

**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY
COMMISSION, LUCKNOW**

Petition No. 987 of 2014

Quorum

Hon'ble Shri S. K. Agarwal, Chairman

In the matter of:

In the matter of Petition No. 987 of 2014 for denial / delay by Uttar Pradesh Power Transmission Corporation Ltd. (UPPTCL) in handing over the physical possession of the 220 kV R. C. Green Substation at Greater Noida to Noida Power Company Ltd. (NPCL)

And

In the matter of:

Noida Power Company Ltd., Commercial Complex, 'H' Block, Alpha II Sector,
Greater Noida (UP)

Petitioner

Versus

1. Uttar Pradesh Power Transmission Company Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)
2. Uttar Pradesh State Load Dispatch Centre, Uttar Pradesh Power Transmission Company Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)
3. Uttar Pradesh Power Corporation Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)

Respondents

Present in the Hearing:**Petitioner**

1. Shri Vishal Gupta, Advocate, NPCL
2. Shri R. C. Agarwala, MD & CEO, NPCL
3. Shri Rajiv Goyal, G.M. Power Procurement & Projects, NPCL
4. Shri Alok Sharma, Sr. Manager, Legal, NPCL
5. Shri A. K. Arora, Resident Manager, NPCL.

Respondents

1. Shri Raghvendra Singh, Sr. Advocate, UPPTCL
2. Md. Altaf Mansoor, Advocate, UPPTCL
3. Shri Puneet Chandra, Advocate, UPPTCL
4. Shri Amarjeet Singh Rakhra, Advocate

ORDER

(Hearing on 23.01.2018)

The Noida Power Company Ltd., the Petitioner has filed this Petition No. 987 of 2014 on 5th December, 2014 praying the Hon'ble Commission to declare that the Petitioner is entitled to own, operate and maintain the 220kV Substation at R.C. Green, Greater Noida being a distribution licensee and UPPTCL, Respondent No.1 be directed to hand over the physical possession of the 220kV Line from 400kV Greater Noida (Pali) Substation to R.C. Green Substation and 220kV R.C. Green Substation and associated facilities to the Petitioner. The reliefs claimed by the Petitioner are mentioned herein below:

- (a) To declare the Petitioner to be the lawful owner of the 220kV Substation at R.C. Green, Greater Noida and declare that the

Petitioner is entitled to own, operate and maintain the 220kV Substation at R.C. Green, Greater Noida being a distribution licensee.

- (b) Direct Respondents to hand over the physical possession of the 220kV Substation at R.C. Green, Greater Noida to the Petitioner it being its lawful owner, for its operation and maintenance.
- (c) Pass any other further order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the case.

During the hearing on 23.01.2018 Mr.Raghvendra Singh, Advocate General,U.P appearing for Respondent No. 1 argued on their applications related to their preliminary objections about the very maintainability of the present petition and jurisdiction of the Commission and submitted that, the preliminary objections should be decided first.

The main contentions of the Respondent No. 1 are as follows:

- a) That the provisions of section 86 (1) (f) of the Electricity Act 2003 is ex parte and not applicable at all to the present dispute.
- b) That provisions of section 86 (1) (f) of the Electricity Act 2003 empower the Commission to adjudicate upon dispute between licensees and generating companies and to refer to any dispute to arbitration.
- c) That the petitioner is admittedly a distribution licensees as defined under Section 2 (17) of the Electricity Act 2003 and according to its own admission in para 2 of the present petition, is a deemed

distribution licensee in the terms of the first proviso appended to section 14 of the Electricity Act 2003.

- d) That none of the respondents are Generating Companies, the Respondent No. 1 is a State Transmission Utility and functioning under the provisions of section 39 of the Electricity Act 2003.
- e) That from the perusal of the aforesaid facts, it is clear that the dispute which has been raised by the petitioner by means of the present petition is not covered under section 86 (1) (f) of the Electricity Act 2003, and the same is not maintainable therefore the present petition is liable to be rejected.
- f) The maintainability of the Petition with regard to the jurisdiction of the Hon'ble Commission to decide issues especially relating to the question of right, title and proprietary interest over certain land.

