CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 163/MP/2012

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

Date of Hearing: 10.1.2013
Date of Order: 9.5.2013

In the matter of

Petition under section 79(1) (f) of the Electricity Act, 2003 read with Regulation 20 of the CERC (Open Access in Inter-State Transmission) Regulations, 2008 towards unpaid unscheduled Inter-change charges for the period ranging from 28.8.2005 to 31.12.2006.

And
in the matter of

Bhushan Power and Steel Limited, New Delhi ….**Petitioner**

Vs

GRIDCO Ltd, Bhubaneswar
Orissa Power Transmission Corporation Ltd, Bhubaneswar
State Load Despatch Centre, Odisha, Bhubaneswar ….**Respondents**

Parties Present:
Shri Sanjay Sen, Advocate for the petitioner
Shri Rajiv Yadav, Advocate for the petitioner
Shri Sourabh Kumar, BPSL
Shri R.K.Mehta, Advocate for GRIDCO
Shri R.B.Sharma, Advocate for OPTCL

ORDER

The petitioner, Bhushan Steel and Power Ltd has filed present petiton under clause (f) of sub-section (1) of Section 79 of the Electricity act, 2003 (hereafter 'the Electricity Act'), with the following prayers:

"(a) Direct Respondent No. 1 and Respondent No. 2 to release the payment of Rs. 5,75,76,584/- along with interest @ 18% per annum calculated from the due date of pending UI bills and up till the actual payment thereof;and

(b) Pass such other and further order(s) as this Hon'ble Commission may deem appropriate under the facts and circumstances of the present case."

2. The petitioner has set up an integrated steel plant in Sambalpur District of the State of Odisha as also a captive power plant (CPP) with a total capacity of 100 MW. When the steel plant was yet to be commissioned, the petitioner had surplus power available with it. The petitioner made an application, being Petition No. 174/2003 before the Odisha Electricity Regulatory Commission (hereafter 'the State Commission') for grant of open access for sale of available surplus power outside the State of Odisha by utilising the transmission network of GRIDCO, the first respondent, and others. The State Commission in its order dated 27.2.2004 recorded the petitioner's no objection to accept the UI pricing mechanism applicable to inter-State transactions for open access customer. The State Commission further noted the submission made on behalf of the petitioner that the application for inter-State transmission of electricity would be made to the nodal agency in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (hereafter 'the 2004 Regulations'). After taking note of the above submissions of the petitioner and the unwillingness of GRIDCO to purchase the surplus power, the State Commission in the said order dated 27.2.2004 permitted the petitioner to sell its surplus power in accordance with the Electricity Act, 2003. The State Commission while granting permission observed that the tariff for inter-State transmission of electricity would be determined by CERC.

3. The petitioner entered into an arrangement for sale of power upto 64 MW with Reliance Energy Trading Limited which sold the power outside the State to its

committed customers by availing the short-term inter-State open access from time to time after obtaining clearances from the State Load Despatch Centre, Odisha, the third respondent, (hereafter 'SLDC'). GRIDCO by its letter dated 25.8.2005 advised the petitioner to open irrevocable Letter of Credit (LC) for ₹10.00 lakh, towards payment security mechanism for realization of UI charges, if any, for mismatch between the scheduled export and actual export of power. The petitioner has stated that it opened irrevocable LC in favour of GRIDCO immediately on receipt of the letter dated 25.8.2005.

4. GRIDCO in its letter dated 25.8.2005 also agreed to issue weekly bills for payment of the UI charges. The petitioner has alleged that no bills for UI charges receivable by it were ever issued. The petitioner in its letter dated 24.10.2005 addressed to Director (Finance), Orissa Power Transmission Corporation Ltd, the second respondent. (hereafter 'OPTCL') pointed out that the bills for payment of the UI charges were not received and requested him to consider the Secure Meter data of WESCO which is of 0.2 accuracy class for the purpose the UI billing since the apex meters installed at Budhipadar sub-station were not set for 15 minutes integration data. A similar letter dated 29.10.2005 was written by the petitioner to the General Manager, OPTCL.

