

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 252/MP/2021

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 8th February, 2023

In the matter of

Petition under Section 79(1)(f) and Section 79(1)(c) read with Section 158 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking reference to arbitration of inter-State dispute between the Petitioner being the State of Haryana and the Respondent being the Union Territory of Chandigarh with respect to recovery of an amount of Rs.11,15,64,277.30 i.e. the cost of 15.8 crore units of the pilfered electricity at the then prevalent rates along with compound interest @ 18% till the date of payment.

And

In the matter of

Haryana Vidyut Prasaran Nigam Limited
Shakti Bhawan, Sector-6,
Panchkula, Haryana

....Petitioner

Vs

1. Union of India through its Secretary,
Irrigation and Power Department, New Delhi.
2. Union Territory of Chandigarh through its Administrator,
Chandigarh Administration, Chandigarh.
3. Union Territory of Chandigarh through its Chief Engineer,
Engineering Department, Sector-9, Chandigarh.
4. The Bhakra Beas Management Board,
Sector-19, Madhya Marg, Chandigarh

....Respondents



Parties Present

Shri Naresh Markanda, Sr. Advocate, HVPNL
Shri Raghujeet S. Madan, Advocate, HVPNL
Ms. Sonia Madan, Advocate, HVPNL

ORDER

Haryana Vidyut Prasaran Nigam Limited (HVPNL/the Petitioner) which is the successor entity of erstwhile Haryana State Electricity Board (HSEB) has filed the present petition under Section 79(1)(c) and (f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking reference of the dispute with the Respondents arising out of inter-State transmission of electricity to arbitration. The dispute relates to the loss (in terms of electricity units) caused to the Petitioner on account of pilferage of electricity to the tune of 15.8 crores units from January, 1985 to June, 1990 amounting to Rs. 11,15,64,277.30 being the principal amount calculated at the global rates, prevailing at the relevant time.

Submissions of the Petitioner

2. The Petitioner has submitted the following facts leading to the filing of the present petition:

(a) By virtue of the re-organization of the composite State of Punjab and the coming into force of the Punjab Reorganization Act, 1966, the State of Haryana, UT of Chandigarh and State of Himachal Pradesh became entitled to the share of power to be generated by the Bhakra Beas Hydro Electric Project functioning under the supervision and control of Bhakra Beas Management Board (BBMB).

The electrical energy from BBMB to UT of Chandigarh was being transmitted and



supplied through the 66 KV Grid Sub-Station, Industrial Area, Chandigarh through the transmission lines which were laid, installed and maintained by BBMB, State of Haryana and Union Territory of Chandigarh.

(b) The UT of Chandigarh received energy from three sources, i.e. from 132 KV Sub-Station at Pinjore and 220 KV Sub-Station at Dhulkote located in Haryana and 220 KV Sub- Station at Mohali located in Punjab. The energy at the 132 KV Sub- Station at Pinjore was received from 132 KV Sub-Station at Ropar and metered at the said sub-station on 132 kV output. The total energy received at Pinjore was calculated from the meter readings for each month at Ropar after providing for line losses as per norms fixed by the BBMB.

(c) The power to Chandigarh from BBMB was transmitted through the 66 KV Sub-Station at Chandigarh which received power from Dhulkote and Pinjore in Haryana respectively. The said 66 KV Sub-Station at Chandigarh was also supplying power directly to M/s Bhushan Industries through 33 KV independent feeder from Chandigarh sub-station (D-3 feeder).

(d) A complaint was received by the Vigilance Cell of the then HSEB and on investigation, it was revealed that the power connection to the private consumer Bhushan Industries was released in December 1984 from the 33 KV bus at the 66 KV Sub-Station, Chandigarh through a breaker which was initially meant to serve as a bus coupler. It was further revealed that the private consumer of the UT of Chandigarh was directly receiving energy from BBMB Sub-Station. On the completion of the investigation, it was seen that Bhushan Industries had been



using more than the sanctioned limit illegally and the energy was accordingly being pilfered with the connivance of the officials of the BBMB and UT Chandigarh causing direct loss of energy to HSEB from the supply being fed from Pinjore by under metering the total energy consumed by UT Chandigarh. HPSEB was held entitled to charge 18% compound interest on the amount of energy so calculated as per prevailing rates of interest with the Banks. Accordingly, the interest chargeable during the various months was worked out and the total amount to be claimed worked to Rs.19,33,95,737.82 at that time.

