

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 54/MP/2018

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 19.3.2019

In the matter of

Miscellaneous Petition seeking adjudication of dispute between NLC and Rajasthan Discoms on the issue of non-implementation of ABT from the date of COD of Barsingsar Thermal Power station in Rajasthan from November, 2011 to December, 2017 and consequential short admittance of the bills thereof.

AND

In the matter of

NLC India Limited

(formerly Neyveli Lignite Corporation Ltd)

Regd office-First floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex of Food Corporation of India,
Chetpet, Chennai-600 031

.....Petitioner

Vs

1. Rajasthan Urja Vikas Nigam Limited
Ground Floor, Vidyut Bhawan,
Janpath, Jaipur-302005

2. Jodhpur Vidyut Vitran Nigam Ltd,
New Power House,
Heavy Industrial Area,
Jodhpur, Rajasthan - 342003

3. Jaipur Vidyut Vitran Nigam Ltd.
VidyutBhawan, Janpath,
Jaipur, Rajasthan -302 005

4. Ajmer Vidyut Vitran Nigam Ltd.
Old Power House Hathibhata,
Jaipur Road, Ajmer, Rajasthan -305 001

5. Rajasthan State Load Despatch Centre,
Ajmer Road, Heerapura, Jaipur - 302 024

6. Rajasthan Rajya Vidyut Prasaran Nigam Limited
VidyutBhawan, Janpath,
Jaipur- 302005

.....Respondents



Parties present:

Shri M.G.Ramachandran, Advocate, NLC
Ms. Anushree Bardhan Advocate, NLC
Ms. Poorva Saigal, Advocate, NLC
Shri Shubham Arya, Advocate, NLC
Shri S.Gnana Prabhakaran, NLC
Shri Dhanasekharan, NLC
Shri S.K.Aggarwal, Advocate, Rajasthan Discoms

ORDER

This Petition has been filed by the Petitioner, NLC India Limited (NLCIL) with the following specific prayers:

- (a) Adjudicate upon the disputes which have arisen on account of the failure on the part of Respondent No. 1/Rajasthan Discoms to pay the amount due to the Petitioner towards fixed charges and energy charges and the Delayed Payment Surcharge thereon as detailed herein above in the petition;
- (b) Declare that the Respondent No. 1/Rajasthan Discoms are required to pay to the Petitioner the principal amount of ₹25.63 Crore (as on 31st December 2017) and the Delayed Payment Surcharge in the sum of ₹35.99 Crore as on 31st December 2017;
- (c) Declare that the Respondent No. 1 shall continue to be liable for payment of fixed charges based on the declared availability/declared capacity in future i.e. from 1.1.2018 onwards and further the energy charges based on the quantum of energy scheduled by the Respondent No. 1/the Rajasthan Discoms from time to time effective 1.1.2018;
- (d) award cost of the petition; and
- (e) pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.

2. NLCIL is a company incorporated under the Companies Act, 1956 and is owned and controlled by the Central Government. The Petitioner owns and operates the Barsingsar Thermal Power Station (2 x 125 MW) (hereinafter called 'the generating station') in Rajasthan with Circulating Fluidised Bed Combustion lignite fired boilers feeding to Turbines. The allocation of power to the Respondents 2 to 4 is based on the letter dated 29.9.2011 of the Energy Department, Govt. of Rajasthan. Unit-II of the generating station was declared under commercial operation on 29.12.2011 and Unit-I/generating station on 20.1.2012.

