

To,  
The Secretary,  
Central Electricity Regulatory Commission,  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath,  
New Delhi- 110 001

Date: 14/01/2018

**Sub: Representation regarding draft CERC (Grant of Connectivity and General Network Access to the inter-State transmission system and other related matters) Regulations, 2017**

- Ref:** (1) Explanatory Memorandum to draft CERC (Grant of Connectivity and General Network Access to the inter-State transmission system and other related matters) Regulations, 2017
- (2) Report of Committee to review Transmission Planning, Connectivity, Long Term Access, Medium Term Open Access and other related issues

Respected Sir,

- (i) This Hon'ble Central Electricity Regulatory Commission ("**CERC**") vide Public Notice dated 14.11.2017 invited comments/suggestions/objections from the stakeholders and interested persons on the Draft CERC (Grant of Connectivity and General Network Access to the inter-State transmission system and other related matters) Regulations, 2017 (hereinafter referred to as the "Draft GNA Regulations, 2017").

- (ii) The draft GNA Regulations, 2017 proposes to insert *inter alia* regulations *qua* construction of the Dedicated Transmission Line ("DTL"), sharing of the said DTL by more than one generator and consequent issues pertaining to sharing of transmission charges or transmission losses etc. arising thereof.
- (iii) Accompanying the above-mentioned Draft GNA Regulations, 2017 is an Explanatory Memorandum which seeks to set out the reasons which prompted the issuance of Draft Regulations along with a brief description of the transmission and connectivity regime within the power sector and their associated regulations.
- (iv) With respect to a DTL, the Draft GNA Regulations, 2017 proposes to insert *inter alia* the following Regulations:

7.24. More than one generator can use the dedicated transmission line connecting their generating station to pooling station of ISTS after formalising all aspects including sharing of the transmission charges and losses of the transmission line among the generators. The transmission charges shall be decided amongst themselves after taking into account the norms specified in the Tariff Regulations issued by Central Commission from time to time.

7.25. On completion of the dedicated transmission line the generator(s) shall be required to hand over the dedicated transmission line to CTU for the purpose of operation and maintenance. CTU shall be entitled to normative operation and maintenance

expenses as per CERC Tariff Regulations. The line shall be under the operational control of CTU for all the purposes.

...

### **8. Construction of Dedicated Transmission Line:**

8.1 The dedicated transmission line from switchyard of generating station or Solar Power Park Developer or Wind Power Park Developer or Wind Solar Power Park Developer to the pooling station of the transmission licensee (including deemed transmission licensee) shall be developed, owned, maintained and operated by the applicant.

8.2 CTU shall plan the system such that maximum length of dedicated transmission line shall not exceed 100 km from switchyard of the generating station or pooling station of the solar power park or wind power park till the nearest pooling substation of transmission licensee for "Applicant for Connectivity" in accordance with Regulation 2(1)(c).

...

8.4 Where the dedicated transmission lines have already been constructed or are under construction by ISTS Licensee (including deemed licensees) under coordinated transmission planning:

(i) The transmission charges for such dedicated transmission lines shall be payable by the concerned generating company to the transmission licensee

from the date of COD of the dedicated line till operationalisation of GNA of the generating station in terms of Regulation 22 of these Regulations;

(ii) After operationalization of GNA, such dedicated transmission line shall be included in the POC pool and payment of transmission charges for the said dedicated transmission line shall be governed as per the CERC (Sharing of inter-state transmission charges and losses) Regulations, 2010 as amended from time to time.

- (v) Further, the Explanatory Memorandum which seeks to set out the reasons which prompted the issuance of Draft GNA Regulations, 2017 describes the construction of DTL and sharing of DTL by more than one generator in para 2.8, the relevant portion of which has been extracted as under:

**"2.8 Construction of Dedicated Transmission Line**

2.8.1. The Committee in its report while dealing with the issue of construction of dedicated transmission line has observed as under:

(f) If a generator gets connected to dedicated line established by another generator, then such dedicated line may be considered as ISTS after obtaining transmission license on filing application with the Commission under CERC (Transmission License) Regulations."

...

2.8.2 Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and

Medium-term Open Access in inter-State Transmission and related matters) (Sixth Amendment) Regulations, 2017 notified dated 17.2.2017 have already included the above said proposal of the Committee.

...

#### **2.8.4 Sharing of dedicated line by more than one generator**

(a) It has been proposed that more than one generator can use the dedicated transmission line connecting their generating station to pooling station of ISTS after formalising all aspects including sharing of the transmission charges and losses of the transmission line among the generators. This is in-line with Aptel Order dated 2.1.2013 in Appeal No.81 of 2011 which observed as follows:

“24.19 It is perfectly legal for two generating companies to plan in coordination with CEA and Power Grid and construct and operate & maintain their dedicated transmission systems together for optimal utilisation of the transmission corridor with a view to minimize cost of point to point transmission of electricity and minimize the requirement of transmission corridor as long as the dedicated transmission system is used exclusively for evacuation and point to point transmission of power of their generating stations.”

(b) It is observed that there shall be a need to share the common infrastructure for which it has been proposed that the same may be decided

amongst themselves after taking into account the norms specified in the Tariff Regulations issued by Central Commission from time to time.”

- (vi) A bare perusal of para 2.8.1 (f) of Explanatory Memorandum, which is incorporating the findings of the Committee [para 7(b) of recommendation of the Committee furnished in the Executive Summary of the Report of Committee], demonstrates that if a generator is connected with a DTL constructed by other generator, then such DTL should be considered as ISTS after obtaining transmission license as per CERC (Transmission License) Regulations. This reasoning has also been upheld by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 59 of 2015 in the case of IL & FS Tamil Nadu Power Company Ltd. vs. CERC & Ors. Even the Difficulty Removal Order Number 5 dated 9<sup>th</sup> June 2005 provides that no transmission license would be required for a dedicated transmission line. However, when same line is used for two or more generators it becomes ISTS or InSTS as line of one generator would be transmitting power from other generating station and accordingly transmission license would be required for the same as per section 14 of the Act.
- Such mechanism brings the shared dedicated line under regulatory regime in line with the mandate contained in Section 79 read with 62 of the Electricity Act, 2003 qua regulation of inter-state transmission of electricity, as mentioned hereinabove. By virtue of said provisions, the Explanatory Memorandum clearly recommends that tariff of the shared DTL ought to be determined by the appropriate commission.

- (vii) However, the Explanatory Memorandum in Para 2.8.4 has proceeded incorrectly, by placing reliance on an *obiter dicta* of the Hon'ble Tribunal in its order dated 02.01.2013 passed in Appeal No. 81 of 2011, to suggest that generators may mutually decide amongst themselves the costs for sharing of common infrastructure after taking into account the norms specified in the CERC Tariff Regulations.
- (viii) The recommendation contained in Para 2.8.4 of the Explanatory Memorandum and Regulation 7.24 of the Draft GNA Regulations, 2017 are in contravention to the parent statute i.e. Electricity Act, 2003 and grossly prejudicial to the vested rights of generators evacuating and transmitting power utilizing common infrastructures owned by another generator in the area, who by virtue of said draft Regulations will be empowered to exercise unbridled discretion and abuse its dominant position.

**Regulation 7.24 – Allain Duhangan – Nalagarh Line – a case study**

- (ix) As this Hon'ble Commission is aware, Allain Duhangan Hydro Power Ltd. (hereinafter referred to as "A.D. Hydro") has set up the 192MW Allain Duhangan Hydro Electric Project (hereinafter referred to as the A.D. Hydro HEP") in district Kullu of Himachal Pradesh on Build Own Operate and Transfer basis. The approval under Section 68 of the Electricity Act, 2003, by Ministry of Power, for the construction of the Allain Duhangan - Nalagarh 220 KV double circuit line was given as an

“Associated Transmission System” (hereinafter referred to as the “**Allain Duhangan – Nalagarh Line**”). Today this line is being used for evacuation of power from the projects of (a) A.D. Hydro [A.D. Hydro HEP - 192MW], (b) Everest Power Pvt. Ltd. [Malana – II HEP -100 MW], (c) our company namely; M/s. Kanchanjunga Power Company Pvt. Ltd. [Baragaon SHEP-24MW] and (d) Himachal Pradesh State Electricity Board Limited [HPSEBL]. Further, CEA, CTU & Himachal Pradesh identified and agreed for integration of RES generation through 33/220 kV, 100 MVA sub- station at Fozal with LILO of said line. The Fozal sub-station was constructed for mainly evacuation of power of SHPs (multiple Nos of SHP, around 96 MW). PGCIL in its report on Green Energy Corridors for Transmission Plan for Envisaged Renewable Capacity furnished [Report on Green Energy Corridors] the construction of Fozal subs-station and its LILO with said line for conveyance of ISTS transfer of generation of said RES/SHPs.

A detailed list of dates explaining the circumstances under which Allain Duhangan – Nalagarh line is being used by multiple generators is enclosed herewith and marked as **Annexure A.**

- (x) As you are already aware that various disputes arose between A.D. Hydro and Everest Power Pvt. Ltd. over the modalities for sharing the cost and operation and maintenance charges for evacuation of power of Malana-II from the Allain Duhangan – Nalagarh line. In September, 2010, Everest Power Pvt. Ltd. filed a petition, being Petition No. 259 of 2010, before this



Hon'ble Commission alleging abuse of dominance and seeking the directions against A.D. Hydro. This Hon'ble Commission by its order dated 01.06.2011 held that the Allain Duhangan – Nalagarh line is part of the inter-State transmission system under Section 2(36) of the Electricity Act, 2003 and that this Hon'ble Commission has jurisdiction under Section 79(1)(c) of the Electricity Act, 2003 to regulate transmission on the said transmission line. Certain relevant extracts of the order dated 01.06.2011 are reproduced hereunder for convenience:

"16. We have considered the submission of the petitioner and Respondent No.1. There is no doubt that as per the Master Plan envisaged by the Central Electricity Authority, the transmission line is required to wheel the power of other generators in the region till the Nalagarh sub-station of Power Grid. Since, the Petitioner has been permitted by Ministry of Power, Government of India in its sanction letter under Section 68 of the Act to wheel its power by LILO of one circuit of Allain Duhangan- Nalagarh transmission line till the Nalagarh sub-station of Power Grid, the portion of the transmission line to be used by EPPL becomes a part of the inter-State transmission system as "inter State transmission system" under 2(36) of the 2003 Act which included conveyance within the State which is incidental to inter-State transmission of electricity. Moreover, permission to EPPL in the sanction letter to ADHPL

under Section 68 of the Act and such permission to ADHPL is conditional to wheeling the power of other generators in the region whose generating stations were included in the planning process of CTU and CEA. Since the subject transmission line has been planned to evacuate power from the region for injection into the sub-station of Power Grid at Nalagarh, the transmission line is incidental to inter-State transmission system. The Commission which has been vested with the responsibility to regulate inter-State transmission has the jurisdiction to issue directions under Section 79(1)(c) of the Act to regulate transmission on the subject transmission line."

(underline supplied)

A copy of the order dated 01.06.2011 passed by this Hon'ble Commission in Petition No. 259 of 2010 is enclosed herewith and marked as **Annexure B**.

- (xi) A.D. Hydro filed an appeal, being Appeal No. 81 of 2011, before the Hon'ble Appellate Tribunal for Electricity, against the aforesaid order passed by this Hon'ble Commission 01.06.2011.
- (xii) The Hon'ble Tribunal by an order dated 02.01.2013 held the Allain Duhangan – Nalagarh line as incidental to inter-state transmission of Electricity and hence this Hon'ble Commission has jurisdiction to adjudicate the dispute between the two

generating companies. Certain relevant extracts of the APTEL judgment are reproduced hereunder for convenience:

“37. Transmission of electricity is a regulated business according to the Electricity Act, 2003. A dedicated transmission system is out of the regulatory control of the Commission so far as no licence is required for the construction, operation and maintenance of dedicated transmission system and that there is no need for the Commission to regulate transmission of electricity as long as it is used for point to point transmission of power output of generating company. However, if the generating company allows its dedicated transmission system for use for evacuation of power output to another generating company with a view to optimally utilize the transmission corridor and the transmission system capacity as has been the case in the present appeal on payment of transmission charges, the Central Commission would have jurisdiction to regulate transmission of electricity on the dedicated line, for such transmission as is incidental to inter-State transmission of electricity.

38. According to Section 79(1)(f) of the Act, the Central Commission has powers to adjudicate upon disputes involving generating companies in regard to matters concerning with clause a) to d) of the Section 79(1). Clause c) pertains to regulation of

inter-State transmission of electricity. According to the Appellant Section 79(1)(f) is not applicable in the present case as the Appellant is not a transmission licensee. The present case is typical where there is a dispute between two generating companies relating to use of the dedicated transmission system owned by one of the generating companies which has been used for conveyance of electricity which is incidental to the inter-State transmission of electricity from the other generating station. In our opinion Section 79(1)(f) would also cover the present dispute between the two generating companies as it relates to inter-State transmission of electricity, which is regulated by the Central Commission under Section 79(1)(c). Therefore, even if the Appellant is not a transmission licensee, the present dispute will fall under the Section 79(1) (f) of the Act. Accordingly, the Central Commission has jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1.

...

54. A question has been raised by the Respondent no. 1 whether the Appellant would need to take a licence for transmission in view of the access allowed to the Respondent no. 1. We feel even though the Appellant is within its own right to obtain transmission licence if it wished so it is not necessary

for the Appellant to take a transmission licence. The appellant has already constructed Allain Duhangan-Nalagarh line as its dedicated transmission system for which the Central Government has also granted permission under Section 68. In the new configuration after loop-in-loop-out of one circuit at Chhaur, part of the transmission line is used for conveyance of electricity across the territory of a State which is incidental to inter-State transmission of electricity from Malana II for which we have only decided the principles for determination of the transmission charges, losses etc., to be borne by the Respondent no.1.

55.

...

(iii) In view of the Loop-in-Loop-out of one of the Allain Duhangan – Nalagarh circuits at Chhaur, part of the line is used for conveyance of electricity across the territory of an intervening State/within the State which is incidental to inter-State transmission of electricity of Malana II of the Respondent no.1. Thus, the transmission of power on this line has to be regulated by the Central Commission. Thus, the Central Commission has the jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1 regarding sharing of transmission charges, losses, etc. by the Respondent no.1 as per

Section 79(1)(f) of the Act. Thus, this issue is decided against the Appellant.

iv) We have given specific findings about the various issues raised by the Appellant and the Respondent no.1 in determination of transmission charges and losses to be borne by the Respondent no.1 for usage of the transmission system of the Appellant, and other related issues in Paragraph 53 of the judgment. The Central Commission shall pass consequential order on the basis of our directions after hearing the concerned parties within 45 days of receipt of the copy of this judgment. However, till the passing of the consequential order by the Central Commission the interim arrangement for payment of transmission charges and transmission losses by the Respondent no.1 to the Appellant as per our interim order dated 10.6.2011 will continue.

56. The Appeal is dismissed with directions to the Central Commission to pass the consequential order. No order as to costs."

(underline supplied)

- (xiii) A bare perusal of the aforesaid establishes beyond doubt that the Hon'ble Tribunal by its judgment dated 02.01.2013 has held that this Hon'ble Commission shall determine the transmission charges for the common infrastructure namely; the Allain Duhangan - Nalagarh Line, being shared between

A.D. Hydro and Everest Power Pvt. Ltd. This finding cannot in any manner be taken to mean that the generators can mutually decide amongst themselves the transmission charges and losses for the use of common infrastructure, being guided by the CERC Tariff Regulations. It is a settled principle of law that an order/judgment ought to be read as a whole in its letter and spirit and not in piecemeal manner.

A copy of the order dated 02.01.2013 passed by the Hon'ble Tribunal in Appeal No. 81 of 2011 is annexed herewith and marked as **Annexure C**.

- (xiv) In terms of directions in the aforesaid judgment dated 2.1.2013, this Hon'ble Commission vide an order dated 18.1.2013 directed A.D. Hydro to file the tariff petition for the said Allain Duhangan – Nalagarh line, in accordance with the provisions of the CERC Tariff Regulations, 2009.

A copy of the order dated 18.01.2013 passed by this Hon'ble Commission in Petition No. 259 of 2010 is annexed herewith and marked as **Annexure D**.

- (xv) In the meanwhile, A.D. Hydro filed an appeal being Civil Appeal No. 1795 of 2013 before the Supreme Court against the order passed by the Hon'ble Tribunal in Appeal No. 81 of 2011. The Hon'ble Supreme Court vide an interim order dated 8.3.2013 granted interim stay on the remand order passed by the Hon'ble Tribunal on 02.01.2013 and directed this Hon'ble Commission not to proceed on the basis of the Tribunal's order of remand.

(xvi) Now the Hon'ble Supreme Court by its judgment dated 26.04.2017 has dismissed Civil Appeal No. 1795 of 2013 and has upheld the order passed by the Hon'ble Tribunal, with the following findings:

5) In view of the concurrent finding of fact taking into account Section 2 (36) (ii), we find no reason to interfere with the judgment of the Appellate Tribunal and hence the same is upheld. We may only indicate that the said judgment has remanded the matter to the Central Commission to decide the matter on merits having held that it has jurisdiction to proceed further.

6) The appeal is dismissed. Needless to say, interim order, stands vacated."

(underline supplied)

A copy of the judgment dated 26.04.2017 passed by the Hon'ble Supreme Court in Civil Appeal No. 1795 of 2013 is annexed herewith and marked as **Annexure E**.

(xvii) Subsequently, A.D. Hydro filed a review petition being R.P.(C) No. 1365/2017 in Civil Appeal No. 1795/2013, before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 12.7.2017 dismissed the Review Petition with the direction that when this Hon'ble Commission decides the matter on merits, it may do so without regard to the observations made by the Hon'ble Tribunal in its order dated



2.1.2013. Relevant portion of the said order is extracted as under:

“Having heard Mr. Dushyant Dave, learned senior counsel appearing for the review petitioner, we find that there is no error apparent in our order dated 26th April, 2017.

However, when the Central Electricity Regulatory Commission decides the matter on merits, it may do so without regard to the observations made by the Appellate Tribunal for Electricity in its order dated 02.1.2013.

With these observations, the Review Petition is disposed of.”

A copy of the order dated 12.07.2017 passed by the Hon’ble Supreme Court in R.P.(C) No. 1365/2017 in Civil Appeal No. 1795/2013 is annexed herewith and marked as **Annexure F**.

- (xviii) Consequent to the disposal of the Civil Appeal and the Review Petition, A.D. Hydro has filed Tariff Petition No. 209/MP/2017, before this Hon’ble Commission, for determination of transmission charges, transmission losses and other conditions for use of 176.5 km Double Circuit 220 kV Dedicated Transmission line (ADHPL) from Prini (Generating station of ADHPL) to Nalagarh (Sub-station of CTU). This petition is pending before this Hon’ble Commission. We have filed our preliminary reply to Tariff Petition No. 209/MP/2017 stating

that A.D. Hydro ought to provide various cost details for determination of the transmission charges for the said line by this Hon'ble Commission. Also, we have filed a separate petition being Petition No. 124/MP/2017 before this Hon'ble Commission opposing the stand taken by A.D. Hydro that the Allain Duhangan – Nalagarh line is a dedicated line and we are seeking determination of transmission charges for this line under the PoC mechanism, by this Hon'ble Commission.

(xix) We apprehend that Regulation 7.24 of Draft GNA Regulations, 2017, apart from being contrary to Section 79 read with Section 62 of the Electricity Act, 2003 may also affect our vested rights in the matters pending before this Hon'ble Commission namely; Tariff Petition No. 209/MP/2017 and Petition No. 124/MP/2017. The Draft GNA Regulations, 2017 ought not to influence the outcome of the pending proceedings and pre-emptively adjudicate the issues pertaining to the Allain Duhangan – Nalagarh line.

(xx) Furthermore, it is submitted that Transmission is a licensed activity and hence regulated by the appropriate commission under Section 79 or 86 read with Section 12 of Act of 2003. For safeguarding proper regulation, Section 62 (1) (b) empowers the appropriate Commission to determine the tariff for transmission of electricity. The objective behind licencing and regulating transmission by the Appropriate Commission is to ensure non-discriminatory open access to any licensee or generating company in accordance with guidelines issued by

Appropriate Commission, on payment of economical transmission charges. The said objective is very well accentuated in Sections 38 and 39 of the Electricity Act, 2003. It is a settled position of law that the conferment of rule-making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of enabling Act or which is inconsistent therewith or repugnant thereto. (*State of Karnataka and Anr. vs. H. Ganesh Kamath and Ors.* reported as (1983)2 SCC 402).

(xxi) A bare perusal of Section 79 of the Electricity Act, 2003 reveals that this Hon'ble Commission is empowered to regulate *inter alia* the tariff of generating companies and to regulate and determine tariff for inter-state transmission of electricity. Section 79 does not contemplate regulation of a DTL or sharing of such dedicated line. Regulation 7.24 of Draft GNA Regulations, 2017 attempts to legislate on the subject of sharing of DTL which is not within its legislative competence or jurisdiction as provided under the parent statute i.e. Act of 2003. It is a settled position of law that regulation making power cannot be exercised in the absence of substantive provisions in the parent statute. (please see *Union of India & Ors. V. S. Srinivasan* reported in (2012) 7 SCC 683).