(e) On the basis of Enquiry Report, HSEB wrote a letter dated 16.8.1991 to BBMB and Union Territory of Chandigarh apprising about the overdrawal of electricity by Union Territory of Chandigarh and diversion of the said electricity to the benefit of Bhushan Industries with the connivance of the officials of Union Territory of Chandigarh, BBMB and HSEB and requesting BBMB and Union Territory of Chandigarh to take appropriate criminal/disciplinary actions against their officials in the light of the revelation in the inquiry report.

(f) HSEB in its letter dated 29.8.1991 wrote to BBMB raising a bill of Rs.19,33,95,737.82 towards overdrawal by Chandigarh Administration. HSEB vide its letter dated 16.1.1995 reminded BBMB about its claim for overdrawal. In response, BBMB vide its letter dated 24.2.1995 requested HSEB to take up the matter with Chandigarh Administration for settlement. Chandigarh Administration vide its letter dated 24.2.1995 responded by informing HSEB that the case was under investigation by CBI and after settlement of the same, Chandigarh



Administration would revert back to HSEB. Thereafter HSEB issued reminders dated 13.2.1995, 16.3.1995 and 16.11.1995 to Chandigarh Administration about the progress of the case. The Petitioner vide its letter dated 22.11.1996 sent a legal notice to BBMB and Chandigarh Administration under Section 80 of IPC. Chandigarh Administration vide its letter dated 17.12.1996 intimated that since no final outcome has been made available by CBI Authorities, the status of the claim remains unaltered. Chandigarh Administration further informed that the onus of accepting the alleged claim for overdrawal of power through BBMB system at 66 kV Grid sub-station rests with BBMB and the matter be taken up with them.

(g) The CBI submitted a detailed report to Chandigarh Administration with respect to the connivance of the officials of the Respondents regarding pilferage of electricity.

(h) Thereafter, the Petitioner filed a civil writ Petition seeking issuance of writ in the nature of mandamus directing the Respondents to make good the loss (in terms of electricity units) caused to the Petitioner on account of the pilferage of the electricity due to lack of vigilance and acts of omission, commission and connivance on the part of the Respondents, as a result of which unaccounted electricity to the tune of 15.8 crores units of electricity was pilfered from January, 1985 to June, 1990.

(h) The said Civil Writ Petition was dismissed by the Hon'ble Punjab and Haryana High Court vide judgment dated 01.04.2015 on the ground that



assessment of the loss could not be carried out in writ jurisdiction and also on the ground that the private consumer was not made a party respondent to the writ petition.

(i) In the meanwhile, CBI submitted its report according to which the officials of the Respondents were found to be involved. Therefore, the Respondents were vicariously liable to make good the loss caused to the Petitioner.

(j) Thereafter, the Petitioner filed a Letter Patent Appeal against the judgement dated 1.4.2015 of the Single Judge which was dismissed by the Division Bench of the Hon'ble High Court vide judgement dated 27.7.2016 on the ground that the method of calculation of loss is not clearly explained in the petition and M/s Bhushan Industries which was primarily responsible for pilferage or theft of energy has not been impleaded.

(k) After dismissal of the LPA, an order dated 2.9.2016 was passed by the Learned CBI Court convicting the officials of the Respondents. It was held by the Ld. CBI Court that the accused maleficiently and fraudulently prevented the meter from getting duly registered so as to abstract energy and triggered a loss of Rs. 3,06,54,700.56 to the Electricity Department, UT, Chandigarh/HSEB, Haryana in collusion with accused, who dishonestly abstracted extra units of electricity from D-3 feeder, BBMB sub Station, Sector 28, Chandigarh and caused loss to the Department.



(l) In view of the judgment of Ld. CBI Court, the Petitioner filed an application seeking review of the judgment dated 27.07.2016 passed in the LPA by the Hon'ble High Court of Punjab and Haryana. However, the review application was also dismissed vide order dated 23.05.2018. However, Hon'ble High Court has observed that the Petitioner (review applicant before High Court) is entitled to claim any compensation/damages or loss etc. and it shall be at liberty to approach the appropriate forum for the said purpose.

(j) The judgement of the CBI court dated 2.9.2016 and 3.9.2016 has been challenged in a Criminal Appeal (CRA-3570-SB-2016) before the Hon'ble High Court of Punjab and Haryana. The appeal has been admitted and the sentence against the Appellants has been stayed vide order dated 5.10.2016.