Submissions of the Petitioner

3. The Petitioner in this Petition has submitted the following:
- (a) The Petitioner entered into a Power Purchase Agreement on 8.10.2003 with Respondents 2 to 4 & 6. The project was commissioned on 20.1.2012, i.e. subsequent to the orders passed by this Commission dated 4.1.2000 and 4.7.2005 implementing the ABT mechanism across the country and also subsequent to the Hon'ble Supreme Court's order dated 17.8.2007. Further, the petitioner's project was commissioned in the State of Rajasthan after almost 5 years of notification of the RERC (Intra State ABT) Regulations, 2006 dated 24.8.2006 which came into effect from 1.10.2006
 - (b) Against the bills raised by the Petitioner, the Respondent no. 1/Rajasthan Discoms has only paid an amount to the extent of capacity charges based on actual energy plus back down energy and energy charges computed on actual energy drawn by Respondent No. 1 / discoms and is denying payment towards annual fixed charges based on availability declared by the Petitioner.
 - (c) A meeting was held on 14.11.2013 to decide the implementation of Intra-State ABT mechanism in the State of Rajasthan. The minutes of the meeting that was drafted by the Respondents and was simply forwarded to the Petitioner, stated that the fixed charges will be payable only to the extent of actual energy drawn plus back down energy instead of declared capacity contrary to the ABT regulations. However, the petitioner did not agree to the minutes of the aforesaid meeting.
 - (d) Subsequent to the above meeting, there were correspondences between the parties and also there have been discussions and deliberations between the Petitioner and the Respondents in regard to the settlement of the claim pertaining to fixed charges based on declared capacity. The petitioner attempted to discuss the matter with the Respondents. The Respondents have not agreed to the payment of the fixed charges based on declared capacity.
 - (e) Even though the Intra-State ABT may not have been fully implemented in the State of Rajasthan as claimed by the Respondent no.1, the declaration of availability, scheduling, dispatch, energy accounting etc., have to be considered in accordance with the Regulations of this Commission.
 - (f) The Petitioner is required to make available the electricity based on the declared capacity as per regulation of CERC and it is up to the Respondents to schedule as per as per their requirement. Unscheduled balance is to be considered as deemed generation for the purpose of payment of the fixed charges.
 - (g) For the purpose of energy charges whatever is scheduled for dispatch by Respondent No.1 should be considered for payment. The difference between what is scheduled/ given dispatch instructions and what is actually drawn has to be accounted for in the UI Charges either payable/receivable by Respondent No.1/ discoms in terms of the applicable regulations. In so far as the Petitioner is



concerned, the scheduled generation is deemed to have been injected by Petitioner and all computation for payment of energy charges by the Respondent no.1 should be as per the given schedule. In case the Petitioner has generated less or more, the same is to be accounted for in the UI charges in terms of applicable regulations.

- (h) The above scheme is well settled as discussed by the Commission in its order dated 4.1.2000 and upheld by the Hon'ble Supreme Court in its order dated 17.8.2007. This mechanism will be applicable to generation and sale of electricity by the Petitioner to the Respondent No.1 from the Barsingsar project also. The Rajasthan SLDC, Respondent No. 5 undertakes the load dispatch functions as specified in Section 32 of the Electricity Act, 2003 to ensure integrated operation of the power system in the State of Rajasthan. In terms of Section 33(3) of the Electricity Act, 2003, the SLDC should comply with the directions of the RLDC.
- (i) Further in terms of Section 28 of the Act, RLDC is entitled to give directions and exercise supervision and control in the operation of the power system in the region and all such directions issued by RLDC is to be enforced by the SLDC. Thus, in the scheme of the Electricity Act, 2003, the SLDC doesn't have an isolated and independent operation in the State to claim a differential treatment. This is particularly in regard to scheduling and despatch of Central Sector generating Stations like that of the Petitioner. Accordingly, irrespective of the load dispatch functions being undertaken by Rajasthan SLDC, the ABT mechanism is enforceable for all intent and purposes.
- (j) In the facts and circumstances mentioned above, the action of the Respondent No. 1/discoms in not paying the amounts due to the Petitioner towards fixed charges computed on the basis of declared availability/declared capacity and restricting the fixed charges to actual energy drawn by Respondent No. 1/discoms plus back down energy is patently erroneous. While the energy charges are payable by Respondent No.1 and the Rajasthan Discoms based on the scheduled generation, the fixed charges are payable on the basis of the declared capacity or declared availability.
- (k) It is not appropriate to compute the capacity charges and/or energy charges on the basis of the quantum of energy actually drawn by Respondent No. 1/ Rajasthan Discoms plus back down energy. It is settled law that the Respondents have to pay fixed charges based on the declared capacity by the Petitioner and Energy charges on the basis of the energy actually drawn plus back down energy. The difference between the energy scheduled and energy actually injected by the Petitioner and drawn by Respondent No. 1/the Rajasthan Discoms have to be accounted for and adjusted under the Unscheduled Interchange (UI) mechanism.
- (l) The purported basis for the Respondents in not implementing the above scheme on the basis of the plea that the generating station of the petitioner is supplying



