even assuming that the Electricity Act does not bar jurisdiction of civil courts to grant compensatory relief, the existence of an alternate forum for the relief claimed would not oust the jurisdiction of this Commission and that the petitioner being *dominus litus*, can choose either forum for enforcement of its claim. In support of this proposition learned counsel relied upon the judgment of the Hon'ble Supreme Court in **Dhannalal Vs. Kalawatibai [(2002) 6 SCC 16]**. Learned counsel submitted that award of monetary compensation would serve as necessary deterrent on those who flout the statutory mandate of non-discriminatory open access with impunity.

16. Learned counsel for SLDC submitted that the Electricity Act has not conferred the power and jurisdiction upon this Commission to adjudicate claims for compensation arising out of refusal to grant open access as the claim of compensation for refusal to grant open access cannot be said to be directly connected with inter-State transmission of

electricity. Learned counsel contended that the claim for compensation does not fall under clause (f) of sub-section (1) of Section 79 of the Electricity Act which envisages the disputes of a regulatory nature only and not money claims for compensation. He submitted that the civil court is the appropriate forum for adjudication of claims for compensation. Learned counsel further argued that in clause (f) of sub-section (1) of Section 79 of the Electricity Act, the word “involving” should be read as “between” since as held by the Hon’ble Supreme Court in **Ramesh Mehta Vs Sanwal Chand [ (2004) 5 SCC 409]**, it is admissible to add or omit or substitute words to make a statute workable and correct drafting errors. Learned counsel further argued that word “or” in clause (f) should be read as “and” . To support his argument, learned counsel relied upon the judgment of the Hon’ble Supreme Court in **Delhi Municipality Vs Tek Chand (AIR 1980 SC 360)**. Learned counsel also referred to **Maxwell on Interpretation of Statutes (11<sup>th</sup> Edition)**. Accordingly, according to learned counsel, this Commission has the jurisdiction to adjudicate upon the disputes “between the generating company and the transmission licensee” under clause (f) of sub-section (1) of Section 79 of the Electricity Act. Learned counsel argued that the present dispute is not between a generating company and a transmission licensee, therefore, this Commission does not have the jurisdiction to entertain the claim for compensation since that case a money dispute involving a private party would also be brought within the jurisdiction of this Commission under clause (f) of sub-section (1) of Section 79. According to learned counsel, literal interpretation would lead to absurdity and uncertainty. Learned counsel further argued that the reliance by the petitioner on Regulation 26 of the Open Access Regulations to support its claim for compensation is misconceived on the view that jurisdiction, if not conferred under the Electricity Act,

cannot be conferred through the Regulations as such power is in excess of the power conferred under the Electricity Act. Learned counsel drew sustenance for the argument from the judgment of the Hon'ble Supreme Court in the case of **Life Insurance Corporation Vs Sunil Kumar Mukherjee [(1964) 5 SCR 528]**. It was further contended by learned counsel that SLDC is a statutory body and not a commercial entity and for this reason also the claim against SLDC is not competent.

17. Learned counsel for GRIDCO submitted that under clause (f) of sub-section (1) of Section 79 of the Electricity Act this Commission is conferred jurisdiction to adjudicate disputes involving generating companies and the transmission licensees in regard to the matter connected with clauses (a) to (d) of sub-section (1) and to refer any dispute for arbitration. Learned counsel contended that neither GRIDCO nor SLDC is generating company or the transmission licensee. According to learned counsel, the petition does not fall for adjudication under any of the clauses (a) to (d).

18. We have carefully considered the submissions of learned counsel for the parties on the maintainability of the petition.

19. Under clause (f) of sub-section (1) of Section 79 of the Electricity Act, extracted above, this Commission is conferred power of adjudication of disputes if such disputes

- (i) involve generating companies or the transmission licensees, and
- (ii) the disputes are in regard to any of the matters connected with clauses (a) to (d), that is, regulation of tariff of the generating companies of the kind mentioned in clauses (a) and (b) or regulation of inter-State transmission of electricity under clause (c) or determination of tariff for inter-State transmission of electricity under clause (d).