5. On 5.7.2006, the petitioner executed a Short Term Open Access Commercial Agreement with GRIDCO. The said agreement acknowledged the fact that the petitioner had been selling about 64 MW of power through the electricity trader. With respect to the UI charges applicable to the sale of electricity by the petitioner, the said agreement provided as follows:

"2. ABT will be applicable to BPSL for above short-term transactions and will be guided by CERC Open Access Regulations, 2004 with its amendments issued from time to time. For smooth operations of transactions, however, as embedded customer, following commercial/stipulations are agreed.

3. (A) BPSL will endeavor to inject as per daily schedules as advised by SLDC.

(B) Any mismatch between the schedule and actual injection accepted by SLDC shall be governed by UI pricing mechanism. Such UI bills shall be prepared by SLDC on weekly basis. In the case of under/over injection the UI payable/ receivable will be settled after taking care of STU losses and wheeling charges.

(C) In the event of zero scheduling by BPSL/ ERLDC, no UI mechanism shall be operative.

(D) When the frequency falls below 49.4 Hz, BPSL shall endeavor to maximize its injection at least up to the level, which can be sustained, without waiting for the instructions of SLDC. Under ABT regime such injection shall be covered under UI mechanism.

(E) In the event of mismatch between the schedule and actual injection, the matter will be governed by UI regulation applicable ..... "

6. The petitioner has alleged that since the bills for the UI charges were not issued, it started raising the bills on the respondents for recovery of the UI charges receivable, the first such bill being for ₹1,31,59,525.77 for the period 28.8.2005 to 30.12.2005. Thereafter, the petitioner claims to have raised a number of bills for the UI charges. The petitioner has alleged that it did not receive any response, despite repeated cautions that the delay in payment of the UI charges would attract levy of the Delayed Payment Surcharge. The petitioner vide its letter dated 6.2.2006 addressed to OPTCL cancelled all the previous UI bills and issued a fresh bill for ₹1,92,67,450/- for the period 28.8.2005 to 8.1.2006. The petitioner has claimed to have issued a number of bills thereafter to OPTCL asking for payment of the outstanding UI charges. The petitioner vide its letter dated 22.7.2006 addressed to GRIDCO, forwarded a statement of the pending UI bills and sought its intervention for clearance of the outstanding bills. The petitioner did not get any response, it has been alleged. The petitioner has

submitted that the outstanding amount for the period starting 28.8.2005 to 3.12,2006 stands at ₹ 5,75,76,584/-.

7. The petitioner has submitted that GRIDCO sent a letter dated 17.4.2008 to SLDC, with a request to verify and certify the UI claims of the petitioner. However, OPTCL by its letter dated 18.4.2008 informed GRIDCO that it did not have any historical record of scheduling by short-term open access customers and was, therefore, unable to verify the petitioner's UI bills. However, the petitioner has averred, an Internal Audit Report dated 25.7.2009, was prepared by the Central Internal Audit Cell of OPTCL with respect to the pending UI bills of the petitioner. The Internal Audit Report a copy of which has been obtained by the petitioner under the Right to Information Act admits as under:

> *"Bhushan Steel & Power has taken Short-Term Open Access in Inter in Inter State Transmission w.e.f 28.8.2005. It has furnished implemented schedule to ERLDC daily & got its payment from Trader on final schedule basis. But the shortfall or excess injection over final schedule had been met from Grid for which it is eligible to get it is the form of unscheduled interchange charge. The total UI for the State as a whole including Open Access has come to Gridco."*

8. In the Internal Audit Report it was concluded that the UI charges for the period 21.10.2005 to 11.1.2006 were required to be recalculated after putting actual export figure with import data and after verification of Reserved Transmission Charges, Scheduling & Operating Charges as per the 2004 Regulations. The petitioner has submitted that the bills for over-injection of power had already been accounted for in the UI pool account of the State whereby GRIDCO had received payments from Eastern Regional Load Despatch Centre. However, the petitioner, it has been alleged, has been deprived of its share of the UI charges. The petitioner has further alleged that

the continued retention of the UI charges received by GRIDCO from ERLDC amounts to its unjust enrichment at its expense.