the entire quantum of electricity to the Rajasthan Discoms is also patently erroneous, as the regulations of the Commission would still apply irrespective of whether the generating station is supplying within a State or to more than one State as decided by the Hon'ble Supreme Court in the Central Power Distribution Company Limited v Central Electricity Regulatory Commission.

- (m) As on date, a sum of ₹25.63 crore is outstanding towards principal from the Respondent No. 1/Rajasthan discoms to the Petitioner towards unpaid fixed charges and energy charges on account of wrong methodology adopted by Respondents for computing the amount due to the Petitioner. In addition to the above, the Petitioner is also entitled to Delayed Payment Surcharge of ₹35.99 crore on the above amount for the overdue period. The Respondents have wrongly denied the claim of the petitioner despite discussions and deliberations held on the issue on several occasions. The Petitioner is entitled to the cost of the present proceedings on account of the conduct of the Respondents.

In the above background, the present Petition has been filed by the Petitioner with the reliefs as prayed for in para (1) above.

4. The Petition was admitted on 19.4.2018 and directions were given to the Respondents to file their replies. In response, the Rajasthan Discoms (Respondent 1 to 4) have filed their reply and the Petitioner has filed its rejoinder to the said reply.

Reply of Respondents 1 to 4

5. The Respondents 1 to 4 (Rajasthan Discoms) vide their reply affidavit dated 10.7.2018 has submitted the following:

- (a) The Petitioner's project falls under the jurisdiction of Rajasthan Electricity Regulatory Commission's regulations and therefore, Intra-state ABT is not operational in the State of Rajasthan and the ABT is applicable to only those generators which are under the jurisdiction of the Central Commission. The petitioner gets its generation schedule from Respondent No. 5 (Rajasthan SLDC) and therefore the scheduling portion of the Petitioner's project fall within the ambit of Rajasthan Electricity Regulatory Commission (RERC) regulations. Ipso facto, the energy charges will be payable only on the quantum of energy actually supplied not qua the ABT scheme, which is not operational.
- (b) It was mutually decided in the MOM dated 14.11.2013 that the energy bills of the intra-state long term and short term generators will be done on the basis of actual capacity available and actual energy injection at par with generators of Respondent No.1 (RUVNL). Since the issue had been decided in 2013 itself, the



claims of the Petitioner are barred by law of limitation. The Petitioner being aware about the meeting and refusing to sign indicates that it was aggrieved with the decision of the respondents, but has remained silent for such long period and hence bar the Petitioner by estoppel.