20. The first question falls for consideration is whether it is permissible to read the word “involving” in clause (f) as “between” as contended by learned counsel for SLDC. One of the fundamental principles of statutory interpretation is that a construction which requires addition or substitution of words or which results in rejection of words as meaningless has to be avoided. In **Commissioner of Income Tax Vs Tata Agencies [(2007) 6 SCC 429]** the Hon’ble Supreme Court held that

*“62. The intention of the legislature has to be gathered from the language used in the statute which means that **attention should be paid to what has been said as also to what has not been said.**” (Emphasis supplied)*

21. In **Union of India Vs Deoki Nandan Aggarwal (AIR 1992 SC 96)**, yje Hon’ble Supreme Court ruled that

*“14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. **The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there.**” (Emphasis supplied)*

22. Learned counsel for SLDC has relied upon the judgment in the case of **Ramesh Mehta Vs Sanwal Chand** (supra). In this case it was undoubtedly held by the Hon’ble Supreme Court that in “suitable” cases the court may add or omit or substitute words to make a statute workable. We however see no reason to accept the contention of learned counsel for SLDC that without substituting the word “involving” with the word “between”, clause (f) of sub-section (1) of section 79 becomes unworkable or leads to any uncertainty or absurdity. The plain dictionary meaning of word “involve” is "to envelop, to entangle, to include, to contain, imply"

**(Shorter Oxford Dictionary)**. Therefore, the expression “*disputes involving generating companies or transmission licensees*” in clause (f) means the disputes which entangle or include the generating companies or transmission licensees. This interpretation is logical and stands to reason when seen that the entities associated with clauses (a) to (d) are either the generating companies or the transmission licensees. Further, as per **P Ramanatha Aiyar’s Advanced Law Lexicon** (Third Edition), the word “involve” is also used, according to the context, as synonymous with word “affected”. In the context of clauses (a) to (d) of sub-section (1) of Section 79, the word “involving” can be said to have been used synonymously with the word “affecting” because the regulatory functions discharged under these clauses directly relate to the generating companies and the transmission licensees. For this reason, the expression “disputes involving generating companies and transmission licensees” may be read as “disputes affecting generating companies or transmission licensees”. There is absolutely no warrant to substitute the word “involving” with the word “between”. Such a contention by learned counsel for SLDC shall be totally out of context and defeat the purpose and object of the power or function of adjudication conferred on this Commission. Therefore the argument advanced by learned counsel for SLDC to substitute the word “between” the word “involving” is rejected.

23. Learned counsel for SLDC further contended that the word “or” appearing in clause (f) should be read as “and” to make the provision more meaningful and certain. Learned counsel has relied upon the judgment of the Hon’ble Supreme Court in **Delhi Municipality Vs Tek Chand** (supra) and **Maxwell on Interpretation of Statutes**. Learned counsel has quoted the following portion of **Maxwell on Interpretation of Statutes** -

*“to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions ‘or’ and ‘and’ one for the other. The word ‘or’ is normally disjunctive and ‘and’ is normally conjunctive, but at times they are read as vice versa. As Scrutton LJ said in Green v Premier Glynhonywy State Co (1928) 1 KB 561 at p. 568, ‘you do sometimes read ‘or’ as ‘and’ in a statute..... But you do not do it unless you are obliged, because ‘or’ does not generally mean ‘and’ and ‘and’ does not generally mean ‘or’. As Lord Halsbury L.C. observed in Mersey Docks % Harbour Board v. Handerson (1883) 13 AC 595 (603) the reading of ‘or’ as ‘and’ is not to be resorted to “unless some other part of the same statute or clear intention of it requires that to be done.” The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of cases of turning ‘or’ into ‘and’ and vice versa not gone to the extreme limit of interpretation.”*

24. From the above extracts it follows that ‘or’ is read as ‘and’ only in exceptional circumstances when some other part of the statute requires it to do so or there is clear intention of the legislature to that effect. Learned counsel did not bring to our notice any provision of the Electricity Act or the intention of Parliament which may compel us to read word ‘or’ in clause (f) of subsection (1) of Section 79 as ‘and’. Therefore, the contention of learned counsel does not merit any consideration.

25. We may point out that acceptance of the contentions of learned counsel for SLDC regarding interpretation of clause (f) of sub-section (1) of Section 79 will lead to absurd results. Learned counsel has argued that clause (f) is applicable when the dispute is **between** the generating company **and** the transmission licensee. There can be no direct commercial relationship between a generating company and a transmission licensee in discharge of the functions by this Commission under clauses (a) to (d) of Sub-section (1) of Section 79. The Electricity Act contemplates direct commercial relationship between a generating company and a distribution licensee or trading licensee or a consumer, without involvement of the transmission licensee commercially. The transmission licensee cannot own electricity but acts a carrier of electricity. In this view of the matter, there can be least or rather no

possibility of a dispute arising between a generating company and the transmission licensee. Therefore acceptance of the argument made by learned counsel for SLDC, would render clause (f) otiose. Also, there will be no machinery left for adjudication of disputes between a generating company and a distribution licensee or trading licensee or a consumer or a transmission licensee and the distribution licensee or trading licensee or consumer. Therefore, the interpretation suggested by learned counsel for SLDC lacks merit and is not worthy of acceptance.