(xxii) It may also be noteworthy that the right to non-discriminatory open access to a generating company sharing a DTL for transmitting electricity, cannot be ensured under the existing provisions of the draft Regulation 7.24, if the transmission charges are to be decided by the generators among

themselves, instead of an appropriate Commission. Such an unregulated mechanism under the draft Regulation 7.24 would be *dehors* the mandate of the Electricity Act, 2003.

- (xxiii) Further, Regulation 7.24 of Draft GNA Regulations, 2017 empowers the generators sharing DTL and the generator who built the said DTL to determine and share transmission charges among themselves as per Tariff Regulations. The impugned regulation, in this manner shall result in conferring unencumbered discretion upon the generator who has built and therefore owning the DTL. By virtue of the ownership of DTL which is being shared by other generators, the generator may abuse its dominant position while negotiating the transmission charges for the said DTL with other generators to the latter's detriment.
- (xxiv) Regulation 7.24 of Draft GNA Regulations, 2017 to the extent of determination and sharing of transmission charges of shared DTL by generators, is also in contravention to the provisions of the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 ("Sharing Regulations, 2010"), which lay down a mechanism on the basis of which the transmission charges payable by beneficiaries is presently calculated.
- (xxv) Though, the Sharing Regulations, 2010 do not contemplate transmission charges ensuing out of sharing of a DTL which is likely to be used for inter-state transmission, however the said Regulations lay down the principles of sharing of transmission

charges under inter-state transmission of electricity. By virtue of the said Regulations, the transmission charges for a transmission asset shall only be imposed under the Point of Connection (PoC) mechanism. Regulation 7.24 of the Draft GNA Regulations, 2017 introduces an altogether new mechanism of determination of transmission charges by generators and sharing of the same within themselves, which is in itself extraneous and outside the purview the scheme of the Sharing Regulations, 2010.

- (xxvi) The mechanism of determination and sharing of transmission charges by the generators themselves, as introduced under Regulation 7.24 of Draft GNA Regulations, 2017, may prove to be detrimental to such generators who though share the charges amongst themselves, are left devoid of the benefit of lower cost of transmission which could have accrued to them had they been included in the PoC mechanism, manifesting the objective of One Grid, One Nation.

Report on Green Energy Corridors also proposed that the transmission charges of such RES integration shall be shared in the pool as per POC mechanism.

In case of Allain Duhangan – Nalagarh Line, The present transmission charges and losses being applied have resulted in pancaking as our 24 MW Baragaon SHP is required to bear charges of STU of Himachal Pradesh, A.D. Hydro and CTU while, our 24 MW Baragaon SHP is liable to pay a single PoC charge. It is serious concern to the project regarding bearing of said multiple huge transmission charges in case of our RES project. The comparative statement for one single POC charge

vs said multiple transmission charges will be submitted separately.

(xxvii) Also, the proposed draft regulation, does not take into consideration a situation where a generator who after constructing the dedicated transmission line includes its cost in its tariff while bidding for its power in a competitive bid. Once a bid is materialized for say a period of 25 years and later the line is also used by other generators on payment of transmission charges to the generator which constructed the DTL, there may be an accounting problem in computation of tariff which is likely to result in unjust enrichment of the owner of DTL and grave prejudice to other generators sharing that DTL. This will further give rise to unavoidable litigations, if Appropriate Commission is not given power to determine charges in such a situation.

(xxviii) Besides this, Regulations 7.25 and 8.1 of the Draft GNA Regulations are against Section 10(1) of the Electricity Act 2003. Thus, the said regulation may be appropriately modified as under:

*7.25 On completion of the dedicated transmission line, the same shall be under the operational control of CTU for all the purposes as ISTS under Section 2(36) of the Act.*

*8.1 The dedicated transmission line from switchyard of generating station or Solar Power Park Developer*

*or Wind Power Park Developer or Wind Solar Power Park Developer to the pooling station of the transmission licensee (including deemed transmission licensee) shall be developed, owned, maintained and operated by the applicant.*

- (xxix) Furthermore, Regulation 8.2 of the Draft GNA Regulations empowers the Central Transmission utility (CTU) to plan the DTL in contravention to Section 3(4) of the Act of 2003. Although it is a reasonable proposal to restrict the length of dedicated transmission line to 100 km however enforcement of such planning cannot be assigned to CTU. It is stated that Planning including Transmission Planning, is function of CEA as per Section 3(4) of the Act of 2003. All proposals for transmission lines and substations by CTU are placed before Regional Standing Committee on Transmission under Chairmanship of CEA for obtaining its approval. The role of CTU is restricted to implementation of the proposal, once it is approved by Standing Committee. It is to be noted further that system proposed by CTU to bring dedicated line of one generator within 100 kms may not be accepted by other beneficiaries of that Region as they have to bear the cost of the additional system. Thus, Regulation 8.2 may be rephrased as under:

*8.2 CTU shall endeavor to plan the system such that maximum length of dedicated transmission line may not exceed 100 km from switchyard of the generating station or pooling station of the solar*

*power park or wind power park till the nearest pooling substation of transmission licensee for "Applicant for Connectivity" in accordance with Regulation 2(1)(c).*

- (xxx) At the outset, it is stated that the objections/ submissions made hereinabove qua Regulation 7.24 of Draft GNA Regulations, 2017 ought to be read as part and parcel of Regulation 8.4 of draft regulations as stated hereunder.
- (xxxi) Regulation 8.4 of Draft GNA Regulations, 2017 mandates the generators to pay transmission charges to transmission licensee from the date of COD of the DTL till operationalization of GNA of generating station, post operationalization, DTL would be included in the PoC pool and transmission charges would then be payable in accordance with Sharing Regulations, 2010. In terms of Regulation 7.24 read with Regulation 8.4, both dealing with DTL, it transpires as follows:
- (a) that generator sharing DTL would pay transmission charges to transmission licensee only.
  - (b) that the ensuing transmission charges would be determined by the generators among themselves and not by the appropriate commission, in contravention to the Section 79 of the Act of 2003.
  - (c) that the transmission charges would be payable by the generator to licensee from the date of commissioning of shared DTL irrespective of the fact that generator has started sharing DTL years after COD of shared DTL.



- (d) that till operationalization, transmission charges would be determined under non-PoC mechanism which is in contravention of Sharing Regulations, 2010 however post operationalization, charges would be socialized under PoC mechanism.
- (xxxii) In view of the above, it is submitted that reading the provisions of a statute as a whole is resulting not only in the violation of the express provisions of parent act of 2003 but also in derogation of the objective of Act. The proposition as stated above, emerged out of combined reading of Regulation 7.24 and Regulation 8.4 of the Draft GNA Regulations, 2017 contravenes *inter alia* the principles of non-discriminatory open access, regulatory power of the Commission to determine tariff and regulate inter-state transmission of electricity.
- (xxxiii) In view of the above, it is further submitted that shared DTL ought to be given a status of inter-state transmission system in order to recover transmission charges under Regulation 8.4. Therefore, the combined reading of Regulation 7.24 and Regulation 8.4 suggests that the generator who has constructed the shared DTL ought to be mandated to acquire transmission license as stipulated under the Act of 2003. Once the generator is transmission licensee, the tariff for the shared line would be determined by the appropriate commission in accordance with the relevant provisions of law. Unless generator to get license for shared DTL which is to be reckoned as ISTS, the generator would not be qualified to

recover transmission charges under Regulation 8.4 of the GNA Draft Regulations, 2017.

- (xxxiv) Further, it is arbitrary to make the generator liable who starts sharing DTL long after COD of the said line, to pay the transmission charges from COD of the dedicated line without the same being used by the generator. Whereas Sharing Regulations, 2010 provides for incidence of transmission charges on the generators since COD of asset who have signed Bulk Purchase Transmission Agreement (BPTA) before construction of the transmission asset. The generator joining the pool later, would be liable to pay charges from the date of signing of BPTA only not before that.
- (xxxv) Further, Regulation 8.4 contemplates non-PoC mechanism for transmission charges till operationalization of GNA of generating station. Any mechanism dehors Sharing Regulations is bad in law and drafting of such provision amounts to abuse of jurisdiction on the part of CERC.

#### **Regulation 8.4 – Allain Duhangan – Nalagarh Line – a case study**

- (xxxvi) As mentioned hereinabove, A.D. Hydro has set up A.D. Hydro HEP in district Kullu of Himachal Pradesh. After getting approval under Section 68 of the Act of 2003, A.D. Hydro constructed the Allain Duhangan - Nalagarh 220 KV double circuit line having capacity of 400 MW, out of which A.D. Hydro agreed to utilize 192 MW for evacuation of power from its generating plant and the balance spare capacity of the line

would be made available to other generators. As abovementioned, this line of A.D. Hydro is presently shared by four other generators including our company M/s. Kanchanjunga Power Company Pvt. Ltd. [Baragaon SHEP-24MW].

(xxxvii) It is stated that the said Allain Duhangan - Nalagarh 220 KV double circuit line was commissioned in the year 2010. Amongst the generators sharing the DTL built by A.D. Hydro, Everest Power Ltd started utilizing the said DTL for evacuating power from its Malana - II HEP -100 MW from Aug 2011. It is further stated that our company M/s. Kanchanjunga Power Company Pvt. Ltd. started sharing the said DTL from the June 2016 only for transmission of power from its Baragaon project.

(xxxviii) In view of the present Regulation 8.4 read with Regulation 7.2.4, Allain Duhangan - Nalagarh line must apply for transmission license in order to recover transmission charges from generators sharing its line. Further, as per draft Regulation 8.4, it would be arbitrary to impose transmission charges on our company since COD of Allain Duhangan - Nalagarh line under non-PoC mechanism while we started sharing DTL from 2016 only. Such procedure would be violative of Sharing Regulations, 2010 as well. Recovery of charges of COD in our case, would amount to unjust enrichment of A. D. Hydro who has recovered the estimated charges for the period between 2010-2016 from other generators then using the line.

(xxxix) The propositions (a) to (d) as emanate from the harmonious construction of Regulation 7.24 and Regulation 8.4 further influence the outcome of the pending proceedings i.e Petition No. 209/MP/2017 and Petition No. 124/MP/2017 and likely to pre-emptively adjudicate the issues pertaining to the Allain Duhangan – Nalagarh line to the detriment of the generators sharing the DTL.

In view of above submissions, we humbly pray to kindly reconsider the aforesaid draft regulations.

Thanking you,

Yours faithfully,

For **Kanchanjunga Power Company Private Limited**

  
Authorized Signatory

**Annexure – A**

The list of dates for Allain Duhangan – Nalagarh line is being used by multiple generators

<b>Sn</b>	<b>Utilities</b>	<b>Date for use of the line</b>
1	A. D. Hydro	Sep 2010
2	Malana-II	Aug 2011
3	Baragaon SHP	June 2016
4	HPSEBL	Dec 2016

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 259/2009  
alongwith  
IA No.4/2011 & 5/2011**

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

**Date of Hearing: 29.3.2011**

**Date of Order: 1.6.2011**

**In the matter of**

Petition under Sections 60 and 79 of the Electricity Act,2003 for issuance of appropriate /necessary directions to the respondents.

**And in the matter of**

Everest Power Private Limited

... **Petitioner**

**Vs**

- 1 Allian Duhangan hydro Power Limited, Noida
- 2 Central Electricity Authority, New Delhi
- 3 Ministry of Power, New Delhi
- 4 Power Grid Corporation of India Ltd., Gurgaon
- 5 Northern Regional Load Despatch Centre
- 6 Ministry of Power, Govt. of Himachal Pradesh
- 7 Himachal Pradesh State Electricity Board, Shimla
- 8 H.P. Power Transmission Corporation Ltd., Shimla
- 9 Department of Forest, Govt. of Himachal Pradesh, Shimla ..

**Respondents**

**Following were present:**

1. Shri M.G.Ramchandran, Advocate for the petitioner
2. Shri Tarun Johri, Advocate for the petitioner
3. Shri Vikas Singh, Senior Advocate for the Respondent No.1
4. Shri Kulbir Singh Chauhan, Dy. District Attorney, Govt. of Himachal Pradesh
5. Shri S. K. Bhowmick, EPPL
6. Shri R.S.N.P. Achanta, EPPL
7. Shri D. P. Sinha, EPPL
8. Shri Jaideep Lakhtakia, EPPL
9. Shri Ankur Gupta, EPPL
10. Ms. Ranjitha, EPPL



11. Shri U. C. Dubey, ADHPL
12. Shri Sumit Garg, ADHPL
13. Shri Praveen, ADHPL
14. Shri S. Thulasi Naik, ADHPL
15. Shri R. C. Kaundal, Govt. of Himachal Pradesh
16. Ms. Jyoti Prasad, NRLDC

### **ORDER**

The Petitioner, Everest Power Private Limited, a generating company is engaged in executing, implementing, and developing a 2x50 MW Malana –II Hydro Electric Project in Kullu District of Himachal Pradesh on Build, Own, Operate and Transfer basis. The Respondent No.1, Allain Duhangan Hydro Power Limited is another generating company engaged in the development and implementation of 192 MW Allain Duhangan Hydro Electric Project in the State of Himachal Pradesh. The dispute between the Petitioner and Respondent No. 1 pertains to the use of 220 kV D/C ADHEP-Nalagarh Transmission line of Respondent No. 1 by the petitioner for evacuation of power from its generating station to the sub-station of PGCIL at Nalagarh. The petitioner has filed the present petition under Section 60 of the Electricity Act, 2003 (“the 2003 Act”) for seeking directions/clarifications on the following issues:

- (a) The methodology and process for computation and sharing transmission charges by the petitioner and ADHPL, for use by the petitioner and ADHPL of 220 kV D/C Allian Duhangan Hydro Electric Project (ADHEP)-Nalagarh transmission line;
- (b) The methodology of sharing of energy losses by the petitioner and ADHPL for use of the said line;



- (c) The method and process to be adopted for calculation and determination of the capital cost of the said line;
- (d) The method and process to be adopted for ascertaining the priority of use by the petitioner and ADHPL for the said line;
- (e) The operation and control of 132/220 kV sub-station at Chhaur constructed by the petitioner and at which point the 220 kV ADHEP-Nalagarh transmission line being constructed by ADHPL is to be LILLOed for evacuation of the power by Malana-II HEP;
- (f) Scheduling, metering and accounting of the power generated by Malana-II HEP and ADHEP by NRLDC at the individual periphery of the respective generator;
- (g) All commercial aspects of the Transmission Service Agreement (TSA) between ADHPL and EPPL should be based on the Commission`s regulations applicable for inter-State transmission system and scheduling and operational issues should be based on the IEGC and RLDC norms for Inter State Transmission System.
- (h) A direction to both parties to conclude the TSA within two weeks.
- (i) Any other order that the Commission may deem fit and proper in the facts and circumstances of the case.

2. After hearing the petitioner on 23.9.2010, we had admitted the petition and issued notice to the respondents. The Respondent No. 1 filed a short reply limited to the question of jurisdiction of the Commission to entertain the petition





under section 60 or 79 of the 2003 Act. Respondent No.5, Northern Regional Load Despatch Centre has filed a reply with response to the prayer of the petitioner as quoted in sub-para (f) of the preceding paragraph and has submitted that all operational and commercial coordination with NRLDC including metering and scheduling etc., shall be at Nalagarh. Respondent No.8, Himachal Pradesh Power Transmission Corporation Limited in its reply dated 28.10.2010 has submitted that keeping in view the need for optimum utilization of transmission corridors in Himachal Pradesh, the petitioner and the Respondent No.1 should execute Transmission Service Agreement in accordance with the benchmarks and conditions imposed under the prevailing regulations of CERC concerning determination of tariff of the transmission line and sharing of transmission charges and losses by various beneficiaries of Inter-State Transmission System (ISTS). The petitioner has filed its rejoinder vide affidavit dated 18.11.2010.

3. During the hearing on 7.12.2010, the learned counsel for the Respondent No.1 submitted that the Commission does not have the jurisdiction to entertain the petition since the transmission line is a dedicated transmission line and before proceeding to the merits of the case, the Commission should first decide the question of jurisdiction. Subsequently, the petitioner filed two Interlocutory Applications, namely IA No. 4/2011 seeking amendment of the petition and IA No. 5/2011 seeking interim reliefs. Notices were issued to the respondents on the IAs on 8.3.2011. Respondent No.1 filed its reply to the IAs vide its affidavit



dated 15.3.2011 and the Petitioner has filed its rejoinder. The matter was heard on 29.3.2011 on the maintainability of the IAs and on the merits of the case.

4. The petitioner has filed IA No.4/2011 under Regulation 114 of the Central Electricity Regulatory Commission(Conduct of Business) Regulations, 1999 seeking amendment to the cause title and para 45 of the petition. The learned counsel for the petitioner submitted that though the petition was filed under section 60 of the 2003 Act, he had argued during the hearing on 23.9.2010 that the Commission has the jurisdiction under section 79(1)(c) and (f) of the 2003 Act to entertain the petition which was also recorded in the Record of Proceedings of the same date. The petitioner has filed the IA No. 4/2011 for the purpose of incorporating its contentions in respect of the Commission's jurisdiction under section 79(1)(c),(d) and (f) and section 60 of the 2003 Act to try and adjudicate the issue raised in the petition.

5. Respondent No.1, ADHPL in its reply dated 15.3.2011 to the IA has submitted that the application is not maintainable under Regulation 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter "Conduct of Business Regulations") as the petitioner has not averred any defect or error in the proceedings. Moreover, no new fact/event has been pleaded which necessitate the amendment for adjudication of the issue raised in the petition and the application has been filed after the Commission has reserved its order after extensively hearing the parties. The Respondent No.1 has further submitted that the petitioner had filed the petition under section 60 of the 2003 Act whereas by virtue of the present application,



the petitioner is invoking the jurisdiction of the Commission under an altogether different section viz. section 79(1)(f) of the 2003 Act. The application is basically in the nature of rejoinder to the case of the Respondent No. 1 that the petitioner had no case either under section 60 or section 79 of the 2003 Act.

6. We have considered the submission of the petitioner and respondent No.1 with regard to the admissibility of the IA for amendment of the petition.

7. The petitioner had initially filed the petition under section 60 of the 2003 Act. However, during the course of argument at the admission stage of the petition on 23.9.2010, the learned counsel for the petitioner submitted that apart from section 60 of the 2003 Act, the petition was maintainable under section 79(1)(f) read with section 79(1)(c) of the 2003 Act since the transmission system is an inter-State Transmission System as per the definition of ISTS in the Act. Taking note of the submissions of the petitioner, the petition was admitted and notice was issued to the respondents to file their replies. The Respondent No.1 filed a short reply confined to the question of jurisdiction vide its affidavit dated 12.11.2010. It has been averred by the Respondent No. 1 in para 22 of the reply that “the issues raised in the present petition do not fall within the ambit of section 79 or section 60 of the 2003 Act.” During the hearing of the petition on 7.12.2010, the matter was argued on the question of jurisdiction of the Commission in which the learned counsel for the Respondent No.1 submitted that the petition was neither maintainable under section 60 nor under section 79 of the Act. Thus both in the written pleadings and oral submission, Respondent No.1 has argued on the question of maintainability of the petition



under section 79 of the Act. By virtue of filing IA No. 4/2011, the petitioner seeks to amend the cause title and para 45 of the petition in order to bring on record its case under section 79 of the 2003 Act and to obviate any confusion in this respect. In our view, the Commission has already taken cognizance of the submission of the petitioner during the hearing on 23.9.2010 that the petition is maintainable under section 79 of the 2003 Act in addition to section 60 of the 2003 Act under which the application has been filed. The Respondent No.1 has also extensively dealt with section 79 in its reply to the petition as well as during the hearing of the petition on 7.12.2010 and also during the hearing on 29.3.2011. It is for the Commission to decide as to whether it has jurisdiction in the matter and if so, under which provision of law. Without formal amendment of the petition, the Commission is within its power to consider the petition under Section 79 of the Act in addition Section 60 of the Act as prayed in the petition. The IA No. 4 of 2011 is disposed of accordingly.

8. Before we consider the petition on merit, the first issue which needs to be decided is whether the Commission has the necessary jurisdiction under the Electricity Act, 2003 or the regulations made thereunder to deal with the dispute raised in the petition.

#### **Jurisdiction of the Commission**

9. For deciding the question of jurisdiction, we consider it necessary to lay down the factual matrix as culled out from the pleadings of the parties. The chronological sequence of events are as under:



(a) Everest Power Private Limited (EPPL) is a generating company engaged in executing, implementing and developing the 2x50 MW Malana II Hydro Electric Project in Kullu District of Himachal Pradesh on Build, Own, Operate and Transfer basis. Allain Duhangan Hydro Power Limited (ADPHL) is also a generating company engaged in execution, implementation, development and operation of 2x96 MW Allain Duhangan Hydro Electric Project(ADHEP) in Kullu District of Himachal Pradesh on Build, Own, Operate and Transfer basis.