9. The petitioner has accordingly filed the present petition for recovery of the outstanding dues along with interest.

10. GRIDCO in its reply dated 10.10.2012 has raised certain preliminary objections. It has also been submitted that petition is not maintainable under clause (f) of sub-section (1) of Section 79 which applies only to the dispute between generating company and transmission licensee. It has been next submitted that claim of the petitioner involves allocation of the UI charges to the petitioner which is the embedded entity in the State and therefore, the matter falls within the jurisdiction State Commission and for that reason CERC does not have jurisdiction. It has been further submitted that in terms of Regulation 35 of the 2004 Regulations, the petitioner had to first approach the Member Secretary, Eastern Regional Electricity Board/ Eastern Regional Power Committee (hereafter 'the Member Secretary") and in case the Member Secretary was unable to resolve the dispute, CERC ought to have been approached for a decision. As the petitioner has not approached the Member Secretary, the present petition is not maintainable. GRIDCO has also submitted that the petition is time barred because for the claim pertaining to the period 2005-06 the petition has been filed only in February 2012, with a delay of nearly six years.

11. The common reply has been filed on behalf of OPTCL and SLDC. In their response dated 8.10.2012, in addition to some of the preliminary objections raised by GRIDCO, they have urged that the 'Special Energy Meters' of 0.2 Accuracy Class required for UI accounting were not installed and that the petitioner executed an

agreement for 'Short Term Open Access' on 5.7.2006 so the claim for the period prior to 5.7.2006 is not maintainable.

12. From the replies filed by the respondents, the following preliminary objections questing the maintainability of the petition have been culled out, namely:

(a) Jurisdiction,

(b) Bar of limitation, and

(c) Non-installation of Special Energy Meters of 0.2 Accuracy Class,

13. We have heard learned counsel for the parties on the question of maintainability of the petition.

14. At this stage, it may be pointed out that the petitioner has filed the petition by invoking Regulation 20 of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (hereafter “the 2008 Regulations”). The dispute, however, pertains to the years 2005 and 2006 when the 2008 Regulations were not in force. Therefore, the preliminary issues have to be examined in the light of the 2004 Regulations in force during the relevant period. Now, we examine the preliminary objections raised by the respondents.

Jurisdiction

15. Objection as jurisdiction is three fold. Firstly, it has been urged that clause (f) of sub-section (1) of Section 79 of the Electricity Act, this Commission has jurisdiction to adjudicate disputes between the generating companies and the transmission licensees. It has been stated by GRIDCO that since it is not the transmission licensee adjudication of dispute between the petitioner and GRIDCO is outside the jurisdiction of this Commission. Secondly, it has been stated that as the dispute involves payment of

the UI charges to the petitioner as an embedded entity, only the State Commission has jurisdiction to adjudicate the dispute. Lastly, on the question of jurisdiction it has been stated that in view of Regulation 35 of the 2004 Regulations, the petitioner was required to first approach the Member Secretary and since the petitioner has not approached the Member Secretary with its grievance, this Commission cannot take up adjudication of the dispute raised.

16. We take up these issues. Under clause (f) of sub-section (1) of Section 79 of the Electricity Act, this Commission is conferred power of adjudication of disputes if such disputes

(i) are 'involving' generating companies or the transmission licensees, and

(ii) are connected with clauses (a) to (d) of sub-section (1), that is, regulation of tariff of the generating companies of the kind mentioned in clauses (a) and (b) or regulation of inter-State transmission of electricity under clause (c) or determination of tariff for inter-State transmission of electricity under clause (d).

