

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 216/MP/2015
with I.A. No. 25/2015**

Subject : Petition seeking a declaration that the levy of Cross Subsidy Surcharge by the Respondent on the Petitioner, which is connected to the Central Transmission Utility and is not a customer of the State Transmission Utility is illegal as the same is in violation of Section 38(2)(d)(ii) of the Electricity Act 2003 read with Rule 6 of the Electricity Rules, 2005.

Date of hearing : 15.10.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Essar Steel India Ltd.

Respondent : Dakshin Gujrat Vij Company Limited.

Parties present : Shri C.S. Vidayanathan, Senior Advocate, ESIL
Shri Neeha Nagpal, Advocate, ESIL
Shri Hitish Gupta, Advocate, ESIL
Ms. Anushree Saigal, Advocate, ESIL
Shri Shubham Arya, Advocate, ESIL
Shri M.G. Ramachandran, Advocate, DGVCL
Ms. Ranjitha Ramachandran, Advocate, DGVCL

Record of Proceedings

Learned senior counsel for the petitioner submitted as under:

(a) The present petition has been filled seeking declaration that the levy of cross subsidy charges by the respondent is illegal in terms of Section 38 (2) (d) (ii) of Electricity Act, 2003 (Act) read with Rule 6 of the Electricity Rules, 2005.

(b) The power to specify the surcharge is vested in Central Commission under Section 38 (2) (d) (ii) of Electricity Act, 2003 read with Rule 6 of the Electricity Rules, 2005. As per Section 38 (2) (d) (ii) of the Act, CTU is required to provide non-discriminatory open access to its transmission system for use by any

consumer as and when such open access is provided by the State Commission under Section 42 (2), on payment of the transmission charges and a surcharge thereon is to be specified by the Central Commission. Further it does not dispense with the requirement of the Central Commission to specify the surcharges though it may do so in accordance with that specified by the State Commission. In the present case, no surcharge has been specified by the Central Commission.

(c) The petitioner is not utilizing the State Distribution/transmission network w.e.f. 23.6.2013 i.e. after disconnection from STU network and connection with the CTU 400 kV transmission line.

(d) The power used in the petitioner's complex is from its captive power plant procured through the dedicated tie-line within its complex and through the 400 kV transmission line of PGCIL. Since, the petitioner is not a consumer of the STU, the respondent is not obligated under the provisions of the Act to keep available capacity of power supply for the petitioner.

(e) Even though the petitioner is physically situated in the same location as the respondent but it does not have any connection or association with the respondent. Therefore, the question of levy of cross subsidy surcharge on the petitioner by the respondent does not arise.

(f) Learned senior counsel for the petitioner requested the Commission to restrain the respondent from collecting the cross subsidy surcharge from the petitioner till disposal of the petition.

2. Learned counsel for the respondent referred to Rule 6 of the Electricity Rules, 2005 and submitted that the manner of payment and utilization has to be specified by the Appropriate Commission of the State. He further submitted that as per proviso of Section 38 (2) (d) (ii) of the Act, surcharge shall be utilized for the purpose of meeting the requirement of current level cross subsidy. Therefore, the Central Commission has not specified the current level cross subsidy in a distribution area. Learned counsel for the respondent submitted that the Commission vide order dated 8.6.2013 in Petition No. 245/MP/2012 had directed the petitioner to pay all applicable subsidy charges as per the provisions of Regulation of SERC. Therefore, the present petition is not maintainable before this Commission.

3. In response to the Commission's query as to whether the petitioner has filed the petition before GERC on similar ground, learned senior counsel for the petitioner submitted that petition filed before GERC is relating to the petitioner's own captive generating station.

4. After hearing the learned counsel for the petitioner and learned counsel for the respondent, the Commission was not inclined to pass any interim order without

considering the reply of the respondent. The Commission directed the petitioner to serve copy of the petition on the respondent immediately, if already not served. The respondent was directed to file its reply by 16.11.2015 with an advance copy to the petitioner who may file its rejoinder, if any, by 27.11.2015. The Commission directed that due date of filing reply and rejoinder shall be strictly complied with and no further extension on that account shall be granted.

5. The petition shall be listed for hearing on 10.12.2015 on maintainability.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**