(b) As per the power evacuation arrangement envisaged by the Central Electricity Authority and Powergrid Corporation of India Limited for large public and private sector hydro power projects coming up in the tributaries of Beas River in Kullu Valley, separate transmission lines from ADHEP and Malana II HEP were to terminate at 400 kV Pooling Station of Power Grid at Panarsa/Banala which was planned and constructed by the Power Grid for evacuation of power from Parbati II and III HEP of NHPC and Kol Dam HEP of NTPC.

(c) Central Electricity Authority in its letter File No.2/HP/18/96-PAC/8108-39 dated 20.8.2002 accorded techno-economic clearance to ADHEP under Electricity (Supply) Act, 1948. As per para 4(vii) of the said letter, Power Grid after detailed route survey was required to confirm the adequacy of land for construction of Parbati pooling point, and accordingly, the decision to take the line from Allain Duhangan to Parbati pooling point instead of Allain Duhangan to Nalagarh was to be reviewed.



(d) On 18.7.2005, Respondent No.1 made an application to PGCIL for long term open access. PGCIL in its letter dated 1.8.2005 informed that commissioning schedule of Panarsa would not coincide with the commissioning of ADHEP. Consequent to the said letter, Respondent No.1 approached Central Electricity Authority who vide its letter dated 14.8.2006 informed PGCIL that if there was any delay in commissioning of Panarsa pooling station, then connectivity should be granted to Respondent No.1 at Nalagarh inter-connection point. Accordingly, PGCIL granted connectivity to ADHEP at Nalagarh.

(e) Ministry of Power, Government of India in its letter No.21.8.2007 accorded its approval under section 68 of the Act for construction of overhead lines up to Nalagarh. Ministry of Environment and Forest, Government of India accorded forest clearance vide letter Nos. 8-107/2007-FC dated 15.4.2009 and No.8-109/2008-FC dated 15.5.2009 for termination of the dedicated transmission line at Nalagarh. The Central Electricity Authority while recommending the case of ADHPL to Ministry of Power for grant of sanction under section 68 of the Act had put the following conditions to be complied with by ADHPL:

- (i) While finalizing the corridor of the proposed Allain Duhangan – Nalagarh 220 kV D/C line, ADHPL should ensure that their corridor is appropriately co-ordinated with respect to the corridor identified by POWERGRID for the 400kV transmission lines in the area

planned for the evacuation of power from Parbati II, Parbati III and Koldam HEPs.

(ii) Out of the total 400 MW transmission capacity of the 220kV D/C line, ADHPL would utilize 192 MW for evacuation of ADHPL power and the balance spare transmission capacity of the line would be made available for evacuation of power from other projects in the Parbati/Beas valley viz, Malana – II (100 MW) AND Sainj (100MW).

(f) The petitioner had entered into a Power Purchase Agreement dated 7.5.2005 with PTC for supply of power from Malana II HEP which would be delivered at the proposed 220/400 kV Parbati Pooling Station of Power grid located at Panarsa/Banala. PTC has executed a Power Sale Agreement with Punjab State Electricity Board for sale of the complete design saleable energy from the Malana II HEP. PTC was granted Long Term Open Access for injection of power from Malana II HEP at the 400 kV bus of Parbati Pooling station.

(g) The petitioner after coming to know that PGCIL had granted open access to ADHEP beyond the power delivery point of 400/220 kV sub-station of Power Grid at Nalagarh due to slippage in the commissioning of the Parbati II HEP, approached the Central Electricity Authority for firming up the transmission network for evacuation of power from Malana II HEP. A meeting was convened by Central Electricity Authority on 10.4.2008 which was attended by the representatives of PGCIL, HPSEB, ADHPL, EPPL and PTC and it was decided as under:



*“a. Malana-II without any further delay should proceed to tie up evacuation of their power through 220 kV ADHEP-Nalagarh line of ADHPL. They would need to establish 220/132 s/s at their own cost.*

*b. ADHPL and EPPL would have a joint meeting on 23<sup>rd</sup> April 2008 to decide the modalities for agreement on the sharing of the cost for the 220 kV ADHEP-Nalagarh line and also its O & M charges for evacuation of the power of Malana II HEP.*

*c. If ADHPL and EPPL arrive at an agreed proposal, the same should be sent to CEA and both parties should proceed accordingly. However, if they are not able to agree on a proposal, both ADHPL and EPPL should send their individual proposal to CEA and a meeting could be held to resolve the issue. However, in any case, both parties should proceed to ensure completion of the evacuation system in the required time frame.*

*d. ADHPL would take up the issue with CERC regarding sharing of the 220 kV ADHEP-Nalagarh line with EPPL for evacuation of power from Malana HEP as well. CEA would extend all support to ADHPL to obtain approval of CERC.”*

(h) Ministry of Power, Government of India in its letter No.11/4/07/PG dated 17.6.2008 accorded approval to EPPL under section 68 of the Act as under:

*“I am directed to refer to Everest Power Private Limited’s letters dated 8.5.08 on the above subject and to convey prior approval of the Central Government under sub-section (1) of section 68 of the Electricity Act, 2003 for construction of 132 kV line for evacuation of power of Malana II HEP and its **inter-connection with 220 kV D/C Allain Duhangan-Nalagarh line near tower no.159 by constructing as 132/220 kV substation** as discussed in a meeting taken by Chairman, CEA on 10.4.2008 wherein it was decided that **Malana should proceed to tie up evacuation of their power through 220 kV ADHEP-Nalagarh line of ADHPL. They would need to establish 220/132 kV sub-station at their own cost on one circuit of the 220 kV Allain Duhangan-Nalagarh line and 132 kV D/C line from Malana II HEP to the 220/132 kV sub-station on 220 kV D/C Allain Duhangan-Nalagarh line. The 220/132 kV sub-station as well as 132 kV line would be the dedicated system of the generating company.”***

(i) In pursuance of the decision in Minutes of Meeting taken by Chairman, CEA on 10.4.2008, the representatives of ADHPL and EPPL met on 14.8.2008 wherein ADHPL expressed its no objection to evacuate the power of Malana II HEP on ADPHL’s 220 kV Allain Duhangan-Nalagarh line subject to commercial settlement and CERC’s approval.

(j) In a meeting taken by Chief Secretary, Government of Himachal Pradesh on 19.11.2008, it was agreed by ADHPL that after the



commissioning of 400 kV pooling point at Panarsa by PGCIL, it would inject power at Panarsa pooling station and the line from Panarsa to Nalagarh would be handed over to HPTCL on mutually agreed terms and conditions.

(k) Additional Chief Secretary (Forests) to the Government of Himachal Pradesh in its letter No.FFE-B-F(2)-63/2008 dated 9.12.2008 addressed to Senior Asstt Inspector General of Forest, Ministry of Forests and Environment Government of India, has conveyed forest clearance in favour of ADHPL for diversion of forest land for laying the 220 kV D/C transmission line from Pirni to Nalagarh. In the letter, the following were recommended:

*“As the proposal attracts the provisions of FCA, 1980, the same is submitted to you for consideration and approval subject to the following conditions which are intended to pool and reduce the number of transmission corridors in the valley.  
i. AD Hydro shall inject its power at Panarsa pooling after the commissioning of this 400 kV pooling point by PGCIL and line beyond Panarsa shall be handed over to HPTCL on mutually agreed terms and conditions.*

*x            x            x            x            x            x  
v.            AD Hydro shall also carry/transmit on this transmission line the power generated by M/s Everest Power at Malana II HEP on mutually agreed terms and conditions.”*

(l) Based on the recommendations of the State Government, Ministry of Environment and Forest, Government of India vide its letters dated 15.4.2009 and 15.5.2009 accorded approval under section 2 of the Forest (Conservation) Act, 1980 for forest clearance for laying the 220 kV D/C transmission line from Pirni to Panarsa to Nalagarh.

(m) In a meeting taken by Member(PS), Central Electricity Authority on 3.9.2009, the following decisions regarding the modalities/solutions to the issues between ADHPL and EPPL were taken:

*“(i) ADHPL shall furnish the design details of the dead end towers for the LILO portion and the foundations and also intimate the name of the supplier and erecting agency to EPPL. The construction of LILO portion will be done by EPPL.*

*(ii) Since the proposed 220/132 kV Chhaur S/S will be constructed by EPPL, the control/ownership of O&M of proposed 220/132 kV Chhaur S/S will remain with EPPL. However, ADHPL also may depute their person for 220 kV S/S control and operation.*

***(iii) The transmission charges between the Allain Duhangan Nalagarh 220 kV D/C line will be shared between ADHPL and EPPL in proportion to the installed generation capacity.***

*(iv) The control/operation of 220 kV circuit breakers for regulating power flow is done as per the instructions of SLDC.”*

(n) The question of termination of Allain Duhangan-Nalagarh transmission system at Panarsa upon commissioning of the 400 kV pooling station of Power Grid which has been committed by ADHPL to HPPTCL was discussed in a meeting under the chairmanship of Chief Engineer (SP&PA) of CEA and ADHPL was advised to interact with HPPTCL and put up a proposal to CEA and PGCIL. As regards future termination of 220 Allain Duhangan-Nalagarh transmission line at Panarsa pooling station, it was decided that ADHPL's liability to wheel EPPL's power shall be limited to Panarsa pooling station of PGCIL subject to commercial agreement between ADHPL, HPPTCL and EPPL for establishment of termination of Allain Nalagarh D/C line at Panarsa and delivery point of Malana would get shifted from Nalagarh to Panarsa pooling station. Both ADHPL and EPPL agreed to enter into agreement on these lines.

(o) In the meeting taken by Director, HPPTCL it was agreed that ADHPL and EEPL should finalize inter-connection agreement expeditiously. Pursuant thereto, ADHPL furnished the draft inter-connection agreement on 31.03.2010. The main features of the inter connection agreement are as under:

- (i) Return on Equity : 3 % higher than CERC norms
- (ii) Cost of 220 kV ADHEP-Nalagarh line: Rs. 2.2 crores per km.
- (iii) Absolute control of 132/220 kV Chhaur substation established by EPPL to remain with ADHPL.
- (iv) Priority to be with ADHPL in case of outage of one circuit of ADHEP-Nalgarh line.
- (v) Scheduling & dispatch of Malana-II HEP by ADHPL.
- (vi) 4% additional loss to be deducted from generation of MALANA II HEP.

(p) The inter-connection agreement could not be concluded due to insistence by ADHPL to enforce its terms and conditions in disregard of the prevailing norms.

(q) On 12.5.2010, Joint Secretary, Ministry of Power conducted a meeting wherein it was agreed as under:

*“(i) The issue of right to use the transmission capacity should be left to the concerned Load Dispatch Centre, which would decide the priorities on the exigencies in public interest.*

*(ii) With regard to the control over 220 kV sub-station at Chhaur, it was noted that the sub-station belonged to EPPL and the solution suggested by the CEA for having a supervisor from ADHPL along with the staff of EPPL should be adhered to.*

*(iii) With regard to sharing of transmission charges, ADHPL agreed to show the accounts for third party inspection so that the transmission charges can be*

*determined in a realistic manner, both the parties can consult CEA , PGCIL and RLDC's in this regard.*

*(iv) The CEO, POSOCO who had also been requested by Ministry of power to join the meeting suggested that the issue of priority can be determined by CERC”*

10. Against the factual matrix as discussed in the foregoing paragraphs above, the petitioner has invoked the jurisdiction of the Commission under Section 79 (1)(c) read with Section 79(1)(f) of the Act and Section 60 of the Act for seeking appropriate directions upon Respondent No.1 to grant inter-connection and other reliefs. The provisions provisions of sections 60 and 79 of the Act are extracted as under:

*“Section 60. (Market domination):*

*The Appropriate Commission may issue such directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry*

*Section 79. Functions of Central Commission :*

*(1) The Central Commission shall discharge the following functions, namely:-*

*.....*

*(c) to regulate the inter-State transmission of electricity ;*

*.....*

*(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;”*

11. Thus the Commission has the power to issue appropriate directions to a generating company or a licensee if such licensee or generating company enters into agreements or into combinations or abuses its dominant position which has an adverse effect on the competition in electricity industry. Section 79 (1)(c) confers the power on the Commission to regulate inter-State transmission of electricity and section 79(1)(f) to adjudicate dispute involving generating company or transmission licensee.

12. The Respondent in its reply has submitted that none of the conditions for operation of Section 79 (1) (f) of the 2003 Act have been fulfilled in the present case as the Respondent no. 1 is neither a transmission licensee nor the issue raised in the petition falls within the ambit of Section 79 (1) (c) or 79 (1) (d) of the Act. It has been submitted that the dedicated transmission line laid by Respondent No.1 can be used as the dedicated transmission line for two generating stations, namely, that of the petitioner and Respondent No. 1, and the terms and conditions for evacuation of power of the petitioner can be mutually agreed through negotiations. Respondent No.1 has further submitted that the parties are within their rights to negotiate the terms and conditions in respect of use of the dedicated transmission line without the intervention of the Commission. Respondent No.1 has further submitted that for invoking Section 60 of the 2003 Act, the Commission has to arrive at the conclusion that the Respondent was in a dominant position in the relevant market; and such dominant position is being abused by Respondent No.1. For these, the Commission shall be required to conduct an investigation as regards the relevant market, the dominant position of the Respondent No. 1, the abuse of such dominant position by Respondent No.1 and its impact on the competition in the relevant market. According to Respondent no.1, the petitioner has not been able to make out a case under Section 60 of the Act against the Respondent No. 1 for abusing its dominant position.

13. The petitioner in its rejoinder has submitted that perusal of various letters, documents and minutes of the meeting held over the last three years prove beyond doubt the fact that Respondent No.1 has already been conferred with



the responsibility of evacuating the power generated by the project of the petitioner which falls in the same corridor/region and therefore, the said transmission line cannot be treated as a dedicated transmission line of the Respondent No.1 and the said line is dedicated to the corridor and should be utilized for evacuation of power being generated by other projects in the said area. The petitioner has further submitted that as per the Master Plan of Central Electricity Authority, the evacuation of power from Malana II HEP is envisaged by LILo of one circuit of Allain Duhangan 220 kV D/C line.

14. On consideration of the factual matrix of the case and submissions of both petitioner and Respondent No.1, it emerges that the transmission lines of Power Grid were planned to extend till Panarsa pooling station in order to meet the evacuation requirements of the generating stations coming up in the Kulu valley of the State of Himachal Pradesh. EPPL was granted open access by CTU for injecting power in the pooling station of Power Grid at Panarsa. On account of the delay in the commissioning of Parbati HEP, the construction of the transmission lines by CTU was delayed. When ADHPL applied for LTOA to Power Grid, it was informed that the pooling station at Panarsa would be delayed. After a joint meeting with Power Grid and CEA, with regard to the evacuation plan, CEA recommended to the Ministry of Power to grant approval under Section 68 of the Act to ADHPL for construction of its dedicated transmission line till Nalagarh. Central Electricity Authority being fully aware of the corridor constraints in the region and the need for a back-up evacuation plan for all generators in the region who are likely to be affected by the delay in



construction of the transmission lines by CTU, while recommending the case of ADHPL for sanction under section 68 of the Act to construct its dedicated transmission line till Panarsa, had advised Ministry of Power as under:

*“(i) While finalizing the corridor of the proposed Allain Duhangan – Nalagarh 220 kV D/C line, ADHPL should ensure that their corridor is appropriately co-ordinated with respect to the corridor identified by POWERGRID for the 400kV transmission lines in the area planned for the evacuation of power from Parbati II, Parbati III and Koldam HEPs.*

*“(ii) Out of the total 400 MW transmission capacity of the 220kV D/C line, ADHPL would utilize 192 MW for evacuation of ADHPL power and the **balance spare transmission capacity of the line would be made available for evacuation of power from other projects in the Parbati/Beas valley viz, Malana – II (100 MW) AND Sainj (100MW).**”*

Thus the dedicated transmission line has been constructed by one generator in place of the development of the inter-state transmission line by Power Grid till Panarsa as planned earlier. All generators in the region whose requirements were taken into account by CEA at the time of planning the inter-State transmission line till Panarsa have been tied up with the dedicated transmission line of Respondent No.1 to evacuate power from their generating stations. Though the 220 kV D/C Allain Duhangan Hydro Electric Project (ADHEP)-Nalagarh transmission line has been developed by Respondent No.1, the main purpose of the line is to evacuate power of all generating stations in the region till Nalagarh where it is connected to the transmission system of CTU.

15. Respondent No.1 has submitted that the original TEC approval of its project and subsequent amendment issued by the Central Electricity Authority mention that transmission line to be constructed for Respondent No.1 was a dedicated transmission line. The petitioner in its rejoinder has submitted that perusal of various letters, documents and meetings over the last three years prove that the Respondent No.1 has been conferred with the responsibility of

evacuating the power generated by the project of the petitioner which falls within the same region/corridor and therefore the said transmission line cannot be treated as a dedicated transmission line. The said transmission line is dedicated to the corridor and would be utilised for evacuation of power being generated by other projects also in the said area. It has been further submitted that even prior to the grant of approval under section 68 of the 2003 Act to ADHPL for their ADHPL-Nalagarh transmission line, the Central Electricity Authority had recommended to MOP that the balance transmission capacity of the transmission lines should be made available to other projects in the region including Malana II. Moreover, Power Grid has communicated to EPPL in its letter dated 24.10.2007 that the master plan of CEA envisaged evacuation of power from Malana II HEP by LILO of one circuit of Allain Duhangan-Nalagarh 220 kV D/C line.

16. We have considered the submissions of the petitioner and Respondent No.1. There is no doubt that as per the Master Plan envisaged by the Central Electricity Authority, the transmission line is required to wheel the power of other generators in the region till the Nalagarh sub-station of Power Grid. Since, the petitioner has been permitted by Ministry of Power, Government of India in its sanction letter under section 68 of the Act to wheel its power by LILO of one circuit of Allain Duhangan-Nalagarh transmission line till the Nalagarh sub-station of Power Grid, the portion of the transmission line to be used by EPPL becomes a part of the inter-State transmission system as "inter-State transmission system" under 2(36) of the 2003 Act which includes conveyance within the State which is incidental to inter-State transmission of





electricity. Moreover, permission to EPPL in the sanction letter under section 68 of the Act to use the transmission line of ADHPL is deemed to be read into the sanction letter to ADHPL under section 68 of the Act and such permission to ADHPL is conditional to wheeling the power of other generators in the region whose generating stations were included in the planning process of CTU and CEA. Since the subject transmission line has been planned to evacuate power from the region for injection into the sub-station of Power Grid at Nalagarh, the transmission line is incidental to inter-State transmission system. The Commission which has been vested with the responsibility to regulate inter-State transmission has the jurisdiction to issue directions under section 79(1)(c) of the Act to regulate transmission on the subject transmission line.

17. The learned Counsel for Respondent No.1 argued during the hearing of 29.3.2011 that ADHPL has created a redundancy to wheel its own power during outage and it can share this redundancy with others on its own terms. We are not in agreement with the submission of the Respondent No.1 for the reason that the redundancy sanctioned in the Techno-economic clearance stands superceded as per the latest Master Plan of CEA which envisaged that the transmission line will be used for other generators in the region. Therefore, Respondent No.1 has a liability to carry the power generated by other generators in the region. Besides EPPL, there are other generators who would require this line for wheeling their power. Therefore, the Commission being vested with the power of regulation of inter-State transmission of electricity is under a statutory obligation to regulate and facilitate inter-State transmission of power and in discharge of the said function, the Commission is of the view that

the applicant has made substantial investment for setting up the generating station which is ready for commercial operation on the basis of the LTOA granted by CTU. Now the liability for making available the transmission line by CTU has been shifted to the Respondent No.1 in terms of the approval under section 68 of the Act to the applicant. The power from the generating station of EPPL will ultimately go to PSEB and the end consumers of Punjab apart from 12% free power to the State of Himachal Pradesh. Non-scheduling of power from the generating station on account of the dispute between applicant and Respondent No. 1 will be a huge national loss especially in the present shortages of electricity. The Commission has been vested with the power to regulate inter-State transmission of electricity which means that the Commission is required to ensure free flow of electricity on the inter-State transmission system and for that purpose, the Commission can issue appropriate directions even in respect of dedicated transmission lines which are planned and developed for inter-State transmission of power.

18. In view of our finding in the preceding paragraph with regard to Commission's jurisdiction to deal with the matter under section 79(1)(c) of the Act and in the facts and circumstances of this case, we do not consider it necessary invoke our jurisdiction under Section 60 of the Act.

19. The next question therefore arises as to what directions could be issued by the Commission under the facts and circumstance of the case to ensure that inter-State transmission of electricity on the subject transmission line does not



suffer on account of persistent difference between Petitioner and the Respondent No. 1 with regard to the terms and conditions of the Transmission Service Agreement (TSA). The Petitioner and Respondent No. 1 are not *ad idem* on the terms and conditions of the –TSA on the following aspects:

- (i) Return on Equity : 3 % higher than CERC norms.
- (ii) Cost of 220 kV ADHEP-Nalagarh line: ₹ 2.2 crores per km.
- (iii) Absolute control of 132/220 kV Chhaur substation established by EPPL to remain with ADHPL.
- (iv) Priority to be with ADHPL in case of outage of one circuit of ADHEP-Nalagarh line.
- (v) Scheduling & dispatch of Malana-II HEP by ADHPL.
- (vi) 4% additional loss to be deducted from generation of MALANA II HEP.