17. GRIDCO has argued to read the word 'involving' as 'between' and disjunctive word 'or' as conjunctive word 'and'. The question is whether it is permissible to substitute words in the process of construction. One of the fundamental principles of statutory interpretation is that a construction which requires addition or substitution of words or which results in rejection of words as meaningless has to be avoided. In ***Commissioner of Income Tax Vs Tata Agencies [(2007) 6 SCC 429]*** the Hon'ble Supreme Court held that

"62. The intention of the legislature has to be gathered from the language used in the statute which means that ***attention should be paid to what has been said as also to what has not been said****." (Emphasis supplied)*

18. In **Union of India Vs Deoki Nandan Aggarwal (AIR 1992 SC 96)**, the Hon'ble Supreme Court ruled that

"14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. ***The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there****." (Emphasis supplied)*

19. In the case of ***Ramesh Mehta Vs Sanwal Chand [(2004) 5 SCC 409]*** it was held by the Hon'ble Supreme Court that in 'suitable' cases the court may add or omit or substitute words to make a statute workable. In the present case, we see no reason to hold that without substituting the word 'involving' with the word 'between' and word 'or' with word 'and', clause (f) of sub-section (1) of Section 79 becomes unworkable or leads to any uncertainty or absurdity. The plain dictionary meaning of word 'involve' is 'to envelop, to entangle, to include, to contain, imply' **(Shorter Oxford Dictionary)**. Therefore, the expression '*disputes involving generating companies or transmission licensees'* in clause (f) means the disputes which entangle or include the generating companies or transmission licensees. This interpretation is logical and stands to reason when seen in the light of the fact that the entities associated with clauses (a) to (d) of sub-section (1) of Section 79 are either the generating companies or the transmission licensees. Further, as per ***P Ramanatha Aiyar's Advanced Law Lexicon*** (Third Edition), the word 'involve' is also used, according to the context, as

synonymous with word ‘affected’. In the context of clauses (a) to (d) of sub-section (1) of Section 79, the word ‘involving’ can be said to have been used synonymously with the word ‘affecting’ because the regulatory functions discharged under these clauses directly relate to the generating companies and the transmission licensees. For this reason, the expression ‘disputes involving generating companies and transmission licensees’ may be read as ‘disputes affecting generating companies or transmission licensees’. There is absolutely no warrant to substitute the word ‘involving’ with the word ‘between’. Such an interpretation shall be totally out of place and defeat the purpose and object of the power or function of adjudication conferred on this Commission. Therefore the argument advanced on behalf of GRIDCO to substitute the word ‘between’ for the word ‘involving’ is rejected.

20. It is next to be seen whether it is permissible to read the word ‘or’ appearing in clause (f) as ‘and’. **Maxwell on Interpretation of Statutes** has referred to the principle of substituting ‘or’ with ‘and’ and *vice versa* in the following words:

> *“to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions ‘or’ and ‘and’ one for the other. The word ‘or’ is normally disjunctive and ‘and’ is normally conjunctive, but at times they are read as vice versa. As Scrutton LJ said in Green v Premier Glynhonwy State Co (1928) 1 KB 561 at p. 568, ‘you do sometimes read ‘or’ as ‘and’ in a statute..... But you do not do it unless you are obliged, because ‘or’ does not generally mean ‘and’ and ‘and’ does not generally mean ‘or’. As Lord Halsbury L.C. observed in Mersey Docks % Harbour Board v. Handerson (1883) 13 AC 595 (603) the reading of ‘or’ as ‘and’ is not to be resorted to “unless some other part of the same statute or clear intention of it requires that to be done.” The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of cases of turning ‘or’ into ‘and’ and vice versa not gone to the extreme limit of interpretation.”*

21. From the above, it follows that ‘or’ is read as ‘and’ only in exceptional circumstances when some other part of the statute requires it to do so or there is clear intention of the legislature to that effect. Nothing has been brought to our notice that

may compel us to read word ‘or’ in clause (f) of subjection (1) of Section 79 as ‘and’. Therefore, the contention that ‘or’ be read as ‘and’ does not merit any consideration.