- (c) The respondent RUVNL submitted that the issue has already been mutually decided in the meeting long back in 2013. In the meeting it was decided that the energy bills of the intra State long term and short term generators will be done on the basis of actual capacity available and actual energy injection at par with RUVN generators. The respondent further submitted that the petitioner in the meeting refused to sign the minutes that indicates that it was apparently aggrieved by the decision of the respondents.
- (d) Till necessary arrangements to the implementation of ABT are to be established by SLDC, the Petitioner is bound to make payment in such interim period till the implementation of ABT scheme. Moreover, the Petitioner was always aware about the intra-State ABT not being operational in the State of Rajasthan. In the context of claims of the Petitioner a meeting was conveyed under the chairmanship of Pr. Secretary (Energy RoR) on 14.11.2013 to decide the methodology of verification of energy invoices. Accordingly, fixed charges are being verified on actual energy plus back down and variable charges on actual charges. Therefore the Petitioner was bound to pay an outstanding amount as per intra-State mechanism.
- (e) The entire energy (100%) of the Petitioner is scheduled to Rajasthan only, whereas the generation of other central generators is scheduled to various States. Hence, scheduling and accounting of those central generators is done at Regional level whereas, the scheduling of the Petitioner's generating station is at State level. The Petitioner gets its generation scheduled by Rajasthan SLDC. Therefore, the scheduling portion falls under the RERC regulations.
- (f) This Commission has no jurisdiction to decide the matter pertaining to bills and payments with respect to the Respondents, as the same falls within the territorial jurisdiction of RERC. Moreover, the Petitioner has not complied with the provisions of clause 9 of the PPA which provides for Arbitration and jurisdiction of Court.
- (g) The judgment of the Hon'ble Supreme Court referred to by the Petitioner is not relevant in the facts and circumstances of the case as the issue in the present Petition is that the Petitioner gets its generation scheduled by Rajasthan SLDC and the scheduling portion falls under RERC regulations. Also, the said judgment is silent on the retrospective effect of implementation of ABT mechanism. In the absence of ABT mechanism in Rajasthan, the DSM account cannot be issued for Petitioner in isolation. Till the ABT is implemented, the Petitioner can raise invoices as per terms of the PPA, MOM dated 14.11.2013 and RERC regulations.



In the above background, the Respondents have prayed that the claim of the Petitioner is devoid of merits and may be dismissed.

Rejoinder of Petitioner

6. The Petitioner vide its rejoinder affidavit dated 7.8.2018 has submitted the following:

- (a) The Project of the Petitioner falls under the purview of ABT scheme and not under RERC regulations. The Commission's order dated 4.1.2000 regarding ABT mechanism has been made applicable to Central Public Sector Undertakings supplying power even to single State, on 4.7.2005 in Suo motu Petition No. 67/2003. This was reaffirmed by the Commission in its judgment dated 17.8.2007 in CPDCL v CERC (2007) 8 SCC 197. In the light of these orders, the Commission in its order dated 15.9.2017 in Petition No. 62/MP/2013 and order dated 29.9.2017 in Petition No. 15/MP/2016 had held that the generating stations owned and controlled by the Central Government irrespective of the number of beneficiaries fall under the ambit of ABT scheme.
- (b) A plain perusal of the MOM dated 14.11.2013 reveal that the Petitioner never agreed to the proposal that the fixed charges will be payable only to the extent of actual energy drawn plus back down energy instead of declared capacity contrary to the ABT mechanism. It is denied that the Petitioner is barred by the principle of estoppel. ABT scheme is applicable to the facts and circumstances of the case and the jurisdiction of the present dispute lies with this Commission.
- (c) In terms of the decision of the Hon'ble Supreme Court in GUVNL V Essar Power Ltd (2008 4 SCC 755) and the Hon'ble Delhi High Court in PTC v JPVNL (2012 130 DRJ 351), the provisions of the Electricity Act, 2003 supersedes the provisions of the Arbitration Agreement. Thus, there cannot be any dispute regarding the jurisdiction of this Commission.

7. During the hearing of this Petition on 8.1.2019, the learned counsel for the Petitioner and the Respondents mainly reiterated the submissions made in their respective pleadings. Accordingly, the Petition was reserved for orders. Based on the submissions of the parties and the documents available on record, we examine the claim of the Petitioner as stated in the subsequent paragraphs.