20. In view of the peculiar nature of the case where refusal of connectivity by Respondent No.1(ADHPL) to the petitioner (EPPL) may result in bottling of power of Malana-II HEP, the Commission after detailed deliberation hereby directs the parties to follow the following procedure for coordinated operation and control of generating stations and transmission assets:

- (a) **Connectivity:** The ADHPL shall provide connectivity to EPPL on 220 kV ADHEP-Nalagarh transmission line with immediate effect.
- (b) **Capital cost:** The capital cost of the transmission line shall be mutually decided by EPPL and ADHPL taking into consideration approved project cost of the transmission line and the audited expenditure of the transmission line, and the benchmark capital cost for similar line of CTU.

- (c) **Return on Equity:** Return on Equity shall be on the basis of the rate of return allowed under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 as amended from time to time and any subsequent amendment thereof.
- (d) **O&M Expenses:** O&M expenses shall be calculated on actual and borne in proportion to the use of the transmission line.
- (e) **Control of Sub-station:** The control of 132/220 kV Chhuar Substation will be with EPPL and ADHPL may appoint its representative at this substation for coordination purposes.
- (f) **Lead Generator:** In accordance with Central Electricity Regulatory Commission (Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 as amended from time to time, ADHPL will take responsibility of lead generator.
- (g) **Control Area:** The area comprising Allain Duhangan HEP, Malana II HEP and 220 kV ADHEP-Nalagarh transmission line, LILO of this transmission line alongwith 132/220 kV substation at Chhuar will form separate control area. To further clarify this, before Nalagarh inter-connection point at ISTS, all electric elements shall be part of this control area and interface point of 220 kV ADHPP-Nalagarh circuit with Nalagarh shall be considered as the interface point of this control area .
- (h) **Formation of a coordination Centre:** A coordination centre similar to sub-Load dispatch centre shall be established which would coordinate on behalf of all the generators with respective RLDC or SLDC in all respects of combined schedule, deviations, registration as a single user, payment of transmission charges for ISTS/STS,

payment of LDC charges etc. This would also be take care of its areas responsibility in term of switching and security issues in consultation with concerned RLDC/SLDC. Thus all system operation and market operation issues would be handled by this coordination centre for such new control area in coordination with concerned RLDC/SLDC. This coordination centre shall be managed jointly by both generating companies. The cost of establishing this centre shall be borne by both parties in proportion to their generating capacity .If both parties agree, control room of the one substation or generating stations may be used as control centre by making arrangement of Communications required for performing all functions of Load Despatch centre( LDC).

(i) **Responsibility of the coordination Centre:** The coordination Centre shall be responsible for:

(i)Coordinate with the concerned RLDC/SLDC on behalf of entire electrical control area upto the common connection point on all matters of system operation and market operation.

(ii)Coordinate with individual generators on all matters of system operation and market operation.

iii)Represent whole control area (all generators and dedicated transmission system) in various forums of Regional Power Committees.

(iv) Metering, protection coordination, shutdown coordination, outage coordination, switching instruction, scheduling and accounting within its control area.

(v) Payment of Transmission charges, losses, UI charges, Reactive energy charges, LDC fee and charges to the

concerned pool/authority for ISTS/STS usages on behalf entire control area.

(vi) Calculation/exchange of individual schedules, accounts for individual deviation, computation of individual charges/losses for dedicated portion as well apportioning for ISTS/STS portion which would be communicated by concerned RLDC/SLDC for entire control area.

(vii) On-line communication and real-time data telemetry to RLDC/SLDC

(viii) Off-line data about various information to RLDC/SLDC

(ix) Sending meter data of interface meters installed by CTU/STU to RLDC/SLDC.

(j) **Procedures:** Various procedures to be adopted by the coordination centre/Lead coordinator:

(i) Scheduling: Time line for information exchange between coordination centre and RLDC/SLDC for this activity would be as given in the concerned Grid Code. The coordination centre has to take care of 'to and fro' information exchange between individual generators and coordination centre and computation to be done at its end so that above time line of exchange between RLDC/SLDC and coordination centre is met.

(ii) Metering and Accounting: The principle adopted by the coordination centre for metering and accounting within control area should be similar to one notified in the concerned grid code. Additional meters if required for this purpose may be

installed. The special energy meter shall be installed by CTU at the cost of respective generating stations as per scheme agreed in the meeting held on 3.9.2010 with RLDC. For sake of clarity, the metering arrangement is shown in Annexure-I. Computation of deviation energy account, Reactive Energy charges account shall be done in based on regulations framed by the Commission and duly taking into the account the figures computed by RLDC/SLDC at its interface point with ISTS/STS.

(lii)Computation and apportionment of transmission charges for within its control area transmission system (dedicated transmission system): The tariff may be worked based on norms, in respect of return on equity, depreciation, interest on load, working capital etc, followed by the concerned SERC/CERC. The capital cost shall be as per audited figures and worked out as per the principle enumerated in sub-para (b) above. Allocation of this cost may in *pro rata* to the installed capacity of the generation.

(iv)Computation and apportionment of transmission losses in shared dedicated section: The estimated percentage average transmission losses shall be applied to the respective schedules. The estimation shall be based on the previous week's actual percentage average losses worked out through the actual meter readings.

(v)Outage handling and priorities shall be similar to the one enumerated in the concerned grid code and in accordance with Central Electricity Regulatory Commission (Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2010 as

amended. Although in normal case no evacuation constraint is envisaged for power of both ADHPL and EPPL, in case of eventuality of transmission constraints, Regional system operator will decide schedule of generation depending on system conditions and prevailing hydro condition and his decision in this regard shall be final.

(k) All the above procedures/ rules may be enumerated in writing beforehand and copy may also be submitted to the concerned RLDC/SLDC under intimation to the Commission.

(l) Help of concerned RLDC/SLDC may be sought on the above issues so that above procedures are in line with concerned regulations implemented by RLDCs/SLDCs.

21. IA No.5/2011 has become infructuous in view of above directions.

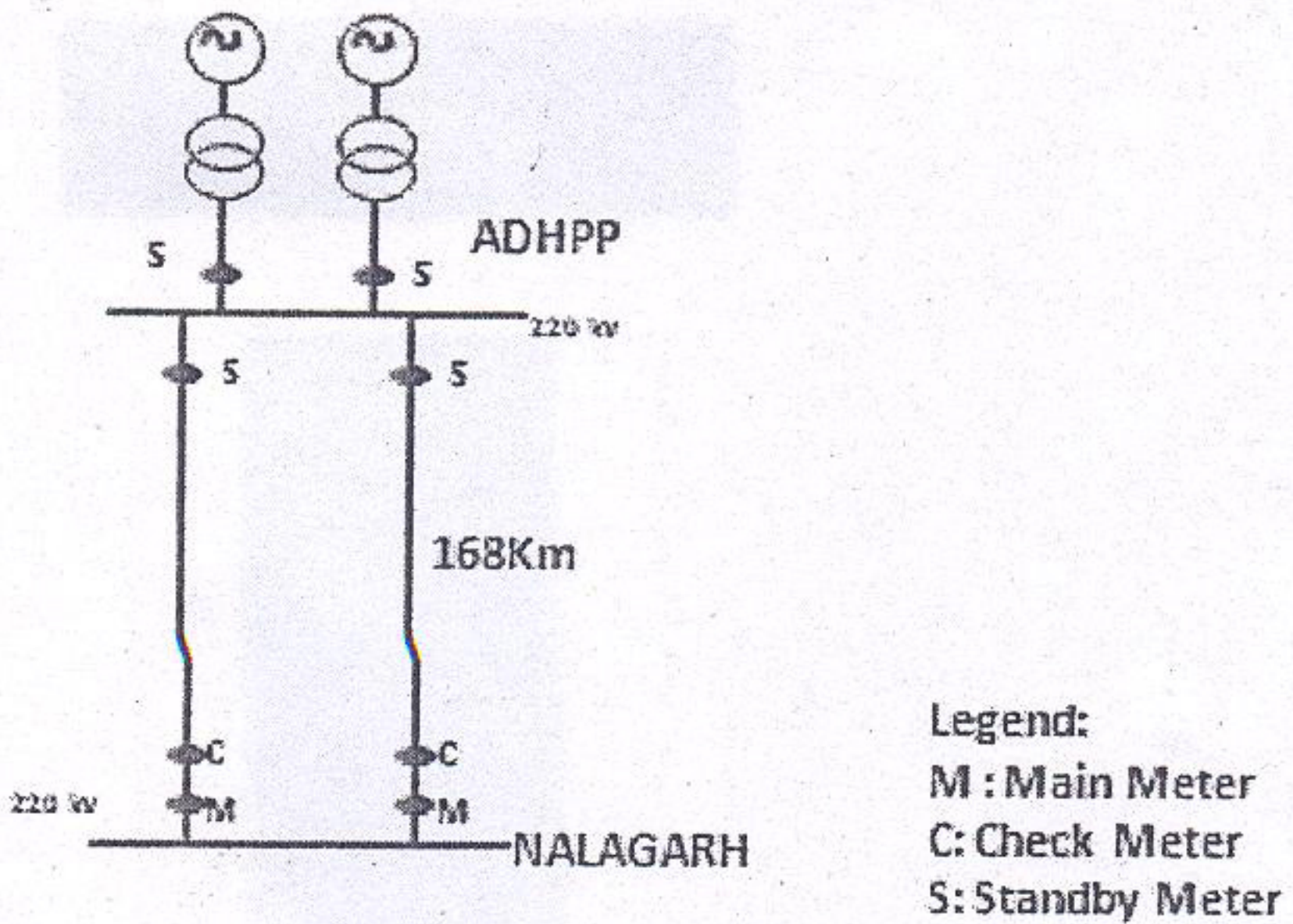
22. Petition No.259/2010 is disposed of accordingly.

Sd/-	sd/-	sd/-	sd/-
<b>(M.DEENA DAYALAN)</b>	<b>(V.S.VERMA)</b>	<b>(S.JAYARAMAN)</b>	<b>(Dr. PRAMOD DEO)</b>
<b>MEMBER</b>	<b>MEMBER</b>	<b>MEMBER</b>	<b>CHAIRPERSON</b>

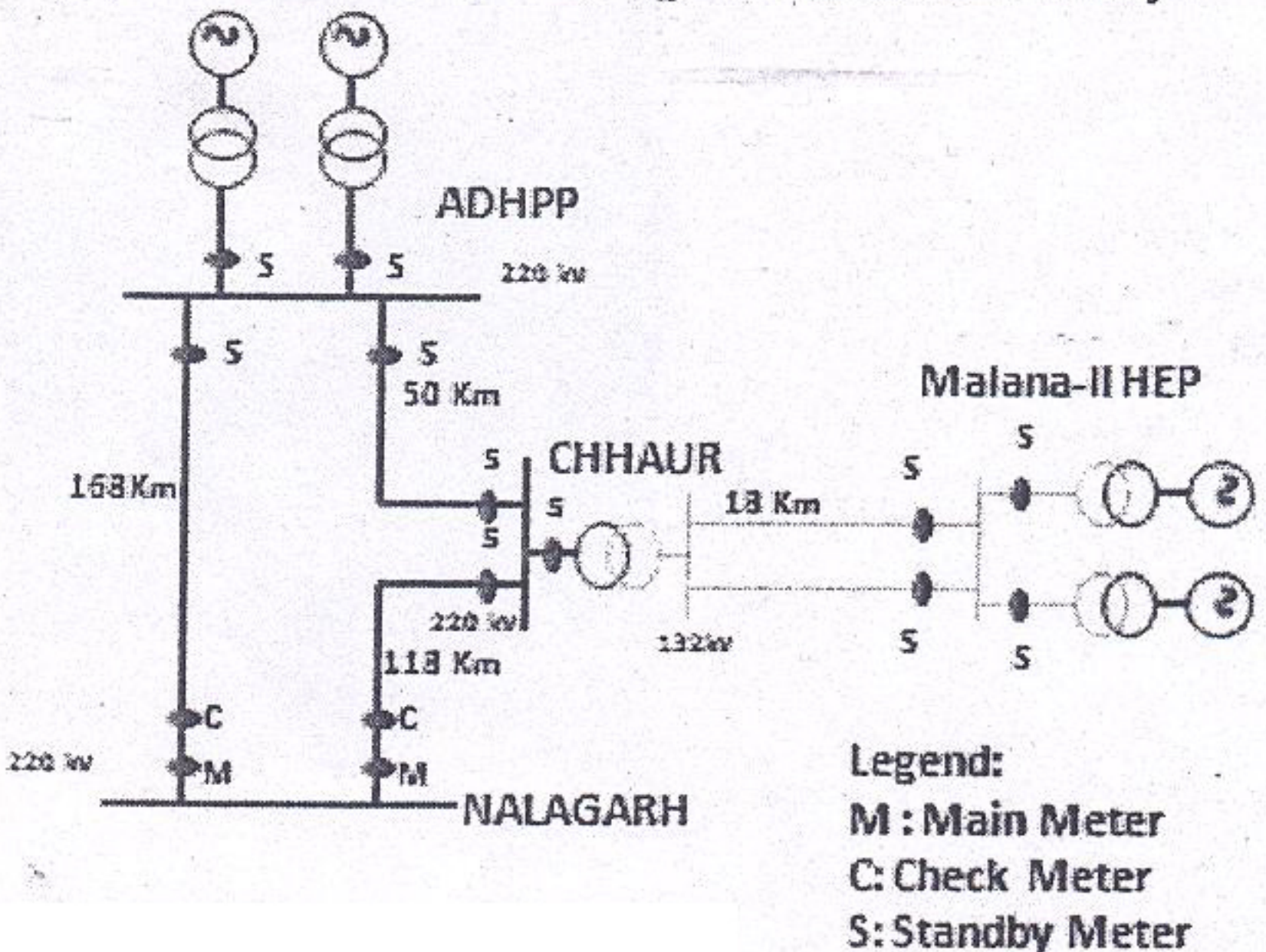




**Inter-face Metering arrangement for Allain Duhangan Hydro Power Project (ADHPP)  
{Before commissioning of Malana-II HEP}**



**Inter-face Metering arrangements for Allain Duhangan Hydro Power Project (ADHPP) and Malana-II HEP  
{After commissioning of Malana-II HEP}**







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Mr. Pawan K. Singh  
Mr. M.G. Ramachandran,  
Mr. Nikhil Nayyar and  
Mr. Pritha SriKumar for R-10

## **JUDGMENT**

### **MR. RAKESH NATH, TECHNICAL MEMBER**

1. This Appeal has been filed by Allain Duhangan Hydro Power Ltd against order dated 1.6.2011 passed by the Central Electricity Regulatory Commission (“Central Commission”) in petition no. 259 of 2010 directing the

- Appellant to provide connectivity on its dedicated transmission line to Everest Power Pvt. Ltd, the Respondent no. 1 herein, and deciding the procedure for coordinated operation and control of the generating stations and the transmission assets including the terms and conditions for charges to be borne by the Respondent no. 1.
2. The Appellant is a generating company which has established a 192 MW Allain Duhangan Hydro Electric Project in district Kullu of Himachal Pradesh on Build Own Operate and Transfer basis.
  3. M/s. Everest Power Pvt. Ltd. is the 1<sup>st</sup> Respondent which is a generating company and has executed the 100 MW Malana – II Hydro Electric Project in Kullu district of Himachal Pradesh.
  4. The Ministry of Power, Government of Himachal Pradesh and H.P. Power Transmission Corporation Ltd. are the

Respondents 6 and 8 respectively. The Central Commission is the Respondent no. 10.

5. The brief facts of the case are as under:-

5.1 On 20.8.2002 the Central Electricity Authority (hereinafter referred to as "CEA") accorded techno-economic clearance to the Allain Duhangan Hydro Electric Project. The clearance included cost of 220 kV Allain Duhangan – Nalagarh double circuit line for evacuation of power from the Appellant's project. However, the clearance *inter alia* stipulated that Power Grid Corporation, the Central Transmission Utility and the transmission licensee, after the route survey would confirm the adequacy of land after construction of Parbati pooling point and, accordingly, the decision of taking the line from Allain Duhangan to Parbati pooling point instead of Allain Duhangan to Nalagarh would be reviewed.

5.2 On 18.7.2005 the Appellant made an application seeking long term open access to Power Grid, the CTU. On 1.8.2005, Power Grid informed the Appellant that the commissioning of Parbati Pooling Station would not coincide with the commissioning of the Appellant's generating station. Pursuant to the said letter, the Appellant approached CEA. Thereafter on 14.8.2006, CEA informed the Appellant that Power Grid had been requested that if there was any delay in commissioning of the Parbati Pooling Station, then connectivity should be granted to the Appellant at Nalagarh sub-station of Power Grid. After various deliberations and meetings between CEA, Power Grid and the Appellant, Power Grid agreed to grant connectivity to the Appellant at Nalagarh. On 26.4.2007 Power Grid granted connectivity to the Appellant at Nalagarh and long term open access on its inter-State transmission system.

5.3 On 25.6.2007, the Appellant approached the Ministry of Power for their approval under Section 68 of the Act to construct 220 KV Allain Duhangan-Nalagarh 220 KV double circuit line.

5.4 Ministry of Power sought comments of the CEA on the above proposal of the Appellant. On 31.7.2007, CEA informed the Ministry of Power that it did not have any objection to the approval of the Allain Duhangan – Nalagarh line under Section 68 of the Act provided that out of 400 MW transmission capacity of the transmission line, the Appellant would utilise 192 MW for evacuation of power from Allain Duhangan and the balance spare transmission capacity of the line would be made available for evacuation of power from other projects in Parbati/Beas Valley, viz., Malana – II (100 MW) and Sainj (100 MW)

5.5 On 21.8.2007, the Ministry of Power accorded the approval for construction of Allain Duhangan -Nalagarh



220 KV double circuit line as the Associated Transmission System of Allain Duhangan HEP.

5.6 On 10.4.2008 CEA convened a meeting to discuss the evacuation arrangement for Malana – II Hydro-Electric Project of the Respondent no.1. It was agreed in the meeting which was attended by the representative of the Appellant that Malana-II should proceed to tie up evacuation of power through 220 KV Allain Duhangan - Nalagarh line and the Appellant and the Respondent no. 1 would mutually decide the modalities for sharing of the cost and Operation and Maintenance charges for evacuation of power of Malana-II and in case no agreement could be reached CEA would try to resolve the issue.

5.7 On 17.6.2008, Ministry of Power granted prior approval under Section 68 of the Act to the Respondent no. 1 for construction of 132 KV line for evacuation of power of Malana-II Project of the Respondent no. 1 and its inter-

connection with 220 KV Allain Duhangan -Nalagarh line of the Appellant by constructing a 132/220 KV Sub-station as the dedicated transmission system of the Respondent no. 1. Subsequently on 14.7.2008, the Power Grid granted long term open access on its inter-State transmission system to the Respondent no.1 for power injection by Malana-II at Nalagarh for onward supply to Punjab State Electricity Board.

5.8 On 18.6.2008, the Appellant informed the Ministry of Power its no objection to the Respondent no. 1 establishing the 132/220 KV Sub-station and loop-in-loop-out of one circuit of Allain Duhangan-Nalagarh line at the 132/220 kV sub-station of the Respondent no. 1, subject to certain conditions.

5.9 On 14.8.2008 the Appellant and the Respondent no. 1 had a meeting where the Appellant informed that it had no objection to evacuate power of Malana-II HEP subject to commercial settlement and approval of the Central

Commission and that the control of the 132/220 KV Sub-station should rest with the Appellant.

5.10 Subsequently a number of meetings took place between the Appellant and the Respondent no. 1 to resolve the commercial and operational issues regarding sharing of the dedicated line of the Appellant by the Respondent no.1. However, agreement could not be reached between the parties.

5.11 In September, 2010 the Respondent no. 1 filed a petition before the Central Commission alleging abuse of dominance and seeking the directions against the Appellant.

5.12 On 1.6.2011 the Central Commission passed the impugned order which is being challenged by the Appellant in this Appeal.