(k) The Petitioner vide letter dated 20.04.2020 again requested Chief Engineer, Engineering Department, U.T., Chandigarh Administration to reimburse the outstanding dues of Rs. 19,33,95,737.82 plus interest @18% from September 1991 till date of payment. Reminders to the said letter were again sent by the Petitioner on 23.06.2020 and 29.07.2020. However, there was no response from the U.T., Chandigarh Administration. Additional Chief Secretary of Govt. of Haryana Power Department vide letter dated 17.09.2020 requested Adviser to Administrator, UT, Chandigarh to intervene in the matter and direct concerned authorities to remit the long-standing dues.

3. In the light of the above background and the observations made by the Hon'ble Punjab and Haryana High Court in the judgment dated 23.05.2018, the Petitioner has



approached this Commission under section 79(f) of the EA, 2003 seeking reference of the dispute relating to the recovery of the loss caused to the Petitioner on account of pilferage of electricity due to lack of vigilance and acts of commission/connivance on the part of the Respondents, as a result of which un-accounted electricity to the tune of 15.8 crores units of electricity was pilfered from January, 1985 to June, 1990 to the arbitral proceedings and the subsequent appointment of the Arbitral Tribunal. In support of its contention with regard to the jurisdiction of this Commission, the Petitioner has relied upon the following judgements/orders:

(a) Judgement of the Hon'ble High Court of Delhi dated 15.5.2012 in FAO No. OMP 677/2011(PTC India Limited Vs Jaiprakash Power Ventures Ltd.) wherein it was held that under Section 79(1)(f) of the Act, the Commission while discharging its functions can refer any dispute to arbitration.

(b) Full Bench Judgement of APTEL dated 7.4.2016 in Appeal No.97 of 2014 anBatch (Uttar Haryana Bijili Vitaran Nigam Limited & Others Vs. Central Electricity Regulatory Commission and Others) holding that "supply of power to more than one State from the same generating station of a generating company, ipso facto, qualifies as 'Composite Scheme' to attract the jurisdiction of the Central Commission under Section 79 of the said Act."

(c) Order of the Commission dated 1.3.2018 in Petition No.10/MP/2016 (Jaiprakash Power Ventures Limited Vs Global Energy Private Limited) wherein it was held that "the intra-State trading between GEPL and UPPCL being resultant of inter-State supply of power by JPVL to GEPL and being undertaken on the basis



of the inter-State trading licence issued by this Commission is a clear case of inter-State trading in electricity.”

(d) Judgement of the Hon'ble Supreme Court in the case of Essar Oil Limited Vs. Hindustan Shipyard Ltd. And Ors [(2015) 10 SCC 642] and Shri Ram Builders Vs State of M.P. and Ors [(2014) 14 SCC 104] regarding the doctrine of privity of contract wherein it was held that any omission or commission on the part of a stranger to the contract does not affect the rights and liabilities of the parties to the contract. It has been submitted that the Petitioner and Respondents are bound by terms and conditions of the contract entered between the composite State of Punjab and State of Rajasthan on 13.1.1959 and the private consumer (M/s Bhushan Industries Ltd.) being a stranger to the contract cannot affect the outcome of the present proceedings and for the same reason, the private consumer is not required to be impleaded as a party respondent in the present case. The Petitioner's claim is solely against the Union Territory of Chandigarh being a party to the contract.

(e) Judgement of the Hon'ble Supreme Court in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra [AIR 1957 SC 264] wherein the principle for determining the factors for principal-agent relationship was laid down i.e. 'control and supervision' by one party over the other in order to establish relationship of principal and agent. It has been submitted that since the allegations against the officials of the Respondents are proved, the Respondents are vicariously liable to make good the loss caused to the Petitioner.



(f) Judgement of the Hon'ble Supreme Court in Gujarat Urja Vikas Ltd. Vs. Essar Power Ltd. Holding [(2008) 4 SCC 755] that only the Commission has the power to refer the dispute between the Petitioner and the Respondents to arbitral proceedings and appointment of Arbitral Tribunal.