On the issue of maintainability and deciding the same by the Hon'ble Commission before proceeding on the merit of the matter Mr. Vishal Gupta, counsel for the Petitioner has brought to the notice, the Commission's order dated 11.5.2015, which states as under: -

"The Commission observed that the issue of maintainability and merits of the petition shall be decided simultaneously."

Mr. Vishal Gupta further put light on the Commission's orders dated 22.03.2016 and 29.06.2016, wherein it is categorically observed and cited in above quoted order dated 11.05.2015.

Mr. Gupta further argued and referred the written submissions filed by the Petitioner and contended that the argument of the Respondent No.1 is ex-

facie erroneous as it is an admitted fact that the Petitioner is a distribution licensee under the Electricity Act, 2003. Further, the Respondent No.1 is a State Transmission Utility and a Transmission Licensee of this Commission vide License No. 02 of 2011 dated 3rd August, 2011.

The Petitioner submitted that a bare perusal of Section 86 (1)(f) of the Electricity Act, 2003 clearly shows that this Commission is empowered to adjudicate disputes between licensees as well as generating companies and licensees. In other words this Commission can clearly adjudicate any disputes between two licensees irrespective of their nature. This position is unambiguous and clear. This has been clarified and up held by the Hon'ble Supreme Court and the Appellate Tribunal for Electricity in various cases. The Petitioner relies upon the following judgments in this regard:

Hon'ble Appellate Tribunal for Electricity:

- a) Pune Power Development Private Limited vs Karnataka Electricity Regulatory Commission. (Appeal No. 200 of 2009, Decided on 23.02.2011)
- b) PTC India Limited Versus Gujarat Electricity Regulatory Commission (Appeal No. 31 of 2012, Decided on 01.10.2012);
- c) Lanco Power Limited Vs Haryana Electricity Regulatory Commission, (Appeal No.15 and 52 of 2011, Decided on 04.11.2011.)

That as far as objection of the Respondent No. 1 with regard to jurisdiction of the Commission to decide issues especially relating to the question of right, title and proprietary interest over certain land is concerned, Mr. Gupta has relied upon a judgment of the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Ltd Versus Essar Power Ltd (Civil Appeal No. 1940 of 2008, Decided on 13.08.2008) wherein the Hon'ble Supreme Court categorically held that any dispute between licensees shall be decided by the Commission

irrespective of their nature as there is no bar in the Electricity Act, 2003. The relevant part of the said judgment is quoted hereinbelow for ready reference:

“59.....However, since the Electricity Act, 2003 has come into force w.e.f. 10.6.2003, after this date all adjudication of disputes between licensees and generating companies can only be done by the State Commission or the arbitrator (or arbitrators) appointed by it. After 10.6.2003 there can be no adjudication of dispute between licensees and generating companies by anyone other than the State Commission or the arbitrator (or arbitrators) nominated by it. ***We further clarify that all disputes, and not merely those pertaining to matters referred to in clauses (a) to (e) and (g) to (k) in Section 86(1), between the licensee and generating companies can only be resolved by the Commission or an arbitrator appointed by it. This is because there is no restriction in Section 86(1)(f) about the nature of the dispute.***”

On the issue of disposal of preliminary objections on maintainability of the Petition and jurisdiction of the Commission before proceeding on the merits of the case, the Petitioner relied upon the judgment of Hon’ble Supreme Court in the matter of PTC India Ltd. vs Gujrat Electricity Regulatory Commission and Another in Civil Appeal No. 7524 of 2012 wherein it had observed as follows:

“We have considered the argument of the learned senior counsel but not felt impressed. Since, one of the objectives of the new enactment is to ensure expeditious adjudication of the disputes raised by the parties, there is no warrant for entertaining preliminary / interlocutory objections raised by

either party and decide the same by long-drawn hearing and by recording lengthy orders. The State Commission and the Tribunal should, while deciding the main matter consider all objections including the one relating to their jurisdiction to entertain the matter. Any attempt by the parties to delay adjudication of the dispute deserves to be deprecated and the State Commission and the Tribunal are not expected to waste their time in dealing with objections of different hues.”

According to the Counsel of the Petitioner a bare perusal of the above judgments of the Hon'ble Supreme Court and Hon'ble Appellate Tribunal for Electricity clearly shows that the contention raised by the Respondent No.1 on the jurisdiction of the Hon'ble Commission is patently erroneous and cannot be sustained in law.