22. We may point out that acceptance of the contentions raised on behalf of the respondents for interpretation of clause (f) of sub-section (1) of Section 79 will lead to absurd results. In the normal course, there may not be any direct commercial relationship between a generating company and a transmission licensee connected with discharge of the functions by this Commission under clauses (a) to (d) of Sub-section (1) of Section 79. The Electricity Act contemplates direct commercial relationship between a generating company and a distribution licensee or trading licensee or a consumer, without involvement of the transmission licensee commercially. The transmission licensee cannot own electricity but acts a carrier of electricity primarily on behalf of the distribution licensees, trading licensees and the consumers and very rarely on behalf of the generating companies. In this view of the matter, there would be a rare possibility of a dispute arising between a generating company and the transmission licensee. The acceptance of the argument of the respondents would render clause (f) otiose in most of the disputes that may arise under clauses (a) to (d). Also, by following the interpretation urged by the GRIDCO the Electricity Act will not be left with any machinery for adjudication of disputes between a generating company and a distribution licensee or trading licensee or a consumer or a transmission licensee and the distribution licensee or trading licensee or consumer. Therefore, the interpretation suggested by the respondents lacks merit and is not worthy of acceptance.

23. Therefore, in our considered opinion when a generating company or transmission licensee feels aggrieved in connection with any matter listed in clauses

(a) to (d), such generating company or transmission licensee has to approach this Commission for adjudication of the dispute under clause (f) of sub-section (1) of Section 79 of the Electricity Act. The petitioner is a generating company as defined under sub-section (28) of Section 2 of the Electricity Act and therefore, competent to approach this Commission for adjudication of the claim provided the claim is related to clauses (a) to (d) of sub-section (1) of Section 79 of the Electricity Act.

24. The dispute in the case on hand relates to recovery of the UI charges for the transactions undertaken in terms of the 2004 Regulations, which were framed by this Commission in discharge of its function under clause (c) of sub-section (1) of Section 79 of the Electricity Act. The dispute is thus connected with regulation of inter-State transmission of electricity which function is assigned to this Commission.

25. The conditions laid down under clause (f) of sub-section (1) of Section 79 of the Electricity Act are met in the present case and thus, the dispute falls within the jurisdiction of this Commission. Therefore, the first limb of the argument on the question of jurisdiction fails.

26. In the second limb of the argument, GRIDCO has urged that adjudication of the dispute falls within the jurisdiction of the State Commission for the fact that it involves payment of the UI charges to the petitioner which is an embedded intra-State entity. We do not find any merit in the contention. Regulation 21 of the 2004 Regulations provides for the methodology for recovery and disbursement of the UI charges payable/recoverable in the course of availing inter-State open access. As laid down under clause (I) of Regulation 21, the mismatch between the scheduled and the actual

drawal at drawal point(s) and the scheduled and the actual injection at injection point(s) is met from the grid and is governed by the UI pricing mechanism applicable to the inter-State transactions. Under clause (ii) a separate bill for UI charges is issued to the direct customers and in case of the embedded customers, a composite UI bill for the State as a whole is issued, the segregation for which for the embedded State entities is done at the State level. As already seen, the departmental authorities have found that GRIDCO had received the UI charges for over-generation for the State as a whole. However, segregation of the UI charges payable to and receivable by the embedded intra-State entities was to be done by the concerned State agency in terms of clause (ii) of Regulation 21 of the 2004 Regulations. The concerned State agency has failed to act in accordance with the regulations of this Commission. The petitioner seeks enforcement of regulations framed by this Commission. The examination of the petitioner's claim is therefore within the exclusive jurisdiction of this Commission and not the State Commission. It is also pointed out that the State Commission is aware of the facts that the UI charges were payable in accordance with the UI pricing mechanism applicable to inter-State transactions for open access customer and that the 2004 Regulations would govern the inter-State open access. These facts have been taken note of by the State Commission in its order dated 27.2.2004 while permitting the petitioner to use the intra-State transmission network then belonging to GRIDCO.