4. As regards the limitation, the Petitioner has relied upon the judgement of the Hon'ble High Court of Punjab and Haryana dated 1.4.2015 wherein it was held that there was no fetter for realizing the claims of one State authority against the other as there is no limitation in the case of State to State action or Union to State action under Article 131 of the Constitution of India. Further, in the judgement dated 27.7.2016, the Hon'ble Division Bench of the Punjab and Haryana High Court has observed that the Petitioner (Review Applicant before the High Court) shall be at liberty to seek its condonation on the plea that the proceedings remained pending before the High Court at different levels and such a plea shall be decided by the appropriate forum after hearing the parties and in accordance with law. The Petitioner has submitted that within a period of passing of the said judgement by the High Court, the Central Government had declared a nationwide lockdown with effect from 24.3.2020. Hon'ble Supreme Court from time to time issued directions extending the period of limitation on account of the pandemic, the last being issued on 8.3.2021 clarifying that the period from 14.3.2021 till further orders shall be excluded from limitation period. The Petitioner has submitted that the petition has been filed within limitation.



5. The Petitioner has prayed for the following in the present petition:

“1. The present petition may kindly be allowed to adjudicate and the dispute with respect to the recovery of the excess tariff paid may kindly be referred to arbitral proceedings in terms of Section 79(1)(f) of the EA Act, 2003; and

2. This Commission may kindly be pleased to appoint an Arbitral Tribunal in terms of Section 158 of the EA Act, 2003; AND/OR

3. This Commission may kindly pass any order/directions as it deems it and proper, in the interest of justice.”

6. The Petition was heard on maintainability. With regard to jurisdiction of the Commission to entertain the petition, learned Senior Counsel for the Petitioner submitted that since the dispute has arisen out of the inter-State transmission of electricity, according to the Petitioner, this Commission has the necessary jurisdiction in the matter.

Analysis and Decision

7. We have heard the learned Senior Counsel for the Petitioner and have perused the documents on record. Since the matter was heard and reserved on the issue of maintainability, we proceed to examine whether the Commission has the necessary jurisdiction to adjudicate the dispute or refer it to arbitration. If the answer to the said question is in the positive, the Commission will further examine whether the petition is filed within limitation before proceeding to deal with the matter on merit.

8. The Petitioner has filed the present petition before this Commission in the light of the observations of the Hon'ble High Court of Punjab and Haryana in its judgement dated 23.5.2018 in the Review Application No.40-2016 in LPA-231-2016 (Haryana Vidyut Prasaran Nigam Vs Union of India and others) that if the review applicant/appellant is



entitled to claim any compensation/damages or loss etc., it shall be at liberty to approach the appropriate Forum for the said purpose. Relevant paras of the said judgement are extracted as under:

“[2] The appellant now seeks review of the above-stated decision on the ground that subsequent thereto, the CBI Court, Chandigarh vide judgement dated 02.09.2016 has held some of the Officers/officials of the Electricity Department of UT, Chandigarh and BBMB, guilty of committing offences under the Prevention of Corruption Act, 1947, Section 120-B IPC and Sections 39 and 39A of the Indian Electricity Act, 1910. These criminal proceedings pertain to the same incident of theft of electricity committed by M/s Bhushan Industries in collusion and connivance with the Officers of UT Administration/BBMB. It is thus alleged that in view of the finding of guilt having been returned by the CBI Court, this Court may recall the judgement under review.

[3] Having heard learned counsel for the parties at considerable length, we are of the view that no case to review the judgement dated 27.07.2016 is made out. Suffice to observe that if on the basis of finding of fact returned by a Court of competent jurisdiction (subject to right to appeal etc. of the affected persons), the review applicant/appellant is entitled to claim any compensation/damages or loss etc., it shall be at liberty to approach the appropriate Forum for the said purpose. In case of objection re: limitation is raised, the review applicant shall be at liberty to seek its condonation on the plea that proceedings remained pending before this Court at different levels. Such a plea shall be decided by the Appropriate Forum after hearing the parties and in accordance with law. We clarify that we have not expressed any views on merits in relation thereto.”

9. The Petitioner has submitted that the Commission is the appropriate forum to adjudicate the dispute or refer it to arbitration under Section 79(1)(f) of the Act on account of the fact that (a) BBMB is a generating station having a composite scheme for generation and supply of electricity to more than one State; (b) the theft of electricity has taken place in the course of inter-State transmission of electricity and function to regulate inter-State transmission of electricity is vested in the Commission under Section 79(1)(c) of the Act; (c) Chandigarh Administration carries the vicarious liability for the theft or pilferage of electricity done by its employees: and (d) in terms of the Hon'ble Supreme Court in Gujarat Urja Vikas Ltd. Vs. Essar Power Ltd. Holding [(2008) 4 SCC 755], the Commission can refer the matter to arbitration.