The Petitioner further clarified that the present dispute before the Hon'ble Commission is not for deciding any right, title and proprietary interest over certain land. There is no doubt over the title, right and proprietary interest over the land and assets of the 220/132/33kV R. C. Green Substation it is absolutely with the Petitioner Company. The dispute before the Hon'ble Commission is for declaring the entitlement of a Distribution licensee to establish, own, operate and maintain a Substation having voltage level over and above 33kV and for handing over of the physical possession of the 220/132/33kV R C Green Substation to the Petitioner by the Respondent No. 1. That the Respondent No. 1 has raised the issue of non-handing over of the 220kV Substation being a distribution licensee either due to poor understanding/misunderstanding of the latest laws relating to the electricity sector or its intention is to grab the Substation.

Commission's observations:

We have considered the submissions of the Petitioner and the Respondents on the issue of maintainability and jurisdiction of the Commission and after careful examination of all the issues placed before the Commission the following issues are framed for adjudication:

- (a) Maintainability of the matter and Jurisdiction of the Commission to hear the present dispute between two licensees of this Commission;

And

- (b) Disposal of the miscellaneous applications especially related to preliminary objections filed by the parties before proceeding to hear the matter on merits;

As both the issues (a) and (b) are inter related and dependent on each other's outcome, therefore, we deal with both the issues together.

The Respondent No. 1 filed application raising preliminary objections as to the jurisdiction of this Commission under Section 86(1)(f) of the Electricity Act, 2003 to adjudicate the dispute between the Petitioner and the Respondents. The Respondent has contended that since Petitioner is a distribution licensee and the Respondent No.1 is a State Transmission Utility and none of them being a generating company, this Commission has no powers to adjudicate the disputes between the Petitioner and the Respondents under Section 86(1)(f) of the Act. The Respondent No. 1 subsequently filed another application for disposal of its earlier application on preliminary objection by the Commission before proceeding to hear the matter on the merits. The Commission vide its order dated 11.05.2015 decided that the issue of

maintainability of the Petition and jurisdiction of the Commission and merits of the case shall be decided simultaneously.

The Commission has carefully examined the arguments and citations filed by both the parties in support of their contentions on the issue of Maintainability of the matter and Jurisdiction of the Commission to hear the present dispute between two licensees of this Commission and disposal of the miscellaneous applications especially related to preliminary objections filed by the parties before proceeding to hear the matter on merits. The Hon'ble Supreme Court vide its judgement dated 13.08.2008 in the matter of Gujrat Urja Vikas Nigam Ltd. vs. Essar Power Ltd. has unambiguously held that all the disputes, and not merely those pertaining to matters referred to in clauses (a) to (e) and (g) to (k) in Section 86(1), between the licensee and generating Companies can only be resolved by the Commission or an arbitrator appointed by it. We therefore, find no reason and substance in the arguments of the Respondent No.1 to deviate from the above clear position with regard to jurisdiction of this Commission.

Similarly, on the issue of disposal of preliminary objections on maintainability of the Petition and jurisdiction of the Commission before proceeding on the merits of the case the Hon'ble Supreme Court vide its order dated 18.10.2012 in the matter of PTC India Ltd. vs Gujrat Electricity Regulatory Commission and Another in Civil Appeal No. 7524 of 2012 categorically observed and clarified that "the State Commission and the Tribunal should, while deciding the main matter consider all objections including the one relating to their jurisdiction to entertain the matter. Any attempt by the parties to delay adjudication of the dispute deserves to be deprecated and the State Commission and the Tribunal are not expected to waste their time in dealing with objections of different hues." In light of above order of the Hon'ble Supreme Court, we vide our order dated 11.05.2015 have already clarified our

position and decided that the all the preliminary objections and applications shall be decided along with merits of the case.

The Commission, therefore, have no doubt in light of the above referred judgments of the Hon'ble Supreme Court in holding the Issues No. (a) & (b) against the Respondent No.1 and hold that the Commission has the jurisdiction to adjudicate the disputes between two licensees irrespective of the nature of the case.

The Applications of the Respondent No. 1 on the issues of maintainability and jurisdiction of the Commission are accordingly disposed of.

S.K.Agarwal
Chairman

Dated: 12.02.2018