Analysis and Decision

8. We first deal with the objection raised by the Respondents with regard to the jurisdiction of the Commission to decide the matter. The Respondents have submitted



that since the matter regarding bills and payments pertain to the territorial jurisdiction of RERC, this Commission has no jurisdiction to decide the matter. There is no dispute that the Petitioner, NLCIL, a Central Government company is a generating company owned and controlled by the Central Government. The PPA dated 8.10.2003 executed by the Petitioner with the Respondents contains the following provision for determination of tariff;

“5.0 Tariff

5.1 The power tariff shall be determined by Central Electricity Regulatory Commission (CERC) as per the provisions of the Electricity Act, 2003”

5.2 GOI notification, if any, on Availability Based Tariff (ABT) shall also prevail from time to time.”

9. The power of determination of tariff by the Central Commission can be traced to clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003 according to which the regulation of tariff of the Petitioner is within the jurisdiction of the Central Commission. The dispute involved in this Petition relates to recovery of tariff by the Petitioner towards power supplied to the Respondent discoms. Therefore, adjudication of the dispute falls within the jurisdiction of this Commission under clause (f) of sub-section (1) of Section 79 of the said Act. Hence, the objection of the Respondents as to jurisdiction of this Commission has no merit.

10. Secondly, the Respondents have also contended that the project of the petitioner falls under the RERC Regulations and therefore, intra-State ABT is not operational in the State of Rajasthan. The Respondents have argued that the ABT scheme is applicable to only those generators which are under the jurisdiction of this Commission and since 100% of the energy is scheduled to the State of Rajasthan, the scheduling of the Petitioner is at the State level i.e Rajasthan SLDC (the respondent no. 5 herein) the charges for electricity shall be fixed in accordance with the methods and the principle as specified by the State Commission. *Per contra* the Petitioner has submitted that the Project of the Petitioner falls within the purview of the ABT scheme. It has contended



that ABT mechanism has been made applicable in terms of Commission's order dated 4.7.2005 in Suo motu Petition No. 67/2003 to Central Public Sector Undertakings supplying power to a single State also and the said order had been affirmed by the Hon'ble Supreme Court vide its judgment dated 17.8.2007 in CPDCL V CERC (2007 8 SCC 197).

11. We have considered the matter. This Commission in its order dated 4.1.2000 in Petition No. 2/99 (suo motu) decided to implement the scheme of Availability Based Tariff (ABT) in different regions of the country in a phased manner. Accordingly, the said scheme was implemented in a phased manner from the following dates in case of the generating stations supplying electricity to more than one State;

- (i) Western Region: 1.7.2002
- (ii) Northern Region: 1.12.2002
- (iii) Southern Region: 1.1.2003
- (iv) Eastern Region: 1.4.2003
- (v) North-Eastern Region: 1.11.2003

12. Thereafter, the Commission by order dated 4.7.2005 in Petition No. 67/2003 (suo motu) subjected under the purview of ABT, the generating stations owned by the Central Power Sector Utilities supplying power to only one beneficiary (State) with effect from 1.12.2005. It was also clarified in the said order that, except for scheduling and UI accounting to be carried out by the respective SLDCs, the procedure for scheduling and payment of charges for UI were to be governed by the provisions of the tariff regulations notified from time to time. The relevant portion of the order dated 4.7.2005 is extracted hereunder:

“13. Scheduling procedure and payment of charges for the Unscheduled Interchanges (UI) shall be governed in terms of the Commission's notification dated 26.3.2004 as amended from time to time, on terms and conditions of tariff, except that the scheduling and UI accounting shall be carried out by respective SLDCs.”

13. Aggrieved by the said order, the distribution licensees of the erstwhile unified State of Andhra Pradesh filed Appeal No. 152/2005 before the Appellate Tribunal for Electricity (the Tribunal) objecting amongst other, the jurisdiction of this Commission to



introduce ABT for the generating stations (Simhadri STPS-1000 MW) supplying power within the State of Andhra Pradesh. The Tribunal vide its judgment dated 3.1.2006 rejected the plea of the appellants therein about the lack of jurisdiction of the Central Commission to introduce ABT in a single beneficiary plant and dismissed the said appeal.