26. Therefore, in our considered opinion when a generating company or transmission licensee feels aggrieved in connection with any matter listed in clauses (a) to (d), such generating company or transmission licensee can approach this Commission for adjudication of the dispute under clause (f) of sub-section (1) of Section 79 of the Electricity Act and seek redressal of the grievance.

27. It has been contended on behalf of GRIDCO that the petitioner has not been able to establish that it is a generating company and therefore it cannot maintain action. We have considered the objection on behalf of GRIDCO but are of the opinion that objection merits summary rejection. Clause (f) of sub-section (1) of Section 79 does not refer to CPP or IPP. Under this provision, a generating company can seek adjudication of its dispute. The expression 'generating company' has been defined under sub-section (28) of Section 2 of the Electricity Act as "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." The expression 'generating station' has been defined under sub-section (30) of Section 2 of the Electricity Act to mean as "any station for generating electricity". The definition does not prescribe the specific capacity of the station to be considered as

the generating station. It is not disputed that the petitioner owns and operates and maintains the generating station of capacity of 50 MW for generating electricity. Therefore, the petitioner is a generating company and can maintain action under clause (f) In regard to matters connected with clauses (a) to (d).

28. Learned counsel for GRIDCO submitted that the subject matter of the present dispute does not fall within clauses (a) to (d). The present dispute does not involve tariff of the generating companies or for inter-State transmission of electricity and therefore cannot be said to be in relation to matters connected with clauses (a) or (b) or (d). Accordingly, it is to be seen whether the dispute is connected with regulation of inter-State transmission of electricity under clause (c). Inter-State transmission of electricity, as it is understood, means conveyance of electricity by means of main transmission line from the territory of one State to another State. The petitioner had applied for open access under the Open Access Regulations for conveyance of electricity outside the State of Odisha for sale to other States through IEX. Clause (2) of the Open Access Regulations provides that these regulations apply to grant of short-term open access for energy transfer through use of the transmission lines or associated facilities with such lines on the inter-State transmission system. The Open Access Regulations lay down the terms and conditions of the open access on the inter-Station transmission system. Therefore, the dispute on account of alleged denial of open access under the Open Access Regulations is in relation to regulation of inter-State transmission of electricity, a function entrusted to this Commission under clause (c) of sub-section (1). The dispute raised is in regard to denial of access to the inter-State transmission system. The dispute raised thus essentially



concerns regulation on inter-State transmission system falling under clause (f) of sub-section (1) of Section 79 of the Electricity Act.

29. Based on the above discussion, we sum up our conclusions as under:

- (a) A generating company or a transmission licensee is competent to maintain action under clause (f) of sub-section (1) of Section 79 of the Electricity Act.
- (b) The petitioner is a generating company within the meaning of the term defined under sub-section (28) of Section 2 of the Electricity Act.
- (c) The dispute raised by the petitioner is in relation to a matter connected with clause (c) of sub-section (1) of Section 79 of the Electricity Act.
- (d) The adjudication of the dispute squarely falls within the scope of clause (f) of sub-section (1) of Section 79 of the Electricity Act.

30. It was contended on behalf of SLDC and GRIDCO that the claim for compensation cannot be maintained under clause (f) of sub-section (1) of Section 79 of the Electricity Act and such a claim can be filed before a civil court. A similar issue was raised before the Appellate Tribunal In the case of **Tamil Nadu Electricity Board Vs Neyveli Lignite Corporation Ltd (Appeal No 49 /2010)**. The Appellate Tribunal framed the issue whether this Commission, under Clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003, had the inherent jurisdiction to adjudicate upon money claim. It was argued before the Appellate Tribunal that this Commission did not have the inherent jurisdiction to adjudicate upon the money claim which was the dispute of civil nature and could be adjudicated upon only by the