27. On the question of jurisdiction, the respondents have further submitted that in terms of Regulation 35 of the 2004 Regulations, the petitioner was required to first approach the Member Secretary for resolution of its dispute for recovery of the UI charges and the petitioner could approach this Commission in case the Member

Secretary was unable to settle the dispute. It has been submitted that since the petitioner has filed the present petition directly before this Commission without first exhausting the forum available under Regulation 35, this Commission cannot entertain the petition.

28. Regulation 35 of the 2004 Regulations is extracted hereunder:

> **"Redressal Mechanism**
>
> *35. All complaints regarding unfair practices, delays, discrimination, lack of information, supply of wrong information or any other matter related to open access in inter-state transmission shall be directed to the Member Secretary, Regional Electricity Board or Regional Power Committee, as the case may be, of the region in which the authority against whom the complaint is made, is located. The Member Secretary, Regional Electricity Board or the Regional Power Committee, as the case may be, shall investigate and endeavour to resolve the grievance.*
>
> *Provided that any matter which the Member Secretary, Regional Electricity Board or the Regional Power Committee, as the case may be, is unable to resolve, shall be reported to the Commission for a decision."*

29. A bare reading of Regulation 35 suggests that the role assigned to the Member Secretary is of investigation of the dispute and thereafter of making efforts (endeavouring) to resolve the dispute. The Member Secretary's role is to act as a fact-finding body and as a conciliator considering the possibility of disputes involving technical issues. The Member Secretary is expected to render assistance to this Commission in resolution of the disputes. The Member Secretary was not assigned any authority of adjudication of dispute. The power of adjudication of disputes was not intended to be delegated to the Member Secretary. In fact, such power of adjudication could not be delegated to Member Secretary when seen in the light of specific prohibition under Section 97 of the Electricity Act, which provides as under:

> ***"97. Delegation**.- The Appropriate Commission may, by general or special order in writing, delegate to any Member, Secretary, officer of the Appropriate Commission or any other person subject to such conditions, if*

any, as may be specified in the order, such of its powers and functions under this Act ***(except the powers to adjudicate disputes under Section 79 and Section 86 and the powers to make regulations under section 178 or section 181)*** *as it may deem necessary."* (Emphasis Supplied)

30. Thus, according to Section 97 of the Electricity Act, this Commission cannot delegate its powers to adjudicate disputes under Section 79 and the powers to make regulations under Section 178 of the Electricity Act. CERC has plenary power of adjudication of disputes under the Electricity Act. The power continued to be vested in this Commission despite enactment of Regulation 35. Therefore, filing of the present petition without first approaching the Member Secretary does not oust the jurisdiction of this Commission to adjudicate the dispute raised. Nevertheless, this Commission can take assistance from any authority, including the Member Secretary, for adjudication of the disputes brought before it, with a view to doing substantive justice to the parties, with or without a provision made in Regulation 35 of the 2004 Regulations.

Limitation

31. The next preliminary objection relates to bar of limitation. According to GRIDCO, the petition is barred by limitation and/or suffers from delay and laches since the petition has been filed in February 2012 seeking recovery of the UI charges pertaining to the years 2005 and 2006.

32. We proceed to examine the objection of limitation or delay and laches. The Electricity Act is a special statute which does not provide for any period of limitation for adjudication of claims by this Commission. The Limitation Act, 1963 (the Limitation Act) consolidates the law for limitation of suits and other proceedings. The Hon'ble Supreme Court has consistently held the view that the provisions of the Limitation Act are not applicable to the proceedings before the *quasi judicial* bodies and tribunals. **In**

LS Synthetics Ltd Vs Fairgrowth Financial Services Ltd & others [(2004) 11 SCC 456], the Hon'ble Supreme Court held as under:

> *"33. The Limitation Act, 1963 is applicable only in relation to certain applications and not all applications despite the fact that the words "other proceedings" were added in the long title of the Act in 1963. The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a Tribunal, where the Code of Civil Procedure or Code of Criminal Procedure is applicable; the Limitation Act 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application. As for example, there is no bar of limitation for initiation of a final decree proceedings or to invoke the jurisdiction of the Court under Section 151 of the Code of Civil Procedure or for correction of accidental slip or omission in judgments, orders or decrees; the reason being that these powers can be exercised even suo motu by the Court and, thus, no question of any limitation arises."*

