

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Shri Bhanu Bhushan, Member**
- 2. Shri R Krishnamoorthy, Member**
- 3. Shri S.Jayaraman, Member**

**Petition No.83/2008**

**In the matter of**

Reimbursement of additional expenditure towards deployment of Special Security Forces (CISF) at Salakati and Bongaigaon sub-stations for the year 2006-2007 in Eastern Region.

**And in the matter of**

Power Grid Corporation of India Ltd., Gurgaon ..... **Petitioner**

**Vs**

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Calcutta
3. Grid Corporation of Orissa Ltd., Bhubaneswar
4. Damodar Valley Corporation, Calcutta
5. Power Department, Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Ranchi

**Respondents**

**The following were present:**

1. Shri U.K. Tyagi, PGCIL
2. Shri B.C.Pant, PGCIL
3. Shri M.M. Mondal, PGCIL
4. Shri R.B.Sharma, Advocate, BSEB
5. Shri Rinchen O. Bhutia, State of Sikkim

**ORDER  
(DATE OF HEARING: 25.11.2008)**

The application has been made to seek reimbursement by the beneficiaries in Eastern Region of additional expenditure incurred towards deployment of special security forces at Salakati and Bongaigaon sub-stations for the year 2006-07.

2. The petitioner has based its claim on Regulations 12 and 13 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations,

2004 (the 2004 regulations) which empower the Commission to make appropriate provisions for removing difficulties and to relax the provisions thereof in appropriate cases.

3. The petitioner has submitted that its establishments in North-eastern region have been receiving threats from the militant outfits and there had been cases of kidnapping of employees and contractor's staff by the militants. It has been stated that CISF cover was provided at Salakati and Bongaigaon sub-stations taking in view the disturbed conditions prevailing in the area, to accord proper security to its assets and personnel deployed at these sub-stations and to ensure uninterrupted power flow to the beneficiaries. The petitioner has listed several instances of kidnapping, attack and killing to highlight difficult security scenario prevalent in the North-eastern region. The petitioner has referred to the Commission's earlier orders dated 27.10.2006 and 30.8.2007 in Petitions No.81/2006 and 81/2007 whereby reimbursement of abnormal O&M expenses for the years 2004-05 and 2005-06 respectively were approved. The petitioner has submitted that there had not been any improvement in law and order position and sub-stations were under constant threat of militancy during the period for which CISF was deployed. In order to counter the situation, the petitioner is stated to have continued deployment of the additional security forces. The petitioner has submitted corroborative evidence in the form of copies of the newspaper reports and correspondence with the security agencies to substantiate its claim of the prevailing law and order situation.

4. The petitioner's claim for reimbursement of special security expenses is supported by auditors' certificate dated 29.2.2008, which incorporates the details of expenditure incurred on making special security arrangement at Bongaigaon

and Salakati sub-stations, as appended herein below, verified from the books/records of the petitioner for the year 2006-07:

S.No.		400 kV Bongaigaon sub-station	220 kV Salakati sub-station
1.	Salary	6138012	9245566
2.	Medical	100141	66740
3.	Vehicle expenses	259410	248980
4.	Other expenses	205025	291674
	<b>Total</b>	<b>6702588</b>	<b>9852960</b>

5. The petitioner has apportioned the salary component of the expenditure between Bongaigaon and Salakati sub-stations for the year 2006-07 on 50:50 basis, based on the Commission's order dated 30.8.2007 in Petition No. 81/2007. The petitioner has submitted the following claim for reimbursement of expenses for these sub-stations:

(Rs. in lakh)			
S. No.	Description	400 kV Bongaigaon sub-station	220 kV Salakati sub-station
1.	Salary	76.92	76.92
2.	Medical	1.00	0.67
3.	Vehicle expenses	2.59	2.49
4.	Other expenses	2.05	2.92
	<b>Total</b>	<b>82.56</b>	<b>83.00</b>

6. The petitioner has submitted that:

(a) Total security expenses of Rs. 83 lakh associated with Salakati sub-station forming part of Chukha transmission system are to be shared by the constituents of Eastern Region in proportion to the transmission charges shared by the beneficiaries of that Region.

(b) Security expenses for Bongaigaon sub-station associated with Bongaigaon-Malda transmission line (inter-regional asset between

Eastern Region and North-eastern Region) under Kathalguri transmission system are to be shared by the constituents of Eastern Region and North-eastern Region on 50:50 basis, and the charges so calculated for Eastern Region are to be further shared by the constituents of that Region in proportion to the transmission charges shared by them for Bongaigaon-Malda transmission line.

7. Reply has been filed by the respondents, Bihar State Electricity Board (BSEB) and West Bengal State Electricity Distribution Company Limited (WBSEDCL).