The relevant portion of the judgment dated 3.1.2006 is extracted hereunder:

“4. As already pointed out under Section 79 of the Act the CERC has been vested with the power to regulate the tariff of generating companies owned or controlled by the Central Government. Since, the special provision relating to fixation of tariff of generating companies owned or controlled by the Central government is being dealt with under Section 79 read with Section 76 of the Act, Section 86 which is a general provision, cannot be read to confer power on the State Commission to determine the tariff of a generating company owned or controlled by the Central Government supplying power to the transmission company within the State. Where there is a special provision specifically dealing with a subject, a general provision, howsoever widely worded must yield to the former...”

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7. In view of the aforesaid discussion, we have no hesitation in rejecting the plea of the appellant that the CERC lacked the jurisdiction to introduce ABT for Simhadri thermal station.”

14. Against the said judgment of the Tribunal, CPDCL filed Civil Appeal No. 2104/2006 before the Hon’ble Supreme Court on various issues, including the question of jurisdiction of this Commission to apply ABT and whether this Commission (in the facts of Simhadri STPS case) can exercise jurisdiction when matters relating to State Grid fall within the role and function of the State Electricity Regulatory Commission. As regards the contention of CPDCL that this Commission did not have the jurisdiction to introduce ABT for generating stations (Simhadri STPS) supplying power within the State of AP, the Hon’ble Supreme Court vide its judgment dated 17.8.2007 held as under:

“(16) It is submitted that the order dated 4.7.2005 passed by the Commission in discharge of its power under Section 79(1)(a) of the Electricity Act, 2003 cannot be justified. It is further argued under Section 79(1)(c) the Central Commission can only regulate inter-State transmission of electricity. It is argued that Section 86(1)(c) of the Act confers the power of jurisdiction of facilitating intra-State transmission upon the State Regulatory Commission. It is also argued that the UI charges in respect of Simhadri could have only been imposed by the State Regulatory Commission, after due consultation with all other generators in the State and the transmission utility who has the responsibility to maintain the grid.

(17) In our view, the aforesaid contention is thoroughly misconceived. Simadhri Station is owned and controlled by the NTPC which is a Government of India undertaking. Section 79(1)(a) of the Act contemplates that the Central Commission has jurisdiction over



generating companies owned or controlled by the Central Government. In view thereof, the provisions under Section 86 cannot be applied for NTPC station. The various sections under the Electricity Act would clearly show beyond any doubt the powers of Central Commission and jurisdiction in regard to the grid, the scheduling and despatch. Under Section 79(1)(h) the Central Commission has the power to specify Grid Code. It also provides that the function of the State Commission to specify State Grid Code under Section 86(1)(f) should be consistent with the Grid Code specified by the Central Commission and therefore the power of the State Commission is subservient to the power of the Central Commission. Section 2 (32) defines Grid as inter connected transmission lines. The expression used inter connected has a significant meaning. Sub-section (1) of Section 28 deals with the function of RLDC (Regional Load Despatch Centre) to ensure integrated operation of the power system in the concerned region. The term power system is of wide import. It is not confined to inter State Transmission Lines but extends to even supply lines, distribution, main service lines etc. However, sub-section (3) of Section 28 deals with duties of RLDC using the expression within the region or in the region. Obviously it includes both Inter State and Intra State lines and is not restricted to inter State lines. Section 29 of the Act empowers the RLDC to give directions and exercise such supervision and control to any person for ensuring stability of grid operation. It also provides that the State Load Despatch Centre shall duly enforce such directions. Sub-section (3) of Section 33 of the Act provides that the State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.

(18) A fascicule reading of the above provisions would clearly show that the scheme of the Electricity Act is that RLDC is required to follow the principles, guidelines and methodologies specified by the Central Commission and all persons including the distribution licensees like the appellants herein are required to follow the directions of RLDC. RLDC can enforce such directions through SLDC. In turn SLDC is required to follow the directions of RLDC.

(19) Having regard the aforesaid mentioned provisions of law, the contention that the Central Commission has no jurisdiction to deal with grid discipline in regard to single State beneficiary station, in our view, has no merit. As already noticed ABT is to ensure discipline in the integrated system. Further ABT is being introduced station wise and it is the Central Commission alone who has the jurisdiction particularly, in regard to generating stations of NTPC, which is a Central Government, owned and controlled generating company...”