33. The issue was earlier considered by the Hon'ble Supreme Court in **Nityananda M. Joshi Vs LIC [(1969) 2 SCC 199]** wherein the question was examined with reference to applicability of Article 137 of the Limitation Act. The Hon'ble Supreme Court held that the Limitation Act deals with the applications before the courts and the labour court, a quasi judicial body under the Industrial Disputes Act, was not a court within the meaning of the Limitation Act and hence Article 137 of the Limitation Act was not applicable. The observations of the Hon'ble Supreme Court are extracted below:

> *"3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed." Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."*

34. The issue was also considered in Sushila **Devi Vs Ramanandan Prasad [(1976) 1 SCC 361]** with reference to applicability of Section 5 of the Limitation Act to an application made before the Collector. Here also, the Hon'ble Supreme Court held that the Collector was not a court though certain powers under the Code of Civil Procedure were vested in him. The Hon'ble Supreme Court concluded that Section 5 of the Limitation Act could not be invoked in the proceedings before the Collector. The observations of the Hon'ble Supreme Court are extracted hereunder:

> *"The third ground on which the decision of the High Court rests relates to the applicability of Section 5 of the Limitation Act, 1963. We do not see how Section 5 could be invoked in connection with the application made on October 17, 1965 by the first respondent. Under Section 5 of the Limitation Act an appeal or application "may be admitted after the prescribed period if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period." The Collector to whom the application was made was not a court, though Section 15 of the Act vested him with certain specified powers under the Code of Civil Procedure; also, the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise."*

35. Another case in which the issue was considered is reported as **Sakuru Vs Tanaji [(1985) 3 SCC 590]**. In this case, Hon'ble Supreme Court held that the Limitation Act does not apply to the appeals or applications before *quasi judicial* Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities are vested with certain specified powers conferred on courts under Code of Civil Procedure or Criminal Procedure Code, as per the observations extracted below:

> *".....the provisions of the Limitation Act, 1963 apply only to proceedings in "courts" and not to appeals or applications before bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him. ....."*

36. As noted above, the Electricity Act does not specifically lay down period of limitation for adjudication of disputes under clause (f) of sub-section (1) of Section 79.

In the light of the above decisions of the Hon'ble Supreme Court, the Limitation Act cannot be invoked to apply the bar of limitation in the present petition.

37. Notwithstanding the fact that the Limitation Act does not govern the proceedings before the *quasi judicial* authorities like this Commission, the courts have repeatedly held that the parties should approach for enforcement of their rights within a reasonable period. It has been held that any inordinate delay is fatal to the claim when raised. A classic example of this proposition of law is judgment of the Hon'ble Supreme Court dated 22.9.1964 in ***CA No. 140/64, titled Smt. Naraini Devi Khaitan Vs State of Bihar***. This case had its origin through the proceedings before the High Court under Article 226 of the Constitution for enforcement of fundamental rights. The Hon'ble Supreme Court held that if the petitioner is guilty of laches and there are other relevant circumstances to indicate that it would be inappropriate to exercise its prerogative jurisdiction under Article 226, ends of justice may require that writ should be refused. However, the matters are left to the discretion of the court which must be exercised judiciously and reasonably. The observations of the Hon'ble Supreme Court are extracted below:

> *"It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion*

of the Court, in this matter too discretion must be exercised judiciously and reasonably."