Civil Court. It was also argued that this Commission did not have a jurisdiction to decide the disputed questions of fact as the jurisdiction for that purpose was vested only in the civil court. These contentions were rejected by the Appellate Tribunal in its judgment dated 10.9.2010. The Appellate Tribunal held that -

*“(i) Electricity Act, 2003 has vested power on the Central Commission to adjudicate the dispute which has been carved out by the Act. Section 79(1)(f) of the Act has carved out a limited and narrow specialized field wherein the Central Commission is empowered to adjudicate. The scope of the power in dispute involves one or more generating companies, and to matters connected with clauses (a) to (d) of section 79 (1). The matter that come before the Central Commission for adjudication are not private civil disputes affecting individual rights but matters and disputes which are relevant to the field of electricity as governed by the related national policies and the Act, 2003. The composition of the Central Commission is such that by virtue of the knowledge, skill and experience, the Central Commission undoubtedly is not only well equipped to discharge the adjudicatory functions bestowed on it but it is more suited to appreciate the technical and factual questions arising in the matters that come before them.*

31. The Appellate Tribunal concluded the finding on the issue observing that

*“37. Applying the above dictum to the present case, it follows that the challenge to the jurisdiction of the Central Commission to adjudicate upon the dispute with reference to the reimbursement of the income tax or refund of excess rebate, is not tenable.”*

32. It is established law that when a power is conferred on a statutory authority such power also includes exercise of other incidental or ancillary powers by the statutory authority without the exercise of which the main power cannot be exercised. **De Smith in ‘Judicial Review of Administrative Action’** put the law pithily in these words:

*“The House of Lords has laid down the principle that "whatever may fairly be regarded as incidental to or consequent upon those things which the Legislature has authorised ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires.”*

33. The Constitution Bench of the Hon'ble Supreme Court in case of **State of Uttar Pradesh vs Batuk Deo Pati Tripathi & Another [(1973) 2 SCC 102]** held that a power to do a thing necessarily carries with it the power to regulate the manner in which the thing may be done.

34. In **Khargram Panchayat Samiti and another v. State of W.B. and others [(1987) 3 SCC 82]** the issue arose whether, in the absence of any specific statutory provision, the Panchayat Samiti conferred with a statutory power to issue licence for holding "hats" or "fairs" also possessed any powers to fix the date on which the 'hat' or 'fair' would be held. It was held that such power to fix the date was necessarily incidental to the power of the grant of the licence, in the absence of any provision in the statute. The Hon'ble Supreme Court came to the conclusion that it is impossible to separate the power to grant a licence to hold the "fairs" from that of the fixation of the date thereof, because the two are inseparably and intrinsically interconnected.

35. In **Deepak Theatre Dhuri Vs State of Punjab (AIR 1992 SC 1519)** the Hon'ble Supreme Court held that "fixation of rates of admission became a legitimate ancillary or incidental power in furtherance of the regulation under the (Cinematograph) Act".

36. By applying the principles laid down in the above judgments of the Hon'ble Supreme Court, it can be held that the power of this Commission to regulate inter-State transmission of electricity under clause (c) of sub-section (1) of Section 79 carries with it the power to award compensation as exercise of power to grant compensation in appropriate cases on the aggrieved person suffering losses is considered incidental or ancillary to the power of regulation of inter-State

transmission of electricity. Unless the power of this Commission to adjudicate the claims for compensation is read into clause (f), the power cannot be exercised effectively. In a situation where the power to grant compensation is not read into the statutory framework, the person aggrieved has in the first instance to approach this Commission for adjudication of the dispute under clause (f) of sub-section (1) of Section 79 and in case the grievance is found to be justified, the person aggrieved shall have to knock at the doors of the civil court for enforcement of his claim for compensation. It will not only give rise to multiplicity of proceedings, but may also bring in uncertainty, for the civil court may arrive at its own findings on the issues already decided by this Commission. Such interpretation will be opposed to the policy of law and cannot be sustained. Therefore, the power to grant compensation is to be inherently read into this Commission's power of adjudication of disputes under clause (f) of sub-section (1) of section 79 of the Electricity Act.

37. This Commission is a specialised body. The composition of this Commission is such that by virtue of the knowledge, skill and experience of its Members, it is not only well-equipped to discharge the adjudicatory functions but it is most suited for that purpose and to appreciate the technical and factual questions arising in the matters that come before it. For this reason also, this Commission cannot be denied the power of adjudication of claims for monetary compensation.