10. Section 79 of the Act vests the following functions in the Commission to be performed in discharge of its statutory responsibilities:

“Section 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;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code having regard to Grid Standards;

(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;

(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;

(k) to discharge such other functions as may be assigned under this Act.”

11. As per the above provisions, the Commission has the power under clauses (a) to (d) of sub-Section 1 of Section 79 of the Act to regulate the tariff of the generating stations owned or controlled by the Central Government, the tariff of the generating stations which



have composite scheme for generation and sale of electricity in more than one State, to regulate the inter-State transmission of electricity and to determine the tariff of inter-State transmission system. Under Regulation 79 (1)(f) of the Act, the Commission has the power to adjudicate or refer to arbitration the disputes involving the generating company or transmission licensee in respect of the matters connected with Clauses (a) to (d) of sub-Section 1 of Section 79 of the Act. In other words, the jurisdiction of the Commission for adjudication of the dispute or reference to arbitration gets activated if the dispute involves either a generating company or a transmission licensee and the dispute pertains to tariff. The Appellate Tribunal for Electricity (Appellate Tribunal) in its judgment dated 4.9.2012 in Appeal Nos. 94 and 95 of 2012 has explained the scope of functions of the Commission under Section 79(1)(f) of the Act as under:

“34. Section 79(1) (f) of the Electricity Act, 2003 provides for the adjudication of disputes involving a generating company or a transmission licensee in matters connected with clauses (a) to (d) of Section 79. Thus, anything involving a generating station covered under clauses (a) and (b) as to the generation and supply of electricity will be a matter governed by Section 79 (1) (f) of the Act.”

12. The Petitioner has submitted that this Commission has jurisdiction under Section 79 of the Act to deal with the disputes arising out of supply of electricity to more than one State. The Petitioner has submitted that BBMB is supplying power to more than one State and therefore, there is a composite scheme to attract the jurisdiction of this Commission. The Commission in its order dated 15.9.2011 in Petition (Suo Motu) 181/2011 had held that BBMB is a generating company owned or controlled by the Central Government and is also involved in inter-state transmission of electricity. The said order was upheld by Appellate Tribunal vide order dated 14.12.2012 in Appeal No.183/2011 holding that “the Central Electricity Regulatory Commission has the jurisdiction in respect of the BBMB



within the periphery of the Electricity Act, 2003.” The judgement of the Appellate Tribunal is under challenge before the Hon’ble Supreme Court of India without any stay. Even though BBMB has a composite scheme and falls within the regulatory jurisdiction of the Commission, the said position does not render the present dispute between the Petitioner and Chandigarh Administration/BBMB as amenable to the adjudicatory jurisdiction of the Commission under Section 79(1)(f) of the Act, primarily for the reason that the dispute does not relate to tariff or tariff related matters involving BBMB.

13. The next argument of the Petitioner is that the pilferage of electricity has taken place in the course of inter-State transmission of electricity and since the function to regulate inter-State transmission of electricity is vested in the Commission under Section 79(1)(c) of the Act, the present dispute is maintainable under Section 79(1)(f) of the Act. The word “regulate” is of wide amplitude. It has been held by the Hon’ble Supreme Court in a catena of judgements that the power to “regulate” confers plenary power over the subject matter of regulation. Some of the judgements are discussed as under:

(a) Jiyajeerao Cotton Mills Ltd. Vs. M.P. Electricity Board {(1989)SCC Supl (2) 52}

“The word ‘regulate’ has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the relevant provisions, and the court while interpreting the expression must necessarily keep in view the object to be achieved and the mischief sought to be remedied.”

(b) D.K.Trivedi & Sons Vs. State of Gujarat {(1986) SCC Supl 20}

“The word ‘regulate’ means ‘to control, govern, or direct by rule or regulations; to subject to guidance or restrictions; to adapt to circumstances or surroundings.”

(c) V.S.Rice and Oil Mills & Others Vs. State of A.P. {AIR 1964 SC 1781}

“The word ‘regulate’ is wide enough to confer power on the State to regulate either by increasing the rate, or decreasing the rate, the test being what is it that is necessary or expedient to be done to maintain, increase, or secure supply of the essential articles in question and to arrange for its equitable distribution and its available at fair prices”.



