

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 CIVIL APPEAL NO(s). 6637 OF 2008

GRIDCO. LTD.

Appellant (s)

VERSUS

INDIAN METAL & FERRO ALLOYS LTD. & ANR.

Respondent(s)

WITH

Civil Appeal NO. 6638 of 2008

O R D E R

CIVIL APPEAL NO(s). 6637 OF 2008

The present Appeal, by special leave, arises from the judgment and order of the Orissa High Court dated November 10, 2006 whereby the High Court allowed the appeal of the present respondent No. 1 and issued the following directions :-

(1) The Regulatory Commission shall consider the objection raised by the appellant with regard to absence of any wheeling of electricity from Choudwar to Theruvali as admitted by GRIDCO in its explanation and decide as to whether the appellant is at all liable for any transmission charge in absence of any actual wheeling of electricity from Choudwar to Theruvali.

(2) For the year 2001-2002, fixation of 31 paise per unit by the Regulatory Commission is set aside and the appellant shall be liable to pay at the rate of 17.5 paise per unit as suggested by the GRIDCO before the Regulatory Commission subject to decision of the Regulatory Commission as to whether the appellant is at all liable to pay any transmission charge."

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2. Direction No. (1) whereby the Regulatory Commission has been directed to decide as to whether the present respondent No. 1 was at all liable for any transmission charge in absence of any actual wheeling of electricity from Choudwar to Theruvali, we are satisfied that the said direction does not call for any interference by us.

3. As regards the second direction given by the High Court that for the year 2001-2002, the present respondent No. 1 shall be liable to pay transmission charges at the rate of 17.5 paise per unit subject to decision of the Regulatory Commission as to whether the present respondent No. 1 was at all liable to pay transmission charges, it appears to us that the order of the High Court is principally based on the explanation given by the present appellant to the Regulatory Commission justifying the proposal for fixing the transmission tariff at the rate of 17.5 paise per unit although the actual cost thereof was 52.8 paise per unit.

4. The Regulatory Commission sought certain clarifications from the present appellant in the course of consideration of the matter. Query 11 made by the Regulatory Commission to the appellant was as follows :

"GRIDCO has proposed wheeling charges for utilization of its transmission system @ 17.5 paise per unit apparently to encourage growth of more CPPs for availing cheap power. On the other hand, the actual drawal from the CPPs is very dismal. At the

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present juncture, the logic of charging a rate lower than the cost of transmission calculated at 52 paise P/U leading to loss of miscellaneous revenue may be adequately justified."

5. In response to the above query, the appellant furnished the following explanation to the Regulatory Commission:

"Considering the following points, GRIDCO management has proposed to charge 17.5 P/U as wheeling charge in place of 52.80 P/U as calculated.

In the past years the tariff applications contained a contention that the wheeling charges should be at par with the per unit cost of transmission considering the over all power transmitted.

The wheeling charges pertaining to two companies namely; IMFA/ICCL and NALCO where wheeling is involved from their Captive power Plants located at Choudwar and Angul to their factories at Theruvali and Damanjodi

respectively.

Before installation of the Captive power Plant, respective companies have received the approval of the State Government as well as the erstwhile OSEB. From the arrangement established under the agreement/MOU with these companies it would appear that power is actually being wheeled from the generating points to the consuming points. It is evident that the Captive power plants are injecting power to the grid and the same is being used for stability of power supply in the vicinity of the power plant and respective industries received power generated in Southern Region which otherwise GRIDCO would have to transmit it for longer distances to utilise in load centres in other regions of the State. What GRIDCO is providing is the facilitation to transmit the power to these industries. As such there is no actual transmission of power from the point of injection to the GRID to the point

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of utilization from the grid by these industries (i.e., the power is being transmitted through the method of displacement). In the present tariff order dated 19.1.2001 at para 6.32.2, the Hon'ble Commission had desired to know the cost details of 400 KV, 132 KV, 66 KV lines and Sub-station bays in respect of all GRID S/S for the purpose of determination of allocation of transmission charges to the various zones. The Concept of cost separation was intended to identify the backbone transmission system meant for use all units of the State. It was also desired to find out the cost involvement of radial transmission systems meant for exclusive use of different DISTCOs. The Commission further desired to know the cost of interconnection of Captive Generation Stations which are exclusively intended for exchange of power between GRIDCO and CPPs to determine the transmission charge on a more scientific basis. Such a study has not been possible by GRIDCO yet.

Injection of power by the CPPs at the load centres, therefore helps GRIDCO in reduction of transmission loss on loaded EHT lines and also helps in improvement of voltage and system stability of the power system. Wheeling of power of the said CPPs is being done in the manner similar to inter state sale of power.

Hence it will be fair to charge the same rate for wheeling charges in respect of both inter stage/intrastate transmission of power which is 17.5 P/U plus the transmission loss."

6. The above explanation shows that inter alia one of reasons given by the appellant for justification of the

proposal for fixation of transmission charges at the rate of 17.5 paise per unit was to bring the transmission charges on par with the inter State sale of power.

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7. If the High Court accepted the explanation that was put forth by the appellant justifying its proposal for fixation of transmission charges at 17.5 paise per unit as wheeling charge in place of actual cost of 52.8 paise per unit, it cannot be said that any error or illegality was committed by the High Court.

8. The impugned order does not call for any interference by us. Civil Appeal is, accordingly, dismissed. No costs.

9. In case the Regulatory Commission ultimately decides that the present respondent No. 1 is liable to pay transmission charges, we observe that the adjustment may be made in the appellant's revenue requirement on the basis of 17.5 paise per unit.

Civil Appeal NO. 6638 of 2008

In view of the order passed in Civil Appeal No. 6637 of 2008 above, this Civil Appeal is also liable to be dismissed and is dismissed. No costs.

.....J.
(R.M. LODHA)

NEW DELHI;
MARCH 28, 2012

.....J.
(H.L. GOKHALE)

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ITEM NO.102

COURT NO.8

SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6637 OF 2008

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INDIAN METAL & FERRO ALLOYS LTD. & ANR.

Respondent(s)

(With prayer for interim relief and office report)

WITH

Civil Appeal NO. 6638 of 2008

(With prayer for interim relief and office report)

Date: 28/03/2012 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE H.L. GOKHALE

For Appellant(s) Mr. Raj Kumar Mehta, Adv.
 Mr. David A., Adv.
 Mr. Antaryami Upadhyay, Adv.

For Respondent(s) Mr. K.K. Venugopal, Sr. Adv.
 Ms. B. Vijayalakshmi Menon, Adv.
 Ms. Ekta Kapil, Adv.
 Mr. Shyam Mohan, Adv.
 Ms. Rashi Kotwalwala, Adv.
 Ms. Divya Bhalla, Adv.

Mr. Rutwik Panda ,Adv.

UPON hearing counsel the Court made the following
O R D E R

Civil Appeals are dismissed in terms of the signed
order.

(Rajesh Dham)
Court Master

(Renu Diwan)
Court Master

(signed order is placed on the file)