6. On 10.6.2011 this Tribunal after hearing the parties passed an interim order as under:-

- “i) The Appellant will allow connectivity in compliance with the applicable laws to Respondent no.1 on 220 KV Allain Duhangan – Nalagarh transmission line by loop in loop out of one of the circuits at 220/132 KV Chhuar sub-station of Respondent no.1.***
- ii) In the interim period, the transmission charges will be worked out on the capital cost of the transmission line as per the audited accounts of the Appellant on the basis of norms of Central Commission’s Tariff Regulations, 2009 and will be shared by the Respondent no.1 in proportion to the rated capacity of the unit commissioned, on pro-rata basis.***
- iii) The first Respondent will share the transmission loss @ 4.75 % of the energy injected by Malana II Power Station at the tapping of 220 KV at Allain Duhangan – Nalagarh circuit at Chhuar Sub-Station of Respondent no.1.***
- iv) The Northern Region Load Despatch Centre will schedule and dispatch the power generation and prepare UI accounts and energy accounts for both Allain Duhangan Hydro Power Station of the Appellant and Malana- II Power Station of Respondent No.1 and will control the switching operations at 220/132 KV at Chhuar sub-station of the Respondent no.1.”***

7. Accordingly, the Appellant provided connectivity to Malana II HEP of the Respondent no.1 on its dedicated transmission line by loop-in-loop-out of one of the circuits of Allain Duhangan – Nalagarh line at 220/132 KV Chhaur Sub-station of the Respondent no.1. The Appellant and the Respondent no.1 also entered into an Interim Power Transmission Agreement for sharing of the transmission charges and transmission losses by the Respondent no. 1, as per the directions of this Tribunal.
  
8. In our order dated 3.5.2012 we noted that the issue has arisen due to optimization in transmission planning adopted by the Central and State Planning Agencies to save the area required in transmission corridor due to right of way problem in the hilly terrain. In the circumstances of the case, there was no alternative but to evacuate the power of both Allain Duhangan and Malana II Hydro Electric Projects through the 220 KV Allain Duhangan - Nalagarh line owned by the Appellant.

The Ld. Counsel for the Appellant also felt that there was no alternative in the present case but to allow evacuation of Malana II HEP through the dedicated transmission line of the Appellant. We felt that it was in the interest of both the parties to amicably settle the matter. We also recorded the issues flagged by the Appellant and the Respondent no. 1 which were required to be resolved and gave time to the parties to discuss and report settlement to us. The issues raised by both the parties were: verification of capital cost, return on equity on investment, sharing of transmission line losses, priority in case of outage of a circuit and control of Chhaur sub-station of the Respondent no.1.

9. However, despite giving adequate time to the Appellant and the Respondent no. 1 to resolve the issue, settlement could not be reached between them. Thereafter, we posted the matter for hearing.

10. One of the issues raised by the Appellant was that the impugned order was passed by the Central Commission against the Principle of Natural Justice as the Appellant was denied an opportunity of filing its reply and addressing the Commission on merits. The Appellant had filed its reply on the issue of maintainability of the petition and the jurisdiction of the Central Commission and argued the matter on the aforesaid preliminary issues. The arguments were heard on 7.12.2010 on the issue of maintainability and jurisdiction and the orders were reserved. However, subsequently on 21.2.2011, the Respondent no. 1 filed two interim applications seeking amendment to petition and directions against the Appellant to permit transmission of electricity. The Central Commission heard the parties and granted time to file reply/rejoinder. Accordingly, the Appellant filed the reply. Thus, according to the Appellant they only filed submissions limited to maintainability.

11. On the other hand the Respondent no. 1 submitted that the Appellant was heard extensively on merits of the case besides the issue of maintainability. The Appellant had never sought any permission for filing short reply nor filed any application before the Central Commission seeking any leave to file a detailed reply on merits of the case. Having participated in extensive arguments as made by the Appellant on merits before the Central Commission, the Appellant could not complain against the exercise of jurisdiction by the Central Commission under Section 79 of the Electricity Act.
  
12. The Ld. Counsel for the State Commission has also submitted that the matter was argued at length before the Central Commission on both issues of maintainability as well as merits.
  
13. Even though the impugned order records the terms and conditions of the Transmission Supply Agreement sought



by the Appellant it does not show whether the Appellant was heard on these issues on merits. However, we do not want to go into the issue of Principle of Natural Justice, as we decided to hear the parties on the issue of maintainability as well as merits as we thought that no useful purpose will be served in remanding the matter back to the Central Commission for reconsideration without hearing the matter on merits as the connectivity has already been provided to Malana II on the Appellant's dedicated transmission line and the arrangement could not be reversed as agreed by both the parties. The Ld. Counsel for the parties also felt that instead of remanding the matter back to the Central Commission for reconsideration, the Tribunal could hear the matter on merits and decide the ratio.

14. The Appellant has made the following submissions:

14.1 The impugned order is without jurisdiction and the petition filed by the Respondent no. 1 was not maintainable before the Central Commission.

14.2 Section 79(1) (f) of the Act envisages the adjudication of a dispute involving generating companies or the transmission licensees in regard to regulation of tariff of generating companies owned or controlled by the Central Government and for such generating companies who have a composite scheme for generation and sale of electricity in more than one State, regulation of inter-State transmission of electricity and determination of tariff for inter-State transmission of electricity. Thus, the precondition for invocation of provisions of Section 79(1)(f) are that there have to be generating companies or the transmission licensee in the dispute between two generating companies on the issue of generation or one generating company and a transmission licensee on an issue of transmission or two transmission licensees on an issue of transmission.

14.3 Even though the Respondent no. 1 had raised the issues relating of transmission of electricity, the main ingredient that one of the parties has to be a transmission licensee is missing. As such, the petition filed by the Respondent no.1 before the Central Commission did not fall within the provisions of Section 79 of the Act. The Central Commission has failed to appreciate that the Appellant is not a transmission licensee under the Act and as such the provisions of Section 79(1)(f) are not attracted. It is a settled law that a statutory authority cannot go beyond the jurisdiction conferred by the Statute under which it is constituted and derives its power from and cannot confer itself with jurisdiction. A statutory authority cannot confer the jurisdiction on the basis of secondary sources and/or on the basis of documents/minutes of meetings. Jurisdiction to a statutory authority also cannot be conferred by an agreement or consent of the parties.

14.4. The Central Commission has incorrectly assumed the jurisdiction on the basis of minutes of meetings of CEA, wrong interpretation of Section 2(36) of the Act defining inter-State transmission system, CEA's recommendation to the Ministry of Power while granting approval to the Appellant under Section 68 of the Act for construction of Allain Duhangan - Nalagarh line and the Section 68 approval for the dedicated transmission system of the Respondent no.1.

14.5 The Central Commission has ignored the fact that the approval granted to the Appellant by Government of India, Ministry of Power under Section 68 does not contain any condition with regard to wheeling of power of the Respondent no.1. Despite the recommendations of CEA that the spare transmission capacity of the Appellant's dedicated transmission line would be made available to other projects, no such condition has been imposed by the Ministry of Power in the approval accorded under Section 68 of the Act to the Appellant.

14.6 The Central Commission has erred to treat the permission to Respondent no.1 for sanction under Section 68 to use the transmission line of the Appellant as deemed to be the sanction letter of the Appellant.

14.7 The Central Commission also could not have fixed the commercial terms and conditions for utilisation of the dedicated transmission line of the Appellant by the Respondent no.1.

14.8 No basis for dominant position under Section 60 has been made out by the Respondent no.1 in its petition before the Central Commission. The Appellant is not a transmission licensee so the precondition for invocation of Section 60 of the Act is not met.

14.9 Ld. Counsel for the Appellant also submitted detailed reasons for higher capital cost incurred in construction of 220 kV Allain Duhangan – Nalagarh line. He submitted that the Appellant is also entitled to claim higher return on equity. He also stated that due to injection of power by

Malana-II the transmission losses on the Allain Duhangan – Nalagarh circuits have increased. Therefore, the Respondent no.1 is liable to bear incremental transmission losses on the line section instead of average transmission losses. Further, the control of 220/132 kV Chhaur sub-station should also rest with the Appellant for its efficient operation. In case of outage of one of the circuits, the Appellant's generation should get priority over the generation of the Respondent no.1 as the line is owned by the Appellant and is the dedicated transmission system of its power project.

15. The Respondent no.1 has made the following submissions:-

15.1 The Respondent no.1 had entered into an agreement for sale of power from its Malana II project with PTC India Ltd., a power trader, in July 2005. On 21.2.2006, PTC was granted long term open access for evacuation of power from the Malana II project through Parbati Pooling Station. Since Parbati Pooling Station and associated

transmission system of Power Grid was getting delayed, the CEA and Power Grid planned evacuation of Malana II through 220 KV Allain Duhangan – Nalagarh transmission system of the Appellant utilizing its spare capacity. The Appellant had also given its consent to this arrangement.

15.2 The approval granted by the Ministry of Power, Government of India under Section 68 of the Act on 17.6.2008 to the Respondent no. 1 also provided for construction of 132 KV line for evacuation of power of Malana II and its interconnection with 220 kV Allain Duhangan – Nalagarh line by constructing a 132/220 KV sub-station as its dedicated transmission system. Accordingly, the dedicated transmission system was constructed by the Respondent no.1. The forest clearance granted to the Appellant for Allain Duhangan – Nalagarh line was also accorded on the condition that the Appellant would also carry/transmit on its transmission line the power generated by Malana II. Subsequently in a

number of meeting taken by Ministry of Power, CEA, Power Grid and Himachal Pradesh Power Transmission Corporation, the State Transmission Utility, the Appellant had consented to evacuate power of various projects coming up in Parbati Basin including Malana II. In the circumstances of the case and peculiar facts, the 220 KV Allain Duhangan – Nalagarh line has lost its dedicated nature and is now to be considered as a main transmission line which is performing the function of inter-State transmission system and thus amenable of being regulated by the Central Commission.

15.3 Prior approval granted to the Respondent no.1 by the Government under Section 68 by letter dated 17.6.2008 is the statutory approval to evacuate the power generated by the Respondent no.1 at Malana II through 220 kV Allain Duhangan – Nalagarh transmission line of the Appellant. Thus, under the law, a statutory right has been created by the Government in favour of the Respondent no.1 which cannot be under the law be



rejected by the Appellant by putting unreasonable conditions and by demanding exemplary charges for transmission of such energy, against the Regulations of the Central Commission.

15.4 Filing of the petition by the Respondent no.1 before the Central Commission for amendment of petition no. 259 of 2010 to include 79 (1) (c), (d) and (f) of the Electricity Act did not prejudice the rights of the Appellant.

15.5 The Central Commission has the jurisdiction to adjudicate the petition under Section 79(1)(f) of the 2003 Act as 220 KV Allain Duhangan – Nalagarh line is a inter-State line within the meaning of Section 2 (36)(ii) of the Electricity Act, 2003.

15.6 In view of the Appellant agreeing to evacuate the power of Malana II and other hydro projects on Allain Duhangan - Nalagarh line, it has lost its dedicated nature and since

the Appellant is now engaged in the business of evacuation of energy granted from the various projects, the Appellant should be directed to obtain a transmission licence in terms of the provisions of the Act.

15.7 CEA had specifically recommended that out of 400 MW capacity of 220 KV Allain Duhangan – Nalagarh line, the Appellant would utilize 192 MW for evacuation of Allain Duhangan power and the balance spare capacity of the line would be made available to Malana II and Sainj Hydro-Electric projects. The above recommendation of CEA has to be read along with the approval under Section 68 granted by the Ministry of Power dated 17.6.2008 which specifically stated that the power generated by Malana II would be transmitted through the 220 kV Allain Duhangan – Nalagarh transmission system of the Appellant.

15.8 Perusal of various correspondence exchanged between the parties/authorities, including the plan envisaged by

CEA for evacuation of power generated in the region would make it clear that Allain Duhangan – Nalagarh transmission system is to be treated as a dedicated transmission system for the entire corridor through which the energy generated from other hydro electric projects coming up in the region would be transmitted and the Appellant shall be required to abide by the regulatory framework.

15.9 The capital cost indicated by the Appellant for its transmission system is very high considering the cost incurred by the Power Grid and other transmission licensees. He also supported the findings of the Central Commission regarding transmission losses and priority in case of outage of line. According to him the Appellant could not claim ROE higher than that allowed to a transmission licensee under the Central Commission's regulations.

16. Himachal Pradesh Power Transmission Corporation, the Respondent no. 8 herein, in their reply have informed

that the Chief Secretary to Government of Himachal Pradesh had taken a meeting on 19.11.2008 on the issue of large number of transmission lines coming up on the Beas Basin including the transmission line of the Appellant with a view to optimize the transmission corridors and to reduce the number of transmission lines in the valley and carry higher load of power on fewer lines. After detailed discussion to pool and reduce the transmission corridors in the Beas Basin it was inter alia decided the Appellant shall also carry/transmit on its transmission line the power generated by the Respondent no. 1 on mutually agreed terms and conditions. Subsequently, the Respondent no.8 convened meetings on 22.3.2010 and 30.4.2010 with the officials of the Appellant and the Respondent no.1 with a view to resolve the issues in finalizing the Transmission Service Agreement between the Appellant and the Respondent no.1. The Respondent no. 8 has also informed about the notification dated 15.9.2010 of the State Government amending the Hydro Power Policy, 2006 of the State

Government to the extent that the Respondent no. 8 which is also the State Transmission Utility would co-ordinate to ensure optimum utilisation of the transmission system including the dedicated transmission system in the State. The Respondent no. 8 has also informed about a meeting taken by Principal Secretary (Power), Government of Himachal Pradesh with the representatives of the Appellant and the Respondent no. 1 on 2.8.2010 wherein it was agreed that the transmission losses and the transmission charges would be as per the prevailing regulations.

17. The State Government of Himachal Pradesh adopted the reply filed by the Respondent no.8.
18. We have heard the Ld. Counsel for the Appellant, the Respondent no. 1 and the Central Commission and the representative of Respondent no. 6 and 8. Ld. Counsel for the Appellant has already accepted that the dedicated transmission line constructed by the Appellant could be

used for evacuation of power of the Respondent no.1 on the mutually agreed terms and conditions. However, the terms and conditions offered by the Appellant are not acceptable to the Respondent no.1 as according to them they are not reasonable and not in line with the Central Commission's Regulations. According to the Respondent no.1, the capital cost of the transmission line claimed by the Appellant is very much on the higher side. On the other hand, the Appellant wants the Transmission Service Agreement to be entered into at its own terms and conditions.

19. In view of the submissions made by the Ld. Counsel for the parties, the following questions would arise for our consideration.

- i) Whether the Central Commission has the jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no. 1 relating to sharing of transmission charges, transmission losses by the Respondent no.1 and

- other functional and operational issues involving Allain Duhangan-Nalagarh 220 kV double circuit line of the Appellant on providing interconnection to the dedicated transmission system of Malana-II Hydro Project of the Respondent no. 1?
- ii) In the circumstances of the present case when the Appellant has agreed to allow evacuation of power of the Malana II HEP of the Respondent no.1 on its dedicated transmission system, whether the transmission of electricity by the power plant of the Respondent no. 1 on Allain Duhangan – Malana line could be considered as inter-State transmission of electricity?
  - iii) In case we come to the conclusion that the Central Commission has no jurisdiction to arbitrate upon the dispute then how the issues relating to sharing of Allain Duhangan - Nalagarh transmission line between the Appellant and the Respondent no.1 could be resolved?
  - iv) If the answer to the first question is in positive whether the Central Commission has correctly decided the issues

relating to sharing of the 220 kV Allain Duhangan – Nalagarh line by the Respondent no.1?

20. Since the first three issues are interrelated we shall be taking them up together.

21. Let us first examine the findings of the Central Commission in the impugned order. The relevant extracts are as under:-

*“14. On consideration of the factual matrix of the case and submissions of both petitioner and Respondent No.1, it emerges that the transmission lines of Power Grid were planned to extend till Panarsa pooling station in order to meet the evacuation requirements of the generating stations coming up in the Kullu valley of the State of Himachal Pradesh. EPPL was granted open access by CTU for injecting power in the pooling station of Power Grid at Panarsa. On account of the delay in the commissioning of Parbati HEP, the construction of the transmission lines by CTU was delayed. When ADHPL applied for LTOA to Power Grid, it was informed that the pooling station at Panarsa would be delayed. After a joint meeting with Power Grid and CEA, with regard to the evacuation plan, CEA recommended to the Ministry of Power to grant approval under Section 68 of the Act to ADHPL for construction of its dedicated transmission line till Nalagarh. Central Electricity Authority being fully aware of the corridor constraints in the region and the need for a back-up evacuation plan for all generators in the region who are likely to be affected by the delay in construction*



*of the transmission lines by CTU, while recommending the case of ADHPL for sanction under section 68 of the Act to construct its dedicated transmission line till Panarsa, had advised Ministry of Power as under:*

*“(i) While finalizing the corridor of the proposed Allain Duhangan – Nalagarh 220 kV D/C line, ADHPL should ensure that their corridor is appropriately coordinated with respect to the corridor identified by POWERGRID for the 400 kV transmission lines in the area planned for the evacuation of power from Parbati II, Parbati III and Koldam HEPs.*

*(ii) Out of the total 400 MW transmission capacity of the 220 kV D/C line, ADHPL would utilize 192 MW for evacuation for ADHPL power and the balance spare transmission capacity of the line would be made available for evacuation of power from other projects in the Parbati/Beas valley viz, Malana – II (100 MW) and Sainj (100 MW)”.*

*Thus, the dedicated transmission line has been constructed by one generator in place of the development of the inter-state transmission line by Power Grid till Panarsa as planned earlier. All generators in the region whose requirements were taken into account by CEA at the time of planning the inter-State transmission line till Panarsa have been tied up with the dedicated transmission line of Respondent No.1 to evacuate power from their generating stations. Though the 220 kV D/C Allain Duhangan Hydro Electric Project (ADHEP)- Nalagarh transmission line has been developed by Respondent No.1, the main purpose of the line is to evacuate power of all generating stations in the region till Nalagarh where it is connected to the transmission system of CTU.”*

*“16. We have considered the submissions of the petitioner and Respondent No.1. There is no doubt that as per the Master Plan envisaged by the Central Electricity Authority,*

*the transmission line is required to wheel the power of other generators in the region till the Nalagarh sub-station of Power Grid. Since, the petitioner has been permitted by Ministry of Power, Government of India in its sanction letter under section 68 of the Act to wheel its power by LILO of one circuit of Allain Duhangan – Nalagarh transmission line till the Nalagarh sub-station of Power Grid, the portion of the transmission line to be used by EPPL becomes a part of the inter-State transmission system as “inter-State transmission system” under 2(36) of the 2003 Act which includes conveyance within the State which is incidental to inter-State transmission of electricity. Moreover, permission to EPPL in the sanction letter under section 68 of the Act to use the transmission line of ADHPL is deemed to be read into the sanction letter to ADHPL under section 68 of the Act and such permission to ADHPL is conditional to wheeling the power of other generators in the region whose generating stations were included in the planning process of CTU and CEA. Since the subject transmission line has been planned to evacuate power from the region for injection into the sub-station of Power Grid at Nalagarh, the transmission line is incidental to inter-State transmission system. The Commission which has been vested with the responsibility to regulate inter-State transmission has the jurisdiction to issue directions under section 79(1)(c) of the Act to regulate transmission on the subject transmission line.*

17. *The learned counsel for Respondent No.1 argued during the hearing of 29.3.2011 that ADHPL has created a redundancy to wheel its own power during outage and it can share this redundancy with others on its own terms. We are not in agreement with the submission of the Respondent No.1 for the reason that the redundancy sanctioned in the Techno-economic clearance stands superceded as per the latest Master Plan of CEA which envisaged that the transmission line will be used for other generators in the region. Therefore, Respondent No. 1 has a liability to carry the power generated by other generators*

*in the region. Besides EPPL, there are other generators who would require this line for wheeling their power. Therefore, the Commission being vested with the power of regulation of inter-State transmission of electricity is under a statutory obligation to regulate and facilitate inter-State transmission of power and in discharge of the said function, the Commission is of the view that the applicant has made substantial investment for setting up the generating station which is ready for commercial operation on the basis of the LTOA granted by CTU. Now the liability for making available the transmission line by CTU has been shifted to the Respondent No.1 in terms of the approval under section 68 of the Act to the applicant. The power from the generating station of EPPL will ultimately go to PSEB and the end consumers of Punjab apart from 12% free power to the State of Himachal Pradesh. Non-scheduling of power from the generating station on account of the dispute between applicant and Respondent No. 1 will be a huge national loss especially in the present shortage of electricity. The Commission has been vested with the power to regulate inter-State transmission of electricity which means that the Commission is required to ensue free flow of electricity on the inter-State transmission system and for that purpose, the Commission can issue appropriate directions even in respect of dedicated transmission lines which are planned and developed for inter-State transmission of power.*

18. *In view of our finding in the preceding paragraph with regard to Commission's jurisdiction to deal with the matter under section 79(1)(c) of the Act and in the facts and circumstances of this case, we do not consider it necessary invoke our jurisdiction under Section 60 of the Act.*
19. *The next question therefore arises as to what directions could be issued by the Commission under the facts and circumstance of the case to ensure that inter-State transmission of electricity on the subject transmission line*

*does not suffer on account of persistent difference between Petitioner and the Respondent No. 1 with regard to the terms and conditions of the Transmission Service Agreement (TSA). The Petitioner and Respondent No.1 are not ad idem on the terms and conditions of the – TSA on the following aspects:*

- (i) Return on Equity : 3% higher than CERC norms.*
- (ii) Cost of 220 kV ADHEP-Nalagarh line: Rs. 2.2 crores per km.*
- (iii) Absolute control of 132/220 kV Chhaur substation established by EPPL to remain with ADHPL.*
- (iv) Priority to be with ADHPL in case of outage of one circuit of ADHEP-Nalagarh line.*
- (v) Scheduling & dispatch of Malana-II HEP by ADHPL.*
- (vi) 4% additional loss to be deducted from generation of MALANA II HEP.*

*20. In view of the peculiar nature of the case where refusal of connectivity by Respondent No.1 (ADHPL) to the petitioner (EPPL) may result in bottling of power of Malana-II HEP, the Commission after detailed deliberation hereby directs the parties to follow the following procedure for coordinated operation and control of generating stations and transmission assets:”*

The Central Commission has also given directions regarding the procedure to be followed by the parties for coordinated operation and control of generating stations and transmission assets, including the principles for determination of transmission charges and transmission

losses for use of Allain Duhangan – Nalagarh line by the Respondent no.1.