8. The first respondent, BSEB without contesting the need for additional security deployment, in its reply has stated that Bongaigaon and Salakati substations are located in the State of Assam falling in North-eastern Region. Therefore, it is argued that the beneficiaries of that region should bear the additional security expenses, particularly so when Bongaigaon sub-station is a part of inter-regional Kathalguri transmission system and Salakati sub-station though sanctioned as part of Chukha transmission system, is also used by the constituents of North-eastern Region. The first respondent has also taken preliminary objections in the maintainability of the application under Regulations 12 and 13 of the 2004 regulations, permissibility of reimbursement of additional security expenditure under the Electricity Act, 2003 and the Commission's authority to order the sharing the expenditure towards deployment of special security forces to provide the protection to the life and property in view of the prevailing law and order situation which is the State subject under the Constitution of India. In the reply, the first respondent has prayed for dismissal of

the petition on the ground of being outside the ambit of Regulations 12 and 13. The first respondent has sought a direction to the petitioner to identify the credible arrangement to meet the additional security requirements and has urged the Commission not to adjudicate on the claim being beyond its functional jurisdiction, besides allegedly being unconstitutional.

9. The second respondent, WBSEDCL in its reply has stated that West Bengal State Electricity Regulatory Commission has fixed tariff up to 2006-07 without considering the additional security expenditure and it will not be possible for it to recover the additional amount through tariff. It has been further stated that benefit of ICTs in the downstream Salakati sub-station located in the North-eastern Region is being taken by the constituents of that region and they should bear its abnormal security expenses

10. We heard the representative of the petitioner and Shri R.B.Sharma, Advocate for the first respondent.

11. First we consider the preliminary issue of maintainability of the application. The application has been made under Regulations 12 and 13 of the 2004 regulations. Regulation 12 authorizes the Commission to make necessary provisions, not inconsistent with these regulations to remove any difficulty arising in giving effect to these regulations. Learned counsel for the first respondent submitted that no difficulty had arisen in giving effect to the 2004 regulations. Therefore, Regulation 12 was not attracted and as such application was not maintainable under this regulation. We, for the purpose of the present application,

accept the argument of the learned counsel and proceed further to examine other issues.

12. The petitioner has made the application also under Regulation 13 of the 2004 regulations. Regulation 13 is reproduced hereunder;

“13. Power to Relex: The Commission, for reasons to be recorded in writing, may vary any of the provisions of these regulations on its own motion or an application made before it by an interested person.”

13. Learned counsel for the first respondent argued that under Regulation 13, the Commission is empowered to vary any of the provisions of the 2004 regulations by appropriate amendments of these regulations. He argued that without amendments, re-imbusement of additional security expenses cannot be permitted as these expenses cannot be said “to meet the abnormal O & M expenses”.

14. Scope of Regulation 13 of the 2004 regulations was considered by the Appellate Tribunal for Electricity in its judgment dated 22.1.2007 in Appeal No. 89/2006. (NTPC Ltd. Vs Madhya Pradesh State Electricity Board and Others). The Appellate Tribunal held that the power has been conferred in the Commission to relax the rigors of the 2004 regulations in appropriate cases. The Appellate Tribunal further held as under:

“In *Bhinka vs. Charan Singh*, AIR 1959 SC 960, it was held that headings or titles pre-fixed to a section can be referred to for construing the same. In *Ralph Godrej Carriton*, AIR 1955 559, it was held that a heading is to be regarded as key to the interpretation of the clause under examination. In *Qualter Hall & Co. Ltd. vs. Board of Trade*, 1961(3) AU E.R. 389, it was held that heading can be treated as preamble to the provision following it. These principles can also be utilized for construing the Regulations, which are quasi legislative in nature. Therefore, Regulation 13 can be construed in the light of its Heading. Reading the Regulation in the light of its Heading, it must be held that the power comprised in Regulation 13 is essentially the ‘power to relax’. In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the

Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulations is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations.“

15. Based on the ratio of the above judgment of the Appellate Tribunal, the Commission, by virtue of Regulation 13 of the 2004 regulations, is authorized to relax provisions of any of the provisions of these regulations in individual cases. It is not necessary, for this purpose, to amend or change provisions of any of the 2004 regulations. It does not require any noumenal attributes to realize that security expenses are part of O & M expenses. Therefore, in our considered view, the application is maintainable as it seeks re-imbusement of additional security expenses incurred, in relaxation of the O & M norms specified under the 2004 regulations. The matter falls within the purview of the Commission.