15. The contention of the Respondents that scheduling portion falls under the RERC Regulations and in the absence of ABT mechanism, the DSM account cannot be issued for Petitioner, is also not acceptable. The Hon’ble Supreme Court in the said judgment had observed that the State Grid cannot be isolated and cannot be seen as independent from the region. The relevant portion of the said judgment is extracted as under:

“(22) The application of Availability Based Tariff and imposition of Unscheduled Interchange (UI) charges are essential part of the Functions of the Central Commission under Section 79(1)(h) of the Electricity Act, 2003 which reads to specify Grid Code having regard to the Grid Standards, and Sub-section (2) of Section 28 read with Section 178(2)(g) dealing with the Central Commission’s powers to frame Grid Code. The maintenance of Grid discipline envisaged under the Grid Code is regulated by the mechanism of ABT and UI charges. There is no basis for the appellant to contend that unless something is a part of Tariff the Central Commission cannot exercise powers and functions. The ABT and UI charges are commercial mechanism to control the utilities in scheduling, dispatch and drawl and the UI charges are tariff or charges payable for deviations. In the facts and circumstances mentioned above the



legal position is clear and there is no ambiguity in respect of the jurisdiction of the Central Commission.

16. Accordingly, the Hon'ble Supreme Court dismissed the said appeal as under:

“(25) In the facts and circumstances as alluded, and as per the Scheme of the Electricity Act, 2003 mentioned above, the Central Commission has the plenary power to regulate the Grid, particularly in the context of the Grid being integrated and connected across the region comprising of more than one State. The State Grid cannot be isolated and can be seen as independent from the region.

26. In the view that we have taken there is merit in this appeal and it is accordingly dismissed.”

17. Relying upon the above said judgment dated 3.1.2006 in Appeal No. 152/2006 and the judgment dated 17.8.2007 in C.A. No. 2104/2006, the Tribunal vide its judgment dated 12.2.2008 had rejected Appeal No.231/2006 filed by Kerala State Electricity Board (KSEB) challenging the Commission's order dated 30.6.2006 bringing Kayamkulam Rajiv Gandhi Combined Cycle Power Project of NTPC within the purview of ABT with effect from 1.7.2006.

18. In the light of the above judgments, the submissions of the Respondents are rejected and we hold that this Commission has the jurisdiction on the generating station of the Petitioner NLCIL, which is a Central Government owned and controlled generating company. The non-implementation of ABT mechanism for this generating station and the denial of capacity charges including the deemed generation charges, payment of Energy charges and UI charges computed based on availability, scheduled generation and UI respectively by the Respondents is not in accordance to above mentioned judgment of the Hon'ble Supreme Court. ABT for the generating station is therefore applicable with all its consequences, without any limitation and exception.

19. Accordingly, Rajasthan SLDC (Respondent No.5) is directed to ensure the availability of declaration, scheduling, despatch and Deviation Settlement Mechanism and issuance of necessary monthly/weekly Energy Accounts/ Deviation Settlement



Accounts etc. as per IEGC and other applicable regulations in respect of this generating station.

20. Consequent upon the above, the amounts claimed by the Petitioner not having been disputed, the Respondent No. 1/Rajasthan Discoms are liable to pay to the Petitioner the principal amount of ₹25.63 crore (as on 31.12.2017) along with the delayed payment surcharge of ₹35.99 crore (as on 31.12.2017) towards capacity charges based on availability and energy charges based on energy scheduled by the respondents. The payments shall be made within 30 days of this Order. These Respondents are also directed to pay the fixed charges with effect from 1.1.2018 and onwards, based on availability and energy charges based on the quantum of energy scheduled by the Respondents.

21. Petition No. 54/MP/2018 is disposed of in terms of above.

Sd/-
(Dr. M. K. Iyer)
Member

Sd/-
(P.K. Pujari)
Chairperson