22. The findings of the Central Commission are summarized as under:

22.1 Power Grid had planned construction of Panarasa Pooling Station (Parbati Pooling Station) in order to meet the evacuation requirements of the generating stations coming up in Kullu valley of Himachal Pradesh. The Respondent no.1 was also granted open access by Power Grid by injecting power at the Pooling Station at Panarasa. On account of delay in construction of Parbati Hydro Electric Project, the construction of the Panarasa Pooling Station was delayed.

22.2 In view of above, CEA recommended to the Ministry of Power to grant approval under Section 68 of the Act to the Appellant for construction of the dedicated line till Nalagarh and also make available the spare capacity of the line for evacuation of power from Malana II and Sainj.

22.3 Thus a dedicated line has been constructed by M/s. ADHPL in place of development of the inter-State transmission system by Power Grid as planned earlier. Though the line has been developed by the ADPHL (Appellant herein), the main purpose of the line is to evacuate the power of all generating stations in the region till Nalagarh.

22.4 As per the master plan envisaged by the CEA, the transmission line of ADHPL is required to wheel the power of other generators in the region till Nalagarh.

22.5 Since M/s EPPL (Respondent no.1 herein) has been permitted by the Government of India in the sanction under Section 68 of the Act to wheel its power through loop-in loop-out of one circuit of Allain Duhangan – Nalagarh line till Nalagarh sub-station, the portion of line to be used by M/s EPPL becomes a part of inter-State transmission system.

22.6 Permission to M/s. EPPL in the sanction letter under Section 68 of the Act to use the transmission line of M/s. ADHPL is deemed to be read into the sanction letter of ADHPL under Section 68 of the Act. As such, the permission to ADHPL is conditional to wheeling of power of other generators in the region.

22.7 The Central Commission has been vested with the responsibility to regulate inter-State transmission system and has jurisdiction to issue directions under Section 79(1)(c) of the Act to regulate the Allain Duhangan – Nalagarh transmission line.

22.8 M/s. EPPL have made substantial investment for setting up the generating station on the basis of Long Term Open Access granted by the CTU. The power from EPPL will ultimately be transmitted and consumed by the end consumers.

22.9 The liability for making available the transmission line by CTU has been shifted to M/s. ADHPL in terms of approval under Section 68 of the Act to M/s. EPPL.

22.10 The Commission has been vested with powers to regulate inter-State transmission of electricity and for ensuring free flow of electricity on the inter-State transmission system, the Commission can issue appropriate directions even in respect of the dedicated transmission lines which are planned and developed for inter-State transmission of power.

22.11 In view of the Commission's finding that it has the jurisdiction to deal with the matter under Section 79(1)(c) of the Act, the invocation of Commission's jurisdiction under Section 60 of Act is not considered.

23. Accordingly, the Central Commission has given the following directions to the parties for coordinated



operation of generating stations and transmission system.

- (a) Connectivity: M/s. ADHPL to provide connectivity to M/s. EPPL on 220 kV Allain Duhangan – Nalagarh line.
- (b) Capital cost: To be mutually decided by M/s. ADHPL and M/s. EPPL taking into consideration the approved project cost of the line, the audited expenditure and benchmark capital cost for similar line of CTU.
- (c) Return on Equity: As per Central Commission's Regulations, 2009, as amended from time to time.
- (d) O&M expenses: To be calculated as per actual and borne in proportion to use of the transmission line.
- (e) Control of 132/220 KV Chhuar Sub-station : Control of the sub-station with M/s. EPPL and M/s. ADHPL may

appoint its representative at the sub-station for coordination purpose.

- (f) Lead generator: ADHPL will be the lead generator.
- (g) Control area: Area comprising Allain Duhangan HEP, Malana II HEP, 220 KV Allain Duhangan – Nalagarh line, LILO of this line with Chhaur sub-station will form separate control area.
- (h) Formation of a coordination centre: Coordination centre to be managed jointly by ADHPL and EPPL.
- (i) Responsibility of the coordination Centre: As described in the impugned order.
- (j) Procedures: Scheduling, metering and accounting apportionment of transmission charges and transmission losses, etc., decided.

24. Let us now examine the relevant provisions of the Electricity Act.

24.1 The dedicated transmission line has been defined under Section 2(16) as:

*“(16) Dedicated Transmission Lines ” means any electric supply line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations or the load centre, as the case may be;”*

Thus a dedicated transmission line is for point to point transmission connecting the generating station to any transmission line or sub-station or generating station or the load centre.

24.2 Inter-State transmission system is defined under Section 2(36) as:

*“(36) inter-State transmission system” includes –*

*(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;*

*(ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;*

*(iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by Central Transmission Utility.”*

Thus the inter-state transmission system includes conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to inter-State transmission of electricity.

24.3 Intra-State transmission system has been defined under Section 2(37) as any system for transmission of electricity other than inter-State transmission system.

24.4 Section 3 of the Act provides for the CEA to notify the National Electricity Plan in accordance with the National Electricity Policy once in five years.

24.5 Part III of the Act provides for generation of electricity.

Section 7 enables a generating company to establish, operate and maintain a generating station without obtaining a licence if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of Section 73. Section 8, however, provides that a generating company intending to set up a hydro-generating station shall prepare and submit to the CEA for its concurrence, a scheme estimated to involve a capital cost exceeding such sum as may be fixed by the Central Government from time to time by notification. The CEA while concurring any hydel scheme shall examine the scheme with respect to optimum utilisation of water resources and dam design and safety.

24.6 Section 9 provides for captive generation. According to Section 9(i) a person may construct, maintain operate a captive generating plant and dedicated transmission lines. However, the supply of electricity from the captive

generating plant through the grid has to be regulated in the same manner as the generating station of a generating company.

24.7 Section 10 of the Act describes the duties of generating companies as under:

*“Duties of generating companies*

*10. (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.*

*(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.*

*(3) Every generating company shall –*

*(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;*

*(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.”*

Thus, the duties of generating company includes establishment, operation and maintenance of dedicated transmission lines in accordance with the provisions of the Act or the rules or regulations made thereunder. The generating company may supply electricity either to any licensee i.e. a distribution licensee or a trading licensee, and to any consumer, subject to the provisions made in the Act. The generating company has also to coordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.

24.8 Part IV of the Act provides for licensing. Section 12 prohibits any person to transmit electricity or distribute electricity or undertake trading in electricity unless he is authorized to do so by a licence issued under Section 14, or is exempt under Section 13. There is no requirement of a licence for establishment and operation and maintenance of a generating station. Section 14 provides for grant of licence by the Appropriate Commission to any

person a) to transmit electricity as a transmission licensee or b) to distribute electricity as a distribution licensee or c) to undertake trading in electricity as an electricity trader in any area as may be specified in the licence.

24.9 Subsequently, the Electricity (Removal of Difficulty) Fifth Order, 2005 was notified as difficulties had arisen regarding the requirement of a transmission licence for establishing, operating and maintaining a dedicated transmission line for a captive power plant and generating station. The notification provide that the generating company shall not be required to obtain licence under the Act for establishing, operating or maintaining a dedicated transmission line provided such company complies with Grid Code and standards of grid connectivity, technical standards for construction of electrical lines, system operation of the dedicated line as per norms of system operation of the concerned State or Regional Load Dispatch Centre and directions of



concerned SLDC or RLDC regarding operation of the dedicated line. Thus even the dedicated line has follow the Grid Code Regulations of the Appropriate Commission and system operation norms and directions of SLDC or RLDC as the case may be regarding operation of the line.

24.10 Part V of the Act provides for transmission of Electricity. As per Section 38(1), the Central Government has to notify any Government company as the Central Transmission Utility (CTU). Accordingly, Power Grid has been the CTU. Section 38(2) *inter alia* provides for the CTU to undertake transmission of electricity through inter-State transmission system and to discharge all functions of planning and coordination relating to inter-State transmission system with the specified agencies including the generating companies. Section 40 describes the duties of a transmission licensee. It provides for the transmission licensee to build, maintain and operate an efficient, coordinated and economical inter-State

transmission system, as the case may be, comply with the directions of the RLDC or SLDC, as the case may be and to provide non-discriminatory open access to its transmission system for use by any licensee, or generating company on payment of transmission charges or any consumer as and when open access is provided by the State Commission under Section 42(2) on payment of transmission charges and surcharge thereon.

24.11 Part VI of the Act provides for distribution of electricity, Section 60 is covered in Part VI under provisions with respect to supply generally. Section 60 provides for market domination. Under this Section the Appropriate Commission may issue such directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry.

24.12 Part VII provides for tariff. Under Section 62 the Appropriate Commission is empowered to determine tariff in accordance with the provisions of the Act for a) supply of electricity by a generating company to a distribution licensee b) transmission of electricity c) wheeling of electricity and d) retail supply of tariff.

24.13 The approval of Appropriate Government for overhead lines under Section 68 is described under Part VIII of the Act under the heading “Works”. The relevant extracts are as under:

*“68. Overhead lines- (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2)”.*

*“(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary”.*

The Appropriate Government is defined under Section 2(5). The same is reproduced below:

*“(5) “Appropriate Government” means, -*

- (a) the Central Government, -*
- (i) in respect of a generating company wholly or partly owned by it;*
  - (ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;*
  - (iii) in respect of National Load Despatch Centre; and Regional Load Despatch Centre;*
  - (iv) in relation to any works or electric installation belonging to it or under its control ;*
- (b) in any other case, the State Government, having jurisdiction under this Act;”.*

In the present case, the Appellant and the Respondent no. 1 have obtained approval under Section 68 for construction of their respective dedicated transmission lines from the Central Government, as both them intended to transmit their power through inter-State transmission system outside the State of Himachal Pradesh.

24.14 Part IX of the Act is on Central Electricity Authority.

The functions of the Central Electricity Authority under Section 73(f) provides that it has to advise the Central Government on matters relating to National Electricity

Policy and formulate short-term and perspective plans for development of electricity system and coordinate the activities of planning agencies for optimum utilization of resources in the interest of national economy and to provide reliable and affordable electricity for all consumers. Under Section 73(h), the CEA has to advise the Central Government and make recommendations to the Government on any matter that would help in improving the generation, transmission, trading, distribution and utilisation of electricity. Under Section 73(a), the CEA has to advise the licensees, generating companies, etc., on such matters which shall enable them to operate and maintain the electricity system under their ownership and control in an improved manner and where necessary, in coordination with any other Government, licensee or the generating company owning or having the control of another electricity system. Accordingly, the CEA in the present case has coordinated with the Power Grid, Central Government, the Appellant and the Respondent no.1 with a view to

plan transmission system optimally for evacuation of power from their hydro power projects.

24.15 Part X provides for Regulatory Commissions. The functions of the Central Commission relating to regulation of transmission of electricity and adjudications are given under Section 79(1) (c)(d) and (f). The relevant provisions are as under:

*“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) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations.*

*(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;”.*

Thus, in terms of Section 79(1) (f) the Central Commission can adjudicate upto disputes involving generating companies in regard to matters concerning inter-State transmission of electricity. Thus, the Central Commission shall have jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1 only if it is established that transmission of power from the power station of the Respondent no.1 on Allain Duhangan – Nalagarh line involves inter-State transmission of electricity.

24.17 Section 178 of the 2003 Act empowers the Central Commission to make regulations by notifications, consistent with the provisions of the Act and the rules generally to carry out the provisions of the Act. Accordingly, the Central Commission has notified various

Regulations, viz., Tariff Regulations, 2009, Indian Electricity Grid Code Regulations, 2010, etc.

24.18 The provisions of the Act would indicate that the business of generation has been de-licensed. The generating company has been given full freedom to supply power to a licensee i.e. a distribution licensee or a trading licensing, and/or a consumer of its choice subject to certain conditions as specified in the Act. For point to point transmission of power, the generating company can also construct dedicated transmission system to facilitate transfer of its power to its destination of choice. By removal of difficulties notification, 2005, the need for obtaining licence for dedicated transmission system has also been dispensed with. The primary objective of delicensing generation is to give freedom to the generating company in respect of choice of site and investment, choice of buyer of power and freedom from tariff regulation when the generating company supplies power to a trader or directly to consumer. On the other



hand the transmission, distribution and trading are subject to grant of licence and are within the regulatory regime. The generating companies, however, despite delicensing do not enjoy monopoly status and are not free from all Regulations or issuance of directions. The regulatory regime of the Commissions can be enforced against the generating company if the condition precedent therefore becomes applicable. The Removal of Difficulties Notification (Fifth Orders), 2005, itself provides compliance of certain conditions by the generating company subject to which only no licence is required for the dedicated transmission system. For example, a generating station connected directly or through dedicated transmission system to inter-State transmission system has to abide by Indian Electricity Grid Code Regulations framed by the Central Commission under Section 178 (2) (g) of the 2003 Act.

24.19 It is perfectly legal for two generating companies to plan in coordination with CEA and Power Grid and construct

and operate & maintain their dedicated transmission systems together for optimal utilisation of the transmission corridor with a view to minimize cost of point to point transmission of electricity and minimize the requirement of transmission corridor as long as the dedicated transmission system is used exclusively for evacuation and point to point transmission of power of their generating stations.

24.20. In view of the above provisions of the Act, let us examine the questions raised by us regarding the jurisdiction of the Central Commission and the status of the dedicated transmission system of the Appellant after allowing interconnection to the dedicated transmission system of the Respondent no.1.

25. Now let us examine the approvals of the Central Government granted to the Appellant and the Respondent no. 1 under Section 68 of the Act.

25.1 The approval granted to the Appellant by the Ministry of Power, Government of India by letter 21.8.2007 is as under:

*“I am directed to refer to AD Hydro Power Limited letter no. P-104/OG-2061 dated 25<sup>th</sup> June, 07 on the above subject and to convey prior approval of the Central Government under sub-section (1) of Section 68 of the Electricity Act, 2003 for 220 kV D/C Allain Duhangan – Nalagarh Transmission Line as Associated Transmission System (ATS) of 2x96 MW Allain Duhangan HEP in Himachal Pradesh.*

*The approval is subject to compliance of (a) the requirement of the relevant provisions of the Electricity Act, 2003, as amended from time to time and the rules and regulations framed there under and (b) the rules governing the overhead lines as specified in the Indian Electricity Rules, 1956 till they by corresponding rules framed under the Electricity Act, 2003 .*

*This approval is also subject to the following conditions:*

- 1. The implementing agency will commence construction of the project within 3 years, unless this term is extended by the Ministry of Power.*
- 2. Ministry of Power may withdraw the approval before the expiry of the period of 3 years after giving a one-month notice.*
- 3. The implementing agency shall also abide by the provisions of Electricity Act, 2003 concerning electricity trade”.*

The above approval is not conditional to providing access to the Respondent no.1 on their dedicated system.

25.2 Before granting the above approval, the Ministry of Power had obtained the comments of the CEA on the proposal of the Appellant to construct the Allain Duhangan – Nalagarh line as part of associated transmission system for evacuation of power from their hydro electric project. CEA in its letter dated 31.7.2007 to the Ministry of Power communicated its no objection to the proposal subject to the following:

*“ii) Out of the total 400 MW transmission capacity of the 220kV D/C line, ADHPL would utilize 192 MW for evacuation of ADHPL power and the balance spare transmission capacity of the line would be made available for evacuation of power from other projects in the Parbati/Beas valley viz. Malana-II (100 MW) and Sainj (100 MW)”.*

Thus, CEA in order to optimize the transmission corridor recommended use of Allain Duhangan – Nalagarh line for evacuation of power from other Projects in Parbati valley including Malana-II project of the Respondent no. 1.

25.3 However, the Central Government did not include the condition proposed by the CEA in the approval under Section 68 granted to the Appellant.

25.4 Let us now examine the approval under Section 68 granted by the Central Government to the Respondent no.1 for transmission of power of Malana-II. The relevant extracts of letter dated 17.6.2008 from the Ministry of Power addressed to the Respondent no. 1 are as under:

*“I am directed to refer to Everest Power Private Limited’s letter dated 8.5.08 on the above subject and to convey prior approval of the Central Government under sub-section (1) of Section 68 of the Electricity Act, 2003 for construction of 132 kV line for evacuation of power of Malana-II HEP and its interconnection with 220 kV D/C Allain Duhangan-Nalagarh line near tower no. 159 by constructing as 132/220 kV substation as discussed in a meeting taken by Chairman. CEA on 10.4.2008 wherein it was decided that Malana-II, should proceed to tie-up evacuation of their power through 220 kV ADHEP Nalagarh line of ADHPL. They would need to establish 220/132 kV substation at their own cost on one circuit of the 220 kV Allain Duhangan-Nalagarh line and 132 kV D/C line from Malana II HEP to the 220/132 kV substation on 220 kV D/C Allain Duhangan-Nalagarh line. The 220/132 kV substation as well as the 132 kV line would be the dedicated system of generating company”.*

The Central Government by the above letter approved the dedicated transmission system of Malana-II of the Respondent no.1 and its inter connection to the dedicated transmission system of the Appellant considering the decision take in a meeting convened by Chairman, CEA on 10.4.2008 wherein it was decided that Malana-II should proceed to tie up evacuation of their power through 220 kV Allain Duhangan – Nalagarh line of the Appellant. Thus, the approval given to the Respondent no.1 under Section 68 is based on the understanding that power of the Respondent no.1 would be evacuated through the Allain Duhangan – Nalagarh transmission line of the Appellant, as agreed in a meeting taken by the Chairman, CEA. On 18.6.2008, the Appellant also communicated its consent to the Ministry of Power, Government of India to the above arrangement subject to modalities to be worked out by them.

25.5 It would also be relevant to examine the decisions taken in the meeting dated 10.4.2008 held in CEA which was

attended by the representatives of the Appellant and the Respondent no. 1. The relevant extracts are reproduced below:

*“Director (Elect), ADHPL stated that Allain Duhangan HEP to Nalagarh 220 kv D/C line was being constructed as a dedicated line for evacuation of power from Allain Duhangan HEP and the spare capacity of the line could be utilized for evacuation of power from other projects subject to legal/regulatory approval as may be necessary for sharing of a dedicated line.*

*It was specifically decided as under:-*

*a. Malana II, without any further delay should proceed to tie up evacuation of their power through 220 kV ADHEP-Nalagarh line of ADHPL. They would need to establish 220/132 s/s at their own cost.*

*b. ADHPL and EPPL would have a joint meeting on 23<sup>rd</sup> April, 2008 to decide the modalities for agreement on the sharing of the cost for the 220 kV ADHEP – Nalagarh line and also its O&M charges for evacuation of the power of Malana-II HEP.*

*c. If ADHPL and EPPL arrive at an agreed proposal, the same should be sent to CEA and both the parties should proceed accordingly. However, if they were not able to agree on a proposal, both ADHPL and EPPL should send their individual proposal to CEA and a meeting could be held to resolve the issue. However, in any case, both the parties should proceed to ensure completion of evacuation system in the required time frame.*

*d. ADHPL would take up the issue with CERC regarding sharing of the 220 kV ADHEP-Nalagarh line with EPPL for evacuation of power from Malana II HEP as well. CEA*

*would extend all support to ADHPL to obtain the approval of CERC.”*

The Director of the Appellant in the above meeting stated that the spare capacity of their dedicated line could be utilized for evacuation of power from other projects subject to legal/regulatory approval as may be necessary for sharing of a dedicated line. Accordingly, it was decided that the Appellant and the Respondent no.1 would decide the modalities of sharing of cost and operation and maintenance charges for evacuation of power of the Respondent no.1. It was also decided that the Appellant would take up with the Central Commission regarding sharing of their Allain Duhangan – Nalagarh line for evacuation of power from the Malana II project of the Respondent no.1.

26. The examination of all the relevant records would show that Allain Duhangan – Nalagarh 220 kV double circuit line was granted approval by the Central Government as a dedicated transmission line. However, the Appellant



has agreed in the various meeting carried out by the Planning Agencies viz., CEA, CTU, STU, Government of Himachal Pradesh and Ministry of Power, Government of India to permit utilisation of the spare capacity of its line for evacuation of Malana-II HEP of the Respondent no. 1. The permission to the Appellant for diversion of forest land for laying the Allain Duhangan – Nalagarh line granted by the Department of Forest, Government of Himachal Pradesh is also subject to the condition that the Appellant shall carry/transmit on its line power generated by Malana-II on mutually agreed terms and conditions.