16. Next we consider whether the additional security expenses for Salakati sub-station should be shared by the State utilities in North-eastern Region. Salakati sub-station is part of the Chukha transmission system, geographically located in North-eastern Region. However, the State utilities in Eastern Region are the beneficiaries of the transmission system. There is no evidence on record to show, except the statements made in the reply-affidavits, that the State utilities in North-eastern Region are using Salakati sub-station in any manner. Based on the geographical location of the sub-station, they cannot be asked to share the additional security expenses. It also bears notice that no part of the normal transmission charges for Chukha transmission system, of which Salakati sub-station is an element, are borne by the State utilities in North-eastern Region.

17. The next contention of the learned counsel for BSEB, was that since under the Constitution of India law and order is the State subject, the security for the petitioner's establishments should be the responsibility of the State Government concerned. Therefore, it was submitted that the expenses incurred to provide special security could not be passed on the beneficiaries of the transmission assets. We are not impressed by the argument. The petitioner has deployed the Central Industrial Security Force (CISF) to protect its establishment and the employees against the threats of militants, which appear to be real and not imaginary. CISF has been raised under the Central Industrial Security Force Act, 1968, enacted by the Parliament to provide for the constitution and regulation of an armed force of Union (CISF) for the better protection and security of industrial undertakings owned by the Central Government and certain other industrial undertakings and the employees of all such undertakings. The petitioner is an industrial undertaking owned by the Central Government. Thus, deployment of CISF by the petitioner to safeguard its property and employees is in accordance with law and cannot be faulted.

18. As noted above, WBSEDCL in its reply has expressed its difficulty to recover the additional amount from its consumers, since, according to it, the State Commission had already finalized the tariff for the year 2006-07, the year to which these expenses relate. We are afraid this cannot be a ground for denial of the expenses, if otherwise justified. The additional expenses, if payable, can be accounted for in the Annual Revenue Requirement for the year in which they are actually paid, or by adopting some other suitable course.



19. Now we consider the merits of the petitioner's claim. The Commission vide its order dated 25.9.2007 *ibid* held under:

*“On consideration of the facts placed on record by the petitioner, the petitioner was required to make special arrangements to ensure safety and security of its personnel and property. The incidents narrated by the petitioner in support of its claim justify deployment of additional forces. The expenses were essential and unavoidable. In the absence of necessary security arrangements, any untoward incident could have resulted in disruption of power supply in the region, depriving the consumers, railways and other industry in region of electricity. The loss on account of such deprivation could prove disastrous. Therefore, we are satisfied that the respondents are the ultimate beneficiary of the special security arrangement made by the petition, and they should reimburse the expenditure incurred.”*

20. The above observations squarely apply to the case on hand. On consideration of the material on record, and taking cognizance of the general law and order situation in the North-eastern Region, we are satisfied that the petitioner was required to make special arrangements to ensure safety and security of its personnel and property. The incidents narrated by the petitioner in support of its claim justify deployment of additional forces. The expenses were essential and unavoidable. In the absence of necessary security arrangements, any untoward incident could have resulted in disruption of power supply in the region, depriving the consumers, railways and other industry in region of electricity. The loss on account of such deprivation could prove disastrous, and far more than the expenditure incurred on making special security arrangements and being claimed. Thus, deployment of security forces meant though to accord greater security to the petitioner's assets and personnel deployed at the sub-stations, is to the ultimate advantage of the respondents since it facilitated uninterrupted power supply. Therefore, we are satisfied that the respondents as the ultimate beneficiaries of the special security arrangement made by the petitioner should reimburse the expenditure incurred, otherwise it will operate as hardship to the

petitioner. The expenditure has been incurred by the petitioner on making special security arrangements at the sub-stations for the reasons beyond its control and in the overall interest of security of the transmission system. The normative O &M expenses for Eastern Region do not include these abnormal expenses. Therefore, in our view the petitioner becomes entitled to reimbursement of these additional expenses incurred. We, in exercise of power under Regulations 13 of the regulations and in relaxation of the provisions thereof direct reimbursement of these additional expenses for the year 2006-07 as claimed by the petitioner from the respondents.

21. The entire expenses of Rs. 83.00 lakh in respect of Salakati sub-station and 50% of these expenses in case of Bongaigaon sub-station, that is, Rs.41.28 lakh shall be shared by the beneficiaries of Eastern Region, as a part of the transmission charges for Eastern Region.

22. With this order, the present petition stands disposed of.

<b>Sd/-</b>	<b>sd/-</b>	<b>sd/-</b>
<b>(S.JAYARAMAN)</b>	<b>(R.KRISHNAMOORTHY)</b>	<b>(BHANU BHUSHAN)</b>
<b>MEMBER</b>	<b>MEMBER</b>	<b>MEMBER</b>

**New Delhi dated the 10th December 2008**