

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 4/MP/2012 with I.A. No. 3/2012

Subject : Petition under section 79 (1) (c), 79 (1) (f) and 142 of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Open Access in inter-state Transmission) Regulations, 2008.

Date of Hearing : 14.2.2013

Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri M.Deena Dayalan, Member

Petitioner : M/s Aarti Steel Ltd.

Respondents : Orissa State Load Despatch Centre and others.

Parties present : Shri Rajiv Yadav, Advocate for petitioner
Shri R.K. Mehta, SLDC, Odisha
Shri R.B Sharma, Advocate for GRIDCO

Record of Proceedings

Learned counsel for the SLDC, Orissa submitted that today`s hearing is confined to the specific issue pertaining to Commission`s jurisdiction under the Electricity Act, 2003 for awarding monetary compensation for denial of open access.

2. Learned counsel for the petitioner submitted that under Section 79 (1) (f) of the Electricity Act, 2003 (the Act), CERC 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.*" There is no provision in the Act, admitting of any exception/limitation to the general terms in which Section 79 (1) (f) has been cast. The power to "*adjudicate upon disputes*", as contemplated under Section 79 (1) (c) is not restricted by any other

provision of the Act. In other words, apart from the in-built limitation in Section 79(1) (f) - that the dispute must pertain to a matter connected with clauses (a) to (d) of Section 79 - there is no other limitation, express or implied, on the powers of CERC to adjudicate a dispute involving generating companies or transmission licensees.

3. Learned counsel submitted that open access is 'connected with' regulation of inter-State transmission and Commission has been exercising jurisdiction in disputes involving open access related issues. Similarly, the right to 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 under Section 79 (1) (c) of the Act.

4. Learned counsel contended that a specific articulation of the power to award compensation is not necessary. He pointed out that Section 147 read with Sections 57 and 67 of the Act make it amply clear that the Act envisages award of compensation by CERC in exercise of its adjudicatory powers.

5. Referring to the statutory Scheme, learned counsel submitted that the Act is a special enactment, providing for a special adjudicatory mechanism, comprising of Central and State Regulatory Commissions. Relying on *Shiv Kumar Chadha Vs. Municipal Corporation of Delhi* [(1993) 3 SCC 161], learned counsel submitted that since open access is a special statutory right under the Act, all issues pertaining to open access, including a claim for compensation for wrongful denial thereof, is liable to be adjudicated by the said special adjudicatory mechanism alone. He further submitted that the Hon`ble Supreme Court in *PTC India Limited Vs. Central Electricity Regulatory Commission* [(2010) 4SCC 603] observed that the 2003 Act is enacted as an exhaustive code on all matters concerning electricity. Apart from *PTC India*, the Hon'ble Supreme Court, while dealing with Section 86 (1) (f) of the Act, adopted an expansive interpretation of the said provision in *Gujarat Urja Vikas Nigam Limited v. Essar Power Limited* [(2008) 4 SCC 755]. In the said case, the Apex Court held that after the coming into force of the Act, "*there can be no adjudication of dispute between licensees and generating companies by anyone other than the State Commission*". Likewise, disputes of the nature referred to in Section 79(1) (f) can be adjudicated upon by CERC alone. Learned counsel contended that the power to regulate an activity is of wide import and deserves to be liberally construed. In support of his contention, he relied on Hon`ble Supreme Court judgments' 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 Act does not bar jurisdiction of ordinary civil courts to grant compensatory relief in terms of prayer (b), the existence of an alternate forum for such relief would not oust the jurisdiction of CERC. Relying on *Dhannalal Vs. Kalawatibai* [(2002) 6 SCC 16] he submitted that in case of overlap of jurisdiction, the petitioner being *dominus litus*, can choose either forum for enforcement of its claim.

6. 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.

7. Learned counsel for the SLDC, Odisha opened his arguments in the matter. Due to paucity of time, the Commission directed to list the petition for further hearing on 7.3.2013.

By order of the Commission,

**SD/-
(T. Rout)
Joint Chief (Law)**