27. We find that the whole issue has arisen due to circumstances created by delay in execution of Parbati Pooling Station by Power Grid, constraints in providing right of way for laying transmission line in hilly terrain and forest area and need for optimizing the transmission corridor in the forest and hilly area in view of scarce availability of land and environmental consideration.

28. We notice from the records of the case that earlier it was planned that both Allain Duhangan and Malana – II Hydel Projects would construct their respective dedicated lines to Parbati Pooling Station from where power would be transmitted through the Inter-State transmission network of Power Grid to the destination of choice of the respective generating companies. On that understanding the Appellant and the Respondent no.1 started execution of their projects. Respondent no.1 also got long term open access for supply to Punjab State Electricity Board from Parbati Pooling Station of Power Grid. However, due to delay in execution of the Parbati Pooling Station changes were made in the point of injection of power. The Appellant was first to get the approval under Section 68 for execution of its dedicated transmission line to Nalagarh sub-Station of Power Grid, as its hydel project was ahead of the project of the Respondent no.1. When Respondent no.1 approached the CTU/Power Grid and CEA for alternative transmission arrangements in view of

delay in execution of Parbati Pooling Station, they were asked to tie up with the Appellant and utilize the spare capacity of the Appellant's transmission line to transmit its power upto Nalagarh.

29. According to the Electricity Act, the CTU has to do planning and coordination relating to inter-State transmission system with the generating companies and other agencies. CEA also has the responsibility under the plan for optimum utilisation of the resources and also coordinate with the planning agencies and the generating companies, etc. Accordingly, CEA and POWERGRID coordinated with the Appellant and the Respondent no.1 to devise a system of interconnecting the dedicated transmission system of the Respondent no.1 with the dedicated transmission system of the Appellant and evacuation of power of the former through the latter's transmission system upto Nalagarh with the consent of the parties.

30. In the above circumstances, the Respondent no.1 was left with no other alternative but to evacuate its power

through the dedicated transmission system of the Appellant. In the various meetings taken by the CEA, Power Grid and also Government of Himachal Pradesh and Ministry of Power, Government of India which were attended by the representatives of the Appellant and the Respondent no.1 it was decided that the Appellant and the Respondent no.1 would mutually decide the commercial issues of sharing the Allain Duhangan – Nalagarh line. At no time the Appellant opposed giving access to the Respondent no.1 on its transmission system. In fact they communicated to the Ministry of Power, Government of India vide their letter dated 18.6.2008 their no objection to Malana II establishing their 220/132 kV sub-station and loop-in-loop-out of one circuits of Allain Duhangan – Nalagarh at the sub-station of the Respondent no.1. However, despite meetings held between the parties, the settlement could not be reached as the Appellant wanted the settlement at its own terms and conditions. We feel that when the Appellant has accepted to provide access on its dedicated transmission

system to the Respondent no.1 and the latter having no other alternative, the Respondent no.1 could not be left remediless. Electricity Act, 2003 is a complete code and within the provisions of the Act we have to find remedy to the issues raised in this Appeal.

31. Now let us examine the nature of transmission of power on Allain Duhangan – Nalagarh line after loop-in-loop-out of one circuit at Chhaur.
  
32. The dedicated transmission line of the Appellant before interconnection with the dedicated transmission of Malana II at 132/220 kV Chhaur sub-station of the Respondent no.1 comprised point to point connection from the generating station of the Appellant with the sub-station of Power Grid at Nalagarh. However, loop-in loop-out of one of the circuits of Allain Duhangan - Nalagarh line at Chhaur has resulted in dividing that circuit into two line segments viz. 220 kV Allain Duhangan – Chhaur line and 220 kV Chhaur – Nalagarh line. In normal

operating conditions, the entire power output of Malana II will be evacuated through 220 kV Chhaur – Nalagarh line. Thus, with change in the configuration of the circuit, the 220 kV Chhaur – Nalagarh line does not remain the point to point transmission system for Allain Duhangan as it carries the power of both Allain Duhangan and Malana II and emanates from Chhaur and not Allain Duhangan. The transmission system beyond Nalagarh is the inter-State transmission system which is used for inter-State transmission of power from Malana II to Punjab as the Respondent no.1 has tied up for supply of its power to Punjab State Electricity Board besides some percentage of free power committed to be supplied to Himachal Pradesh and has obtained open access for the inter-State transmission system for its power injected at Nalagarh. Thus, under normal operating conditions, the line section of Allain Duhangan - Nalagarh circuit between Chhaur and Nalagarh is used for conveyance of electricity across the territory of the

State/within the State which is incidental to inter-State transmission of electricity from Malana II.

33. Under condition of outage of Chhaur - Nalagarh circuit, the output of Malana-II would be evacuated through 220 kV Chhaur – Allain Duhangan and Allain Duhangan – Nalagarh direct circuit. Thus, under such outage condition also Chhaur - Allain Duhangan - Nalagarh section is used for conveyance of electricity incidental to inter-State transmission of electricity of Malana II. Similarly, under outage condition of Allain Duhangan – Chhaur section of line, the output of Allain Duhangan – Nalagarh direct circuit would transmit the output of Allain Duhangan HEP and Chhaur – Nalagarh section would evacuate the power output of Malana-II. Thus, one circuit of Allain Duhangan line would carry exclusive power of Allain Duhangan and the other circuit would be carry output of only Malana II. Under such outage condition also Chhaur - Nalagarh circuit even though a part of the dedicated transmission system of the

Appellant is used for conveyance of electricity across the territory/within the State which is incidental to inter-State transmission of electricity from Malana II.

34. Thus, it is clear that even though Allain Duhangan – Nalagarh line was a dedicated line of the Appellant some part of the line after loop-in loop-out of one circuit at Chhaur sub-station of the Respondent no. 1 is used as a system incidental to inter-State transmission of electricity from the power plant of the Respondent no.1.
  
35. The definition of the inter-state transmission system under Section 2(36)(ii) includes the conveyance of electricity across the territory of an intervening State as well as within the State which is incidental to such inter-State transmission of electricity. In the present case as discussed in the pervious paragraphs, Allain Duhangan – Nalagarh line after loop-in-loop-out at Chhaur sub-station of the Respondent no.1 becomes the system incidental to inter-State transmission of electricity from



Malana II station of the Respondent no.1. Therefore, the Central Commission shall have jurisdiction to regulate the transmission of electricity on Allain Duhangan – Nalagarh line after loop-in-loop-out of one of the circuits at Chhaur sub-station.

36. Admittedly, the Appellant has in the various meetings taken by the Ministry of Power, CEA, POWERGRID and the State Government has consented to permit the Respondent no.1 to utilize its dedicated line for evacuation of power. On that basis, the Central Government also granted approval to the Respondent no.1 to construct its dedicated transmission system comprising 132 kV transmission line and 220/132 kV sub-station and its interconnection to one of the circuits of the dedicated line of the Appellant. Once the Appellant has agreed to utilisation of part capacity on its dedicated line by the Respondent, it is not open to the Appellant to dictate its own terms and conditions regarding transmission charges and transmission losses to be

borne by the Respondent no.1 and other operational norms. We feel that these have to be regulated by the Central Commission as per its Regulations. As long as the dedicated transmission line of the Appellant is used for its own use, the Central Commission will not have jurisdiction to regulate it but if it is used for conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to inter-State transmission of electricity of another generating company on payment of transmission charges such transmission has to be regulated by the Central Commission.

37. Transmission of electricity is a regulated business according to the Electricity Act, 2003. A dedicated transmission system is out of the regulatory control of the Commission so far as no licence is required for the construction, operation and maintenance of dedicated transmission system and that there is no need for the Commission to regulate transmission of electricity as

long as it is used for point to point transmission of power output of generating company. However, if the generating company allows its dedicated transmission system for use for evacuation of power output to another generating company with a view to optimally utilize the transmission corridor and the transmission system capacity as has been the case in the present appeal on payment of transmission charges, the Central Commission would have jurisdiction to regulate transmission of electricity on the dedicated line, for such transmission as is incidental to inter-State transmission of electricity.

38. According to Section 79(1)(f) of the Act, the Central Commission has powers to adjudicate upon disputes involving generating companies in regard to matters concerning with clause a) to d) of the Section 79(1). Clause c) pertains to regulation of inter-State transmission of electricity. According to the Appellant Section 79(1)(f) is not applicable in the present case as

the Appellant is not a transmission licensee. The present case is typical where there is a dispute between two generating companies relating to use of the dedicated transmission system owned by one of the generating companies which has been used for conveyance of electricity which is incidental to the inter-State transmission of electricity from the other generating station. In our opinion Section 79(1)(f) would also cover the present dispute between the two generating companies as it relates to inter-State transmission of electricity, which is regulated by the Central Commission under Section 79(1)(c). Therefore, even if the Appellant is not a transmission licensee, the present dispute will fall under the Section 79(1) (f) of the Act. Accordingly the Central Commission has jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1.

39. Ld. Counsel for the Appellant in support of his arguments has referred to a number of judgments of the Hon'ble Supreme Court, High Courts and this Tribunal.
40. He has relied on the findings in the following cases to press the point that the Authority should decide the issue of maintainability before deciding the case on merits.
- (i) (2005)10 SCC 274: Securities & Exchange Board of India Vs. Mangalore Stock Exchange.
  - (ii) (2000)10 SCC 253 Manubhai J. Patel and Another Vs. Bank of Baroda & others.
  - (iii) (1999)6 SCC 632: T.K. Lathika Vs. Seth Karsandas Jamnadas
  - (iv) (2002)1 SCC 567 Union of India Vs. Adani Exports Ltd. & Another.

In the above three cases the courts passed the orders on merits without going into the issue of

maintainability/jurisdiction which was raised by one of the parties. The Hon'ble Supreme Court set aside the orders on the ground that the High Court did not decide the maintainability issue before deciding the case on merits. In the present case the Central Commission has dealt with the issue of maintainability and decided the matter on merits after coming to the conclusion that it had the jurisdiction. In this judgment also we have dealt with the issue of maintainability and decided the matter on merits after hearing the parties. Thus, the above referred cases will not be of any help to the Appellant.

41. Ld. Counsel for the Appellant has relied on the following judgments on the construction of statutes to press that the inter-State transmission system has to be interpreted in the context of the entire scheme of the Electricity Act, 2003, which among other things provides for delicensing of generation and dedicated transmission line.

- i) (1984)4 SCC 450: O.P. Singla Vs. Union of India.

- ii) (1991)4 SCC 258: Krishna Kumar Vs. State of Rajasthan and others.
- iii) (1977) 1SCC 373: Sultana Begum Vs Premchand Jain.
- iv) (2000) 5 SCC 373: V.M. Salgaocar & Bros Pvt. Ltd. Vs. Commissioner of Income Tax.
- v) (1987)1 SCC 424 Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors.
- vi) AIR 2006 BOM 213: Reliance Industries Ltd & Anr. Vs. State of Maharashtra & Ors. Thus, the above referred cases will not be of any help to the Appellant.

We have interpreted the various sections of the Electricity Act harmoniously before coming to the final conclusion. The jurisdiction of the Central Commission to adjudicate on sharing of the dedicated transmission line of the Appellant and determination of transmission charges and transmission losses to be borne by the Respondent no.1 does not infringe on the freedom granted to the Appellant as generating company to have arrangements for supply power to the beneficiary of its choice and freedom from

obtaining licence for construction, operation and maintenance of its dedicated transmission line. The Appellant has itself consented to allow use of its dedicated transmission for evacuation of power of the Respondent no.1. Therefore, the above rulings will not be of any help to the Appellant.

42. Ld. Counsel for the Appellant has argued that the Central Government has been conferred the power to grant approval under Section 68 of the Act. The Central Commission cannot interdict the power of the Central Government to grant approval under Section 68. It is solely the discretion of the Central Government under the Act to improve such conditions as appears to it to be necessary. The Central Commission cannot usurp the powers of the Central Commission and import the conditions which were not incorporated by the Central Government in the Appellant's approval under Section 68 of the Act. Further the Section 68 approval has created vested right in the Appellant which can not be taken



away by the Central Commission by retrospective amendment. He has relied on the several judgments to support these points, some of which are given below:

- i) (1991)4 SCC 39: Amir Shad Khan and Another Vs. L. Hmingliana and others.
- ii) AIR 1992 AP 368
- iii) 1986 Supp SCC 584: T.R. Kapur Vs. State of Haryana
- iv) (1964) 6 SCR 870: Rafiquenessa Vs. Lal Bahadur Chetri
- v) (2009) 9 SCC 454: Anil Chandra Vs. Radha Krishna.

43. The Central Government in granting the approval to the Respondent no.1 for its dedicated transmission system and its interconnection to the dedicated transmission system of the Appellant has relied on the decision taken in the meeting held in the CEA where the Appellant committed to allow the connectivity to its dedicated transmission system and evacuate the power of the Respondent no.1 using the spare capacity on its line upto Nalagarh. The Respondent no.1 by the above approval of

the Central Government under Section 68 has also been vested with the right to construct its dedicated system as per the terms of its approval by the Central Government under Section 68. The Appellant is agreeable to allow access to its transmission system for evacuation of the power of the Respondent no.1 but on its own terms and conditions relating to transmission charges, transmission losses, etc. Transmission is a regulated business as per the provisions of the Act. We have already given detailed findings about the jurisdiction of the Central Commission to adjudicate upon the dispute between the Appellant and the Respondent. Thus the rulings relied upon by the Appellant will not of any use to him.

44. Ld. Counsel for the Appellant has referred to various judgments to press the point that the statutory tribunals are creation of statute that draw their powers from the statute and are authorities of limited jurisdiction and that no jurisdiction can be vested by consent of the parties. These judgments are of no use to the Appellant

as we have held the jurisdiction of the Central Commission in this case after harmonious interpretation of various sections of the Act.

45. Ld. Counsel for the Appellant has argued that the Respondent no.1 would not treat itself at par with the Appellant and deny right of first usage/priority to the Appellant over its own line. He has referred to (2003)6 SCC 659: Shiv Shakti Coop. Housing Society Vs. Suraj Developers and others and (2008) 4 SCC 755: Gujarat Urja Vikas Nigam Vs. Essar Power Ltd. to support his arguments wherein the finding of the Hon'ble Supreme Court is that while interpreting a provision the court can only interpret the law and cannot legislate it.

46. We have discussed in detail that once the dedicated transmission system of the Appellant is interconnected to the dedicated transmission system of the Respondent no.1, the transmission system of the Appellant is used for conveyance of electricity across the territory of a state

which is incidental to the inter-State transmission of electricity of the Respondent no.1. Therefore, the issue of usage of the transmission system under outage condition has to be as per the Regulations subject to certain conditions which are peculiar to this case. Normally the output of Malana II is evacuated on Chhaur – Nalagarh section only. Thus for about for 98 to 99% of total time the Respondent no.1 uses only Chhaur-Nalagarh section of the line. The Allain Duhangan – Nalagarh direct circuit and Allain Duhangan – Chhaur circuit of the dedicated transmission line is used by the Respondent no.1 only in the contingency of outage of Chhaur – Nalagarh line. As the Appellant is claiming proportionate transmission charges on the total investment incurred on the entire 220 kV Allain Duhangan – Nalagarh double circuit line from the Respondent no.1, it is not open to the Appellant to deny right for proportionate usage its transmission system to the Respondent no.1 in the contingency of outage of a section of line.

47. Learned counsel for the Appellant has also referred to the following cases to press his point that the generation as also the Dedicated Transmission Line have been kept beyond the purview of licencing and the regulatory measures could not be allowed to be imposed on the generating companies.

- i) 2009 ELR (SC) 246 Tata Power Co. Ltd. vs. Reliance Energy Ltd.
- ii) Appeal no. 87 and 107 of 2010 decided on 26.8.2011 in the matter of Tata Power Trading Co. Ltd. vs. MERC wherein the findings of the above mentioned 2009 ELR (SC) 246 were referred to.

In the case (i) above the generating company was directed by the Commission under Section 23 to supply power to a distribution licensee of the State. The Hon'ble Supreme held that the generating company had freedom to enter into contract for supply of power. In the case (ii) above the State Commission had given certain directions to the

generating company for ensuring supplies to the distribution licensees of Mumbai corresponding to the capacity contracted by them before power is supplied to other entities. The Tribunal set aside the directions of the State Commission relying on the above judgment of the Supreme Court. In our opinion, both these cases are not relevant in the present case where the Central Commission has adjudicated upon the dispute between the Appellant and the Respondent no.1 on the commercial terms and conditions for sharing of the dedicated transmission line of the Appellant by the Respondent no.1, where the Appellant has consented to provide access to the other generator. This in no way encroaches on the freedom from licencing requirement or freedom to supply electricity of the Appellant to the customer of its choice.

48. Learned counsel for the Appellant has argued that the transmission line was constructed by the Appellant for evacuation of its power from its generating station to Nalagarh for forward evacuation since there was a delay in

the construction of the transmission system of Power Grid. Any attempt on the part of the State Government, CEA and Central Commission to compel the Appellant who owns and operates a dedicated transmission line, to wheel power to the other generating plants at non negotiable and prescriptive rate and terms tantamounts unintended and unlawful, expropriation of Appellant's private property. According to him, it is trite law that the State in exercise of its power of eminent domain can deprive a person of his property only by enacting a law through state legislature or parliament and in the manner having force of law and the compensation paid to such a person who has been deprived of his property cannot be illusory. He referred to a number of judgments of the Hon'ble Supreme Court to press his point.

49. We feel that the above rulings are not applicable in the present case. The Appellant has all along in various meetings taken by CTU, STU, CEA, State Government and Ministry of Power, Government of India has been agreeing

to provide spare capacity in its dedicated transmission system for evacuation of power of the Respondent no. 1. Before this Tribunal also they have admitted that they have consented to the arrangement of using spare capacity of their dedicated line for evacuation of power from Malana II. It is now too late for the Appellant to say that he was compelled to provide access to the Respondent no. 1. On the basis of the agreement reached in meeting taken by Chairman, CEA which was attended by the representatives of the Appellant, the Ministry of Power granted approval under Section 68 to the Respondent no. 1 for construction of its dedicated transmission system and its inter-connection to the Appellant's dedicated transmission system. In the present case the Appellant is also not being deprived of his property. The arrangement of sharing of the transmission system of the Appellant will also benefit the Appellant by generation of additional revenue on account of transmission charges payable by the Respondent no. 1.



50. In view of our findings about jurisdiction of the Central Commission to adjudicate upon the dispute between the Appellant and the Respondent no.1, the third issue raised by us becomes irrelevant. We are not going into the issue of market domination (Section 60) as the Central Commission in the impugned order has not dealt with the same.

51. Let us now examine the fourth issue on merits.

52. We find that the main dispute between the Appellant and the Respondent no.1 is relating to the following:

- i) Capital cost of Allain Duhangan – Nalagarh double circuit line.
- ii) Return on equity on investment.
- iii) Sharing of transmission losses.
- iv) Priority in case of outage of a circuit.
- v) Control of 132/220 kV Chhaur sub-station.

53. Let us now deal with the above issues one by one.

53.1 Capital Cost:- The Central Commission has directed that the capital cost of the transmission line shall be mutually decided by the Appellant and the Respondent no. 1 taking into consideration approved project cost of the transmission line and the audited expenditure of the transmission line, and the benchmark capital cost for similar line of CTU. We notice that the Central Commission's Tariff Regulations, 2009 provide that the capital cost would be determined on the basis of actual expenditure incurred on completion of the project, subject to prudence check by the Commission. When the capital cost for a transmission licensee is determined on these principles, the same may be made applicable for determining the transmission charges payable by the Respondent no.1 to the Appellant for use of the transmission system of the Appellant. The Appellant and the Respondent no.1 have not been to agree on the capital cost. Therefore, we direct the Central Commission

to determine the capital cost according to the Tariff Regulations, 2009, after hearing both the parties, which shall be the basis for determination of transmission charges payable by the Respondent no.1 to the Appellant.

53.2 Return on Equity ('ROE'):- The Central Commission decided that the ROE shall be on the basis of rate of return allowed under the Tariff Regulations, 2009 as amended from time to time and any subsequent amendment thereof. The Appellant has sought ROE 3% higher than that allowed in the Central Commission's Regulations. We feel that there is no justification in allowing a higher ROE to the Appellant. We are in agreement with the findings of the Central Commission. When a transmission licensee regulated by the Central Commission is allowed ROE as per the Central Commission's Tariff Regulations which are based on the commercial principles as per Section 61 of the Act, the Appellant could not claim a ROE higher than that specified in the Regulations for transmission business for

determining the transmission charges payable by the Respondent no.1. We find that the Central Commission has decided that the Operation and Maintenance charges have to be borne as per the actuals on prorata basis and not as per its Regulations. As the Appellant argued that they have not been heard on merits, we would give liberty to the Appellant to raise this issue before the Central Commission and the Central Commission shall consider the same afresh and decide the Operating and Maintenance charges to be borne by the Respondent no.1 after hearing the parties.