38. The Open Access Regulations have been notified by this Commission in exercise of its powers under Section 178 of the Electricity Act. As provided under Regulation 26 of the Open Access Regulations, all disputes arising under these regulations are to be decided by this Commission on the basis of an application made by the person aggrieved. This Commission has not only the power to notify the

regulations for the purses of the Electricity Act but also to implement and enforce such regulations in all respects. The power to grant compensation is incidental to this Commission's power to implement and enforce the Open Access Regulations. The monetary claim for compensation is also considered to be included in the expression "all disputes under these regulations" used in Regulation 26 of the Open Access Regulations. On this view of the matter also, this Commission possesses the power and authority not only to entertain an application from the aggrieved person who has been denied open access but also to dispose of the same in accordance with law by doing such acts which are necessary for exercise of power of adjudication of the grievance relating to denial of open access.

39. We may examine the matter from yet another angle. Under Section 142 of the Electricity Act, this Commission is empowered to impose penalty for contravention of its orders, regulations etc. Thus contravention of the Open Access Regulations by any person, which includes the statutory bodies like SLDC, is punishable under Section 142 of the Electricity Act. Section 147 of the Electricity Act declares that the penalties imposed are in addition to, and not in derogation of, any liability in respect of payment of compensation. Therefore, the liability of the person contravening the orders, regulations etc of this Commission to compensate the aggrieved person for the losses suffered by such aggrieved person on account of contravention of the Open Access Regulations cannot be denied.

40. Recently, the question of grant of compensation in a situation of denial of open access was considered by the Appellate Tribunal in Parris Sugar Industries

Limited Vs Karnataka Electricity Regulatory Commission and Others (Appeal No 140/ 2012). In its judgment dated 27.9.2012 the Appellate Tribunal held that -

*“This Tribunal has in the past held that any injection by a generating company without any schedule or concurrence could not be recognized for payment by the distribution licensee which did not have any PPA with the generating company, in the interest of security and economic operation of the grid and maintaining grid discipline. However, the Tribunal has also decided to grant compensation for unscheduled injection by the generator in case the circumstances of the case warranted so and where the generator had to inject energy in the compelling circumstances forced by the action of the licensee. The circumstances in the present case are also similar. The Appellant’s application for NOC for open access for the period 15.10.2011 to 31.10.2011 was pending before Respondent no. 3 and despite follow up they did not get any response, either accepting or rejecting the application. The Appellant’s power plant is not a normal power plant and operates only in the crushing season for a few months during the year. According to the Appellant, crushing had to be commenced on 3.11.2011. They, however, did not approach the Respondent no. 3 for granting open access for further period commencing from 3.11.2011 as their earlier application for the period 15.10.2011 to 31.10.2011 was already pending with the Respondent no. 2, without any decision.*

*We find force in the arguments of the Ld. Counsel for Appellant. **In the circumstances of the case, we feel that the claim of the Appellant for compensation could not be outrightly rejected on the technical grounds that the injection of power was subsequent to the period for which open access was sought and the Appellant should have again applied for NOC for the further period.** Considering that the injection of power commenced only 3 days after the end of the period for which open access was sought and the Appellant was being made to run from pillar to post to obtain the NOC for open access despite the clear findings of the Central and State Commission in their favour. **In our opinion, the Appellant deserves to be compensated for the energy injected. Now, we have to decide the rate at which the compensation may be given to the Appellant to meet the end of justice.**” (Emphasis added)*

41. The Appellate Tribunal awarded compensation to the aggrieved person denied open access.

42. Therefore, it is concluded that the interpretation that this Commission has jurisdiction to award compensation while adjudicating the disputes raised by a

generating company regarding justification of denial of open access is in consonance with statutory provisions, reason and logic. Accordingly, the petition to claim compensation filed under clause (c) read with clause (f) of sub-section (1) of Section 79 of the Electricity Act and Regulation 26 of the Open Access Regulations is maintainable and this Commission is competent to adjudicate the claim on merits. The preliminary objections as to the jurisdiction of this Commission raised on behalf of SLDC and GRIDCO are hereby dismissed. The petition is admitted for hearing on merit.

43. As the pleadings in this case are already complete, the petition shall be set down for hearing on merits on 18.6.2013.

SD/-  
**(M. Deena Dayalan)**  
Member

SD/-  
**(V.S. Verma)**  
Member

SD/-  
**(S. Jayaraman)**  
Member

SD/-  
**(Dr. Pramod Deo)**  
Chairperson