38. A similar proposition of law was laid down in **P.S. Sadasivaswamy Vs State of Tamil Nadu [(1975) 1 SCC 152]** as seen from the portion of the judgment extracted below:

> *".....A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. ....."*

39. In **Rabindra Nath Bose Vs Union of India [(1970) 1 SCC 84]** the Hon'ble Supreme Court refused to grant relief in a petition filed before it under Article 32 when the petitioner approached the Supreme Court after the lapse of a number of years, as noted from the following observations:

> *"It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay. We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years."*

40. We consider whether there has been an unreasonable or inordinate delay in the petitioner approaching this Commission for adjudication of its claim. This question is to be examined in the light of facts on record. We note that the petitioner has been approaching the respondents from time to time for settlement of its claim for payment of the UI charges. The petitioner has been diligently pursuing its claim for recovery of

the UI charges. For this the applicant has placed on record a quiver of communications sent to the respondents seeking release of the amount it considered due. The respondents examined the petitioner's claim departmentally and found that the petitioner was not paid the UI charges for over-generation of electricity, though GRIDCO had received these charges for the State as a whole and was required to disburse them to the embedded intra-State entities. At no stage, there was any denial of the liability to pay the UI charges or rejection of the claim. The respondents are public authorities. They cannot be permitted to defeat the claim of the petitioner, on technical pleas of limitation etc. It cannot be held that the petitioner's claim suffers from any unreasonable delay or laches. In our opinion, the petitioner has been diligently and reasonably pursuing the claim for the UI charges. Therefore, the preliminary objection of limitation is rejected.

Non-installation of Special Energy Meters of 0.2 Accuracy Class

41. OPTCL and SLDC in their common reply have stated that the Special Energy Meters with 0.2 accuracy class were not installed and therefore, the petitioner's claim cannot be verified. The petitioner has conceded that the meters installed at Budhipadar sub-station were not set for 15 minutes integration data. The petitioner has, however, proposed that the Secure Meter data of WESCO which is of 0.2 accuracy class can be considered for the purpose the UI billing since. The petitioner's claim for the UI charges cannot be summarily rejected on the ground of non-installation of the Special Energy Meters with 0.2 accuracy class. The means for verification of the petitioner's claim have to be found. One of the methods suggested by the petitioner is consider data of WESCO. There may some other possible means to verify the correctness of the petitioner's claim. These aspects have to be considered while going into the merits of

the petitioner's claim. Accordingly, we do not find any merit in the plea of OPTCL and SLDC for summary rejection of the claim on the ground of non-installation of Special Energy Meters.

Conclusion

42. Based on the above discussion, we hold that the present petition is neither barred by limitation nor does it suffer from delay or laches. We further hold that this Commission is the only forum having jurisdiction to adjudicate the issues raised in the petition.

43. We find that there is a controversy regarding availability of data for working out and verifying the data needed for adjudication of the petitioner's claim. For this purpose, we consider it appropriate to take assistance of the technical experts in the investigation of the petitioner's claim. Member Secretary, Eastern Regional Power Committee who is responsible for maintenance of the UI energy accounting at Regional level is considered to be most appropriate authority for this purpose. Accordingly, we direct the Member Secretary to investigate the petitioner's claim and submit a report to this Commission latest by 20.6.2013 for its consideration. The Member Secretary shall investigate the UI charges recoverable and payable by the petitioner for the entire period during which short-term inter-State open access was availed by the petitioner. The parties are directed to render necessary assistance to the Member Secretary in investigation. For this purpose, the parties shall appear before the Member Secretary on 20.5.2013 along with the available data in their possession in support of their respective claims.

44. The investigation by the Member Secretary ordered by us conforms to the provisions of Regulation 35 of the 2004 Regulations on which heavy reliance has been placed by the respondents, in letter and spirit even though we are of the considered opinion that the assistance of the Member Secretary, and for that matter any other person or authority, can be sought by this Commission without a provision analogous to Regulation 35 of the 2004 Regulations.

45. The petition shall be listed for hearing on merits on 27.6.2013.

Sd/-	**sd/-**	**sd/-**	**sd/-**
(M. DEENA DAYALAN)	**(V.S. VERMA)**	**(S. JAYARAMAN)**	**(DR. PRAMOD DEO)**
MEMBER	**MEMBER**	**MEMBER**	**CHAIRPERSON**