(d) K. Ramanathan Vs State of Tamil Nadu & Anr. {(1985) SCC(2)116}

"It has often been said that the power to regulate does not necessarily include the power to prohibit and ordinarily the word 'regulate' is not synonymous with the word 'prohibit'. This is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition. At the same time, the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated, the power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would therefore appear that the word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition'. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation,"

14. The principles enunciated in the above judgements establish that the Commission has the plenary power to regulate the inter-State transmission of electricity which extends beyond the transmission of electricity through the inter-State transmission system, keeping in view the objects of the Act to promote competition, encourage investment, development of efficient, coordinated and economical inter-State transmission system, promote non-discriminatory open access and protect consumer interest. However, the power to "regulate inter-State transmission of electricity" cannot extend to fraud or pilferage of electricity which are not the functions to be legitimately required to be carried out under the provisions of the Act. Further, the Act makes special provision under Section 135 of the Act with regard to theft of electricity, makes it a punishable offence with imprisonment and fines extending from three times to five times of the financial gains on account of such unauthorized abstraction or pilferage of electricity. Further, Section 135 of the Act has been kept out of the purview of the Commission and trial of such offences has been vested in the special court to be created for such purpose under Section 153 of the Act. In our view, the pilferage of electricity which has taken place from 66 kV sub-



station at Chandigarh cannot be covered under the scope of Section 79(1)(c) of the Act and hence any dispute thereto cannot be adjudicated under Section 79(1)(f) of the Act.

15. In the light of the above discussion, the Commission is of the view that the dispute raised in the petition neither pertains to regulation of tariff of BBMB under Section 79(1)(a) or (b) of the Act nor pertains to inter-State transmission of electricity under Section 79(1)(c) of the Act. Therefore, the dispute is not amenable to adjudicatory jurisdiction under Section 79(1)(f) of the Act.

16. The Petitioner has submitted that the Commission has the power under Section 79(1)(f) of the Act to refer the matter to arbitration in the light of the principle laid down by the Supreme Court in Gujarat Urja Vikas Limited Vs. Essar Power Limited [(2008) 4 SSC 755]. In the said judgement, Hon'ble Supreme Court has held as under:

"59. In the present case we have already noted that there is an implied conflict between Section 86(1)(f) of the Electricity Act, 2003 and Section 11 of the Arbitration and Conciliation Act, 1996 since under Section 86(1)(f) the dispute between licensees and generating companies is to be decided by the State Commission or the arbitrator nominated by it, whereas under Section 11 of the Arbitration and Conciliation Act, 1996, the court can refer such disputes to an arbitrator appointed by it. Hence on harmonious construction of the provisions of the Electricity Act, 2003 and the Arbitration and Conciliation Act, 1996 we are of the opinion that whenever there is a dispute between a licensee and the generating companies only the State Commission or the Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it can resolve such a dispute, whereas all other disputes (unless there is some other provision in the Electricity Act, 2003) would be decided in accordance with Section 11 of the Arbitration and Conciliation Act, 1996. This is also evident from Section 158 of the Electricity Act, 2003. However, except for Section 11 all other provisions of the Arbitration and Conciliation Act, 1996 will apply to arbitrations under Section 86(1)(f) of the Electricity Act, 2003 (unless there is a conflicting provision in the Electricity Act, 2003, in which case such provision will prevail)."

17. As per the above judgement, whenever there is a dispute between a generating company and licensees, the State Commission or the Central Commission, as the case



may be, or the arbitrator or arbitrators appointed by the concerned Commission shall resolve such dispute. Therefore, it is the discretion vested in the Commission to either adjudicate the dispute or refer the dispute to arbitrator or arbitrators appointed by it. Since we have come to the conclusion in this order that the present dispute is not amenable to adjudicatory jurisdiction under Section 79(1)(f) of the Act, the question of reference of the dispute to arbitration does not arise.

18. In view of our decision that the present dispute is not amenable to adjudicatory jurisdiction under Section 79(1)(f) of the Act, we do not consider it necessary to go into the question of the petition being filed within the period of limitation as pleaded in the present petition.

19. Consequently, we hold that the present petition is not maintainable before the Commission under Section 79(1)(f) of the Act and accordingly, the Petition is dismissed at the stage of admission without going into the merit of the case.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