53.3 Sharing of transmission losses on Allain Duhangan – Nalagarh system:- The Appellant had sought 4% additional loss or loss based on incremental loss to be deducted from generation of Malana II HEP. The Central Commission has decided that the estimated percentage average transmission losses shall be applied to the respective schedules of the generating companies. The estimation shall be based on the previous week's actual

percentage average losses worked out through the actual meter readings. We are in agreement with the findings of the Central Commission that the transmission losses for Allain Duhangan – Nalagarh section to be borne by the Respondent no.1 should be on the basis of the average losses based on the actual meter readings on the sending and receiving ends of the lines. There is no basis for claim of 4% additional loss to be apportioned to Malana-II HEP. When the transmission charges are to be shared on a pro-rata basis on the respective installed capacity of the generating stations of the Appellant and the Respondent the same principle of sharing of losses on the basis of average losses in the line section has to be adopted. For the inter-State transmission of energy also the losses are apportioned on the average basis. The Appellant for inter-State transmission of its electricity has also to bear average losses on the inter-State transmission system.

53.4 Priority in case of a circuit: The Central Commission has decided that the outage handling and priorities shall be similar to the one enumerated in the concerned Grid Code and in accordance with Connectivity, Long Term Access, and Medium Term Open Access Regulation. We find that these Regulations do not have specific provisions for the present case. For the Allain Duhangan – Nalagarh system in view of peculiar situation we have to give specific findings to avoid any ambiguity. For example in case of outage of Allain Duhangan – Chhaur section, Allain Duhangan – Nalagarh direct line section will evacuate the power output of Allain Duhangan and Chhaur – Nalagarh section will evacuate the output of Malana – II. In that case the evacuation from the respective HEP will be as per the capacity of each line section. However, in case of outage of Allain Duhangan – Nalagarh direct line or Chhaur – Nalagarh line section, both Allain Duhangan and Malana II shall have to be allowed to send out power on the restricted capacity of the transmission system on pro-rata basis on their

respective installed capacities. According to Ld. Counsel for the Appellant, the Appellant's generating station should be give priority over the generation of the Respondent no.1. We have already explained in paragraph 46 above the reason for allowing proportionate use of the transmission system of the Appellant to the Respondent no.1 in case of outage of a line section in view of the Respondent no.1 bearing the proportionate transmission charges for the entire double circuit line of the Appellant. We direct the Central Commission to give detailed directions to the NRLDC on the above principles after hearing the parties.

53.5 Control of 132/220 kV Chhaur sub-station: The Central Commission has decided that the control of 132/220 kV Chhaur sub-station will be with the Respondent no.1 and the Appellant may appoint its representative at this sub-station for coordination purpose. We are in agreement with the findings of the Central Commission. The Appellant has sought absolute control of Chhaur sub-

station for efficient control. We notice that Chhaur sub-station is a part of dedicated transmission system of the Respondent no.1 as approved by the Ministry of Power in its approval under Section 68. The sub-station has been constructed and owned by the Respondent no.1. Therefore, there is no force in the argument of the Appellant that the Chhaur sub-station should be under their control. In view of our findings regarding the part of dedicated transmission system becoming the system incidental to inter-State transmission of electricity of Malana II, the operations at Chhaur sub-station for Nalagarh and Allain Duhangan sections have to be carried out under the control of the Northern Regional Load Dispatch Centre. When the operations at Chhaur have to be carried under the overall control of the NRLDC, the Appellant should not be prejudiced by the agency having physical control of the sub-station.

53.5 On the other operational issues decided by the Central Commission, as the Appellant has argued that they have



not been heard by the Central Commission on merits, we give liberty to the Appellant to raise the issue before the Central Commission and the Commission shall consider the same afresh and pass consequential orders after hearing the concerned parties.

54. A question has been raised by the Respondent no. 1 whether the Appellant would need to take a licence for transmission in view of the access allowed to the Respondent no. 1. We feel even though the Appellant is within its own right to obtain transmission licence if it wished so it is not necessary for the Appellant to take a transmission licence. The appellant has already constructed Allain Duhangan-Nalagarh line as its dedicated transmission system for which the Central Government has also granted permission under Section 68. In the new configuration after loop-in-loop-out of one circuit at Chhaur, part of the transmission line is used for conveyance of electricity across the territory of a State which is incidental to inter-State transmission of

electricity from Malana II for which we have only decided the principles for determination of the transmission charges, losses etc., to be borne by the Respondent no.1.

**55. Conclusion**

- i) The arrangement for interconnection of the dedicated transmission system of the hydro power project of the Respondent no.1 with the dedicated transmission system of the Appellant and the evacuation of the power of the Respondent no.1 through the dedicated transmission system of the Appellant upto the sub-station of Power Grid at Nalagarh has been planned and coordinated by the CEA and CTU in consultation with the parties. This has been necessitated by delay in construction of Parbati Pooling Station planned by the CTU earlier for evacuation of power from the hydro power stations of Parbati Basin and constraints in providing alternative transmission corridor in the hilly and forest area and environmental consideration.**

- ii) The Central Government granted permission to the Respondent no.1 under Section 68 to construct its dedicated transmission system comprising 132 kV transmission line and 220/132 kV sub-station to loop-in-loop-out one of the circuits of Allain Duhangan – Nalagarh 220 kV double circuit approval for which was earlier granted by the Central Government to the Appellant as its associated transmission system. The approval to the Respondent no.1 under Section 68 was granted with the understanding reached in a meeting taken in the CEA for the sharing arrangement with the consent of the Appellant and the Respondent no.1**
- iii) In view of the Loop-in-Loop-out of one of the Allain Duhangan – Nalagarh circuits at Chhaur, part of the line is used for conveyance of electricity across the territory of an intervening**

**State/within the State which is incidental to inter-State transmission of electricity of Malana II of the Respondent no.1. Thus, the transmission of power on this line has to be regulated by the Central Commission. Thus, the Central Commission has the jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1 regarding sharing of transmission charges, losses, etc. by the Respondent no.1 as per Section 79(1)(f) of the Act. Thus, this issue is decided against the Appellant.**

- iv) We have given specific findings about the various issues raised by the Appellant and the Respondent no.1 in determination of transmission charges and losses to be borne by the Respondent no.1 for usage of the transmission system of the Appellant, and other related issues in Paragraph 53 of the judgment. The Central**

**Commission shall pass consequential order on the basis of our directions after hearing the concerned parties within 45 days of receipt of the copy of this judgment. However, till the passing of the consequential order by the Central Commission the interim arrangement for payment of transmission charges and transmission losses by the Respondent no.1 to the Appellant as per our interim order dated 10.6.2011 will continue.**

**56. The Appeal is dismissed with directions to the Central Commission to pass the consequential order.**

**No order as to costs.**

**57. Pronounced in open court on 2<sup>nd</sup> day of**

**January, 2013.**

**(Justice P.S. Datta)  
Judicial Member**

**(Rakesh Nath)  
Technical Member**

√  
**REPORTABLE/~~NON-REPORTABLE~~**

**mk**

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 259/2010**

**Coram:**

**Dr. Pramod Deo, Chairperson**

**Shri S. Jayaraman, Member**

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

**Shri M. Deena Dayalan, Member**

**Date of Order: 18.01.2013**

**In the matter of:**

Issue of consequential order in Petition No.259/2010 in compliance with the directions of the Appellate Tribunal for Electricity in judgement dated 2.1.2013 in Appeal No.81/2011(Allain Duhangan Hydro Power Limited V Everest Power Private Limited & Others)

**In the matter of:**

Everest Power Private Limited

....Petitioner

Vs

1. Allain Duhangan Hydro Power Limited, Noida
2. Central Electricity Authority, New Delhi
3. Ministry of Power, New Delhi
4. Power Grid Corporation of India Limited, Gurgaon
5. Northern Regional Load Despatch Centre, New Delhi
6. Ministry of Power, Government of Himachal Pradesh, Shimla
7. Himachal Pradesh State Electricity Board, Shimla
8. Himachal Pradesh Power Transmission Corporation Limited, Shimla
9. Department of Forests, Government of Himachal Pradesh, Shimla

....Respondents

**ORDER**

The Commission in its order dated 1.6.2011 in Petition No.259/2010 had directed that the Commission has the jurisdiction to adjudicate the dispute between the petitioner and Respondent No.1 with regard to the use of the 220 kV D/C Allain Duhangan Hydro Power Limited(ADHEP)-Nalagarh Transmission Line and issued certain consequential directions in para 20 of the said order. Aggrieved by the said order, Respondent No.1 filed Appeal No.81/2011 before the Appellate Tribunal for

Electricity (hereinafter “Appellate Tribunal”). The Appellate Tribunal has disposed of the appeal vide judgement dated 2.1.2013 with the following directions:

“55. Conclusion

(i) The arrangement for interconnection of the dedicated transmission system of the earlier for evacuation of power from the hydro power stations of Parbati Basin and constraints hydro power project of the Respondent no.1 with the dedicated transmission system of the Appellant and the evacuation of the power of the Respondent no.1 through the dedicated transmission system of the Appellant upto the sub-station of Power Grid at Nalagarh has been planned and coordinated by the CEA and CTU in consultation with the parties. This has been necessitated by delay in construction of Parbati Pooling Station planned by the CTU in providing alternative transmission corridor in the hilly and forest area and environmental consideration.

(ii) The Central Government granted permission to the Respondent no.1 under Section 68 to construct its dedicated transmission system comprising 132 kV transmission line and 220/132 kV sub-station to loop-in-loop-out one of the circuits of Allain Duhangan – Nalagarh 220 kV double circuit approval for which was earlier granted by the Central Government to the Appellant as its associated transmission system. The approval to the Respondent no.1 under Section 68 was granted with the understanding reached in a meeting taken in the CEA for the sharing arrangement with the consent of the Appellant and the Respondent no.1

(iii) In view of the Loop-in-Loop-out of one of the Allain Duhangan – Nalagarh circuits at Chhaur, part of the line is used for conveyance of electricity across the territory of an intervening State/within the State which is incidental to inter-State transmission of electricity of Malana II of the Respondent no.1. Thus, the transmission of power on this line has to be regulated by the Central Commission. Thus, the Central Commission has the jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent no.1 regarding sharing of transmission charges, losses, etc. by the Respondent no.1 as per Section 79(1)(f) of the Act. Thus, this issue is decided against the Appellant.

(iv) We have given specific findings about the various issues raised by the Appellant and the Respondent no.1 for usage of the transmission system of the Appellant, and other related issues in Paragraph 53 of the judgment. The Central Commission shall pass consequential order on the basis of our directions after hearing the concerned parties within 45 days of receipt of the copy of this judgment. However, till the passing of the consequential order by the Central Commission the interim arrangement for payment of transmission charges and transmission losses by the Respondent No.1 to the Appellant as per our interim order dated 10.6.2011 will continue.

56. The Appeal is dismissed with directions to the Central Commission to pass the consequential order. No order as to costs.”

2. In para 53 of the judgement, the Appellate Tribunal has issued specific directions regarding capital cost, return on equity, sharing of transmission losses, priority in case of outage of a circuit, control of 132/220 kV Chhaur sub-station.

Briefly, the directions of the Appellate Tribunal on the above issues are as under:

(a) The Central Commission shall decide the capital cost on the basis of the provisions of 2009 Tariff Regulations which shall form the basis for determination of transmission charges payable by the petitioner to Respondent No.1.

(b) Respondent No.1 cannot claim return on equity more than that specified in the 2009 Tariff Regulations for transmission business for determine the transmission charges payable by the petitioner.

(c) The Commission shall decide the O&M charges to be borne by the petitioner afresh after hearing the parties.

(d) As regards the outage handling and priority in scheduling, the Commission shall give detailed directions to NRLDC on the principles enumerated in para 53.4 of the judgement after hearing the parties.

(e) The operations at Chhaur sub-station for Nalagarh and Allain Duhangan sections have to be carried out under the control of the Northern Regional Load Dispatch Centre.

(f) In respect of other operational issues, the Appellate Tribunal has granted liberty to Respondent No.1 (appellant) to raise the issue before the Commission which the Commission shall consider afresh after hearing the parties and pass consequential order.



3. In view of the above, we direct the Respondent No.1 to file the tariff petition for the 220 kV D/C ADHEP - Nalagarh Transmission Line in accordance with the provisions of 2009 Tariff Regulations of this Commission after serving a copy of the petition on the petitioner within 15 days of the issue of this order. The tariff petition shall be accompanied by all relevant documents including the certificate of the statutory auditor with regard to the capital cost and other expenditures. The petitioner is directed to file its reply to the tariff petition within 7 days thereafter. It is clarified that the Respondent No. 1 shall not be required to publish the public notice in the news papers as required under Regulation 5(1) of 2009 Tariff Regulations read with Central Electricity Regulatory Commission (Procedure for making of Application for Determination of Tariff, Publication of the Application and Other Related Matters) Regulations, 2004.

4. Since technical issues are involved, we direct Central Electricity Authority, Central Transmission Utility and Northern Regional Load Despatch Centre to assist the Commission during the hearing.

5. The petition shall be listed for hearing on **21.2.2013**.

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

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

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

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

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1795 OF 2013

ALLAIN DUHANGAN HYDRO POWER LTD.

Appellant(s)

VERSUS

EVEREST POWER PVT. LTD. & ORS.

Respondent(s)

WITH

CONTEMPT PETITION (C) NO. 412/2013

IN

CIVIL APPEAL NO. 1795/2013

O R D E R

1) The present appeal is directed against the judgment dated 02.01.2013 passed by the Appellate Tribunal for Electricity, New Delhi (for short the 'Appellate Tribunal') in which it has confirmed the judgment dated 01.06.2011 of the Central Electricity Regulatory Commission (for short the 'Central Commission') which has held that in view of the fact that inter-State transmission of electricity is involved, the Central Commission would have jurisdiction to proceed further with the matter under Section 79 of the Electricity Act, 2003.

2) We have heard Mr. Parag Tripathi, learned senior counsel appearing on behalf of the respondents. Nobody has argued on behalf of the appellants, despite the fact that the matter has been passed over once and this is the second call. We have also heard Mr. Jayant Bhushan, learned

senior counsel appearing on behalf of the intervener, Mr. Aditya Dhawan, learned counsel for Respondent No.7 and Mr. A.K. Panda, learned senior counsel for the Union of India.

3) Mr. Tripathi has adverted to a concurrent finding of fact of both the Central Commission and the Appellate Tribunal. The Commission in its judgment dated 01.06.2011 held on facts as follows:-

"16. We have considered the submissions of the petitioner and Respondent No.1. There is no doubt that as per the Master Plan envisaged by the Central Electricity Authority, the transmission line is required to wheel the power of other generators in the region till the Nalagarh sub-station of Power Grid. Since, the petitioner has been permitted by Ministry of Power, Government of India in its sanction letter under section 68 of the Act to wheel its power by LILLO of one circuit of Allain Duhangan-Nalagarh transmission line till the Nalagarh sub-station of Power Grid, the portion of the transmission line to be used by EPPL becomes a part of the inter-State transmission system as "inter-State transmission system" under 2(36) of the 2003 Act which includes conveyance within the State which is incidental to inter-State transmission of electricity. Moreover, permission to EPPL in the sanction letter under section 68 of the Act to use the transmission line of ADHPL is deemed to be read into the sanction letter to ADHPL under section 68 of the Act and such permission to ADHPL is conditional to wheeling the power of other generators in the region whose generating

stations were included in the planning process of CTU and CEA. Since the subject transmission line has been planned to evacuate power from the region for injection into the sub-station of Power Grid at Nalagarh, the transmission line is incidental to inter-State transmission system. The Commission which has been vested with the responsibility to regulate inter-State transmission has the jurisdiction to issue directions under section 79(1)(c) of the Act to regulate transmission on the subject transmission line."

- 4) This was affirmed by the Appellate Tribunal in para 35 as follows:-

"35. The definition of the inter-State transmission system under Section 2(36)(ii) includes the conveyance of electricity across the territory of an intervening State as well as within the State which is incidental to such inter-state transmission of electricity. In the present case as discussed in the previous paragraphs, Allain Dunhangan - Nalagarh line after loop-in-loop-out at Chhaur sub-station of the Respondent No.1 becomes the system incidental to inter-State transmission of electricity from Malana II station of the Respondent No.1. Therefore, the Central Commission shall have jurisdiction to regulate the transmission of electricity on Allain Dunhangan - Nalagarh line after loop-in-loop-out of one of the circuits at Chhaur sub-station."

5) In view of the concurrent finding of fact taking into account Section 2(36)(ii), we find no reason to interfere with the judgment of the Appellate Tribunal and hence the same is upheld. We may only indicate that the said judgment has remanded the matter to the Central Commission to decide the matter on merits having held that it has jurisdiction to proceed further.

6) The appeal is dismissed. Needless to say, interim order, stands vacated.

7) In view of the dismissal of the appeal, the contempt petition is disposed of as having become infructuous.

..... J.  
(ROHINTON FALI NARIMAN)

..... J.  
(ABHAY MANOHAR SAPRE)

New Delhi;  
April 26, 2017.

ITEM NO.107

COURT NO.12

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1795/2013

ALLAIN DUHANGAN HYDRO POWER LTD.

Appellant(s)

VERSUS

EVEREST POWER PVT. LTD. &amp; ORS.

Respondent(s)

(with appln. (s) for directions and permission to place addl. documents on record and ex-parte stay and directions and impleadment and permission to file additional documents and intervention and directions and office report)

WITH

CONMT.PET.(C) No. 412/2013 In C.A. No. 1795/2013  
(With Office Report)

Date : 26/04/2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Appellant(s) Mr. Atul Vinod, Adv.  
Mr. Ajay K. Jain, Adv.  
Mr. M. P. Vinod, AOR

For Respondent(s) Mr. Parag Tripathi, Sr. Adv.  
Mr. Tarun Johri, AOR  
Mr. Ankit Saini, Adv.  
Mishika Bajai, Adv.

Mr. Nikhil Nayyar, AOR

Mr. Jayant Bhushan, Sr. Adv.  
Mr. Jafar Alam, Adv.  
Mr. Phaguni Lal, Adv.  
Mr. Santosh Kumar - I, AOR

Mr. A.K. Panda, Sr. Adv.  
Ms. Reena Pandey, Adv.  
Ms. Rekha Pandey, Adv.

Mr. Tushar Bakshi, AOR

Mr. Aditya Dhawan, Adv.  
Ms. Kiran Dhawan, Adv.  
Mr. Varinder Kumar Sharma, AOR

Ms. Anuradha Mutatkar, AOR

Ms. Sharmila Upadhyay, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.  
Needles to say, interim order, stands vacated.

In view of the dismissal of the appeal, the contempt  
petition is disposed of as having become infructuous.

Pending applications filed in the matter stand  
disposed of.

(R. NATARAJAN)  
Court Master

(SNEH LATA SHARMA)  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (C) NO. 1365 OF 2017  
IN  
CIVIL APPEAL NO. 1795 OF 2013

ALLAIN DUHANGAN HYDRO POWER LIMITED

Petitioner(s)

VERSUS

EVEREST POWER PRIVATE LIMITED & ORS.

Respondent(s)

O R D E R

Having heard Mr. Dushyant Dave, learned senior counsel appearing for the review petitioner, we find that there is no error apparent in our order dated 26<sup>th</sup> April, 2017.

However, when the Central Electricity Regulatory Commission decides the matter on merits, it may do so without regard to the observations made by the Appellate Tribunal for Electricity in its order dated 02.01.2013.

With these observations, the Review Petition is disposed of.

..... J.  
(ROHINTON FALI NARIMAN)

..... J.  
(ABHAY MANOHAR SAPRE)

New Delhi;  
July 12, 2017.



S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

R.P.(C) No. 1365/2017 in C.A. No. 1795/2013

(Arising out of impugned final judgment and order passed by this Hon'ble Court dated 26.04.2017)

ALLAIN DUHANGAN HYDRO POWER LIMITED Petitioner(s)

VERSUS

EVEREST POWER PRIVATE LIMITED &amp; ORS. Respondent(s)

Date : 12-07-2017 This petition was circulated today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Mr. Dushyant Dave, Sr. Adv.  
Mr. Ramesh Singh, Adv.  
Mr. A.K. Jain, Adv.  
Ms. Seema Jain, Adv.  
Mr. Dushyant Mahant, Adv.  
Mr. Vimlesh Kumar, Adv.  
Mr. M.P. Vinod, AOR

For Respondent(s) Mr. Parag P. Tripathi, Sr. Adv.  
Mr. Tarun Johri, Adv.  
Mr. Ankur Gupta, Adv.  
  
Mr. Jayant Bhushan, Sr. Adv.  
Mr. Jafar Alam, Adv.  
Mr. Santosh Kumar, Adv.  
Mr. Phaguni Lal, Adv.

UPON hearing the counsel the Court made the following  
O R D E RThe Review Petition is disposed of in terms of the signed  
order.(R. NATARAJAN)  
COURT MASTER(SAROJ KUMARI GAUR)  
COURT MASTER

(Signed order is placed on the file)