

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

APPEAL NO. 95 OF 2009

Dated: 13th January, 2010.

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

In the matter of:

1. **Rajasthan Rajya Vidyut Prasaran Nigam Limited,
SLDC Building, Ajmer Road, Heerapura,
Jaipur-302024.**
2. **Mr. Sudhansh Pant,
Chairman & Managing Director,
Rajasthan Rajya Vidyut Prasaran Nigam Limited,
SLDC Building, Ajmer Road, Heerapura,
Jaipur-302024.**

...Appellants

Versus

1. **Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001.**
2. **Northern Regional Load Despatch Centre,
18A, Katwaria Sarai,
New Delhi-110016.**

... Respondents

Counsel for the Appellant(s): Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Sumeet Pushkarna

Counsel for the Respondent (s): Mr. Nikhil Nayyar,
Mr. Ambuja Agarwal for Resp. No. 1
Mr. Jyoti Prasad, GM, Law, SRLDC
Mr. S.R. Narsimhan, GM, NRLDC
Mr. Manoj Kumar, NRLDC.
Mr. V. Suresh, SRLDC, PGCIL.

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

JUDGMENT

Rajasthan Rajya Vidyut Vitran Nigam Limited (RRVVNL) and its Chairman & Managing Director (CMD) are the Appellants 1 and 2. Both were found guilty by the Central Commission by the order dated 5.5.2009 holding that they had overdrawn electricity when the frequency fell below 49 Hz thereby violated the Grid Code. As against this order the present Appeal has been filed.

2. The short facts are as follows:-

- i) The first Appellant is a Transmission licensee for the state of Rajasthan. It is also performing the statutory functions of the State Load Despatch Centre (SLDC). The Appellant, as SLDC has to co-ordinate with the Northern Regional Load Despatch Centre (NRLDC) and the distribution companies in the state of Rajasthan for the smooth transmission of power and the management of the Grid.
- ii) The functions of purchase and supply of electricity is vested with the Distribution Companies. Under the provisions of the Grid Code the entities injecting and drawing electricity from the grid have to act in the manner so as to protect the grid stability as directed by the RLDC and the SLDC. Both

RLDC and SLDC frequently issued directions to the various constituents regarding grid management and to take appropriate action with regard to the drawl of the electricity.

- iii) On 23.2.2009, the Northern Regional Power Committee (NRPC) sent a Report to the Central Commission complaining that the Appellants had overdrawn electricity when the frequency fell below 49 Hz on a number of time blocks during the period between 20th and 22nd February 2009.
- iv) On finding that the above acts of the Appellants prima facie amount to contravention of the provisions of the Grid Code, the Central Commission issued show cause notice dated 20.03.2009 to both the Appellants directing them as to why penalty under Section 142 of the Act be not imposed upon them for the said violation.
- v) The common reply was filed by the Appellants before the Central Commission giving explanation as well as the , details of the drawl of electricity at the frequency to show that immediate steps were taken by the Appellants when the frequency fell below 49 Hz so as to restore it at 49 Hz.

3. After hearing the representatives of the Appellants and the Regional Centre, the Central Commission by the order dated 5.5.2009 held that the Appellants are guilty of violating the Grid Code by over drawing the electricity when the frequency below 49 Hz and imposed penalty on both the Appellants. Challenging the same this Appeal has been filed by both the Appellants.

4. The learned counsel for the Appellants has urged the various grounds assailing the order impugned dated 5.5.2009 contending that it is not valid in law and that the same is liable to be set aside.

5. The grounds of the Appeal are as follows:-

A. The allegation in the show cause notice dated 20.03.2009 is that the Appellants had drawn power from the Grid in violation of the Grid Code. The Appellants being the SLDC did not draw electricity by itself. On the other hand, they issued directions to the Distribution Companies to take such measures so as to ensure security of the grid. So the allegation that the Appellants had overdrawn power is wrong.

- B. The Central Commission, through show cause notice dated 23.2.2009 to the Appellant, stated that the Appellants have overdrawn electricity from the grid when the frequency fell below 49 Hz and therefore, the Appellants are liable to be proceeded. In the reply the Appellants have stated that the Appellants are not the Utility responsible for the drawl of electricity and only the Transmission Company and however, as SLDC they have taken immediate steps to restore the frequency back to 49 Hz and above. Along with this reply the Appellants produced details and the particulars of the action which was taken when the frequency fell below 49 Hz. These details have not been taken into consideration by the Central Commission.
- C. Under the Grid Code when the frequency falls below 49 Hz there shall be load shedding to ensure that the frequency is restored. There can not be an automatic punishment for frequency falling below 49 Hz in the absence of any material to show that there was no action taken or no load shedding exercise was carried out by the SLDC to restore the frequency above 49 Hz. In this case action had been taken immediately. Frequency had dropped below 49 Hz only for a very short period i.e. for a few minutes within which time

the remedial measures including the suitable directions to the Distribution Company and also the manual load shedding were taken by the Appellants. Therefore, the Central Commission is not correct in holding that the overdrawl during the frequency regime below 49 Hz means the violation of the Grid Code.

D. The drawl of electricity was only by the Distribution Company. Similarly load shedding is also to be carried out by the Distribution Company. The SLDC is not expected to manually disconnect electricity from its transmission Sub-Stations. Only in case of emergency i.e. when it fell below 49 Hz the SLDC disconnects the feeder lines from its transmission stations to protect imminent collapse of the grid. In this case the SLDC took action by starting the process of load shedding and within a few minutes the frequency was brought back to normalcy. Under those circumstances, the Central Commission can not punish the SLDC for dropping of frequency below 49 Hz.

6. In reply to the above grounds, both the Central Commission as well as NRLDC, the Respondent have filed their counters. They also made

oral arguments refuting the grounds urged by the learned counsel for the Appellants. Their arguments are as follows:

A. Under Clause 5.4.2 and 6.4.4 of the Grid Code the SLDCs shall endeavour to restrict the drawl from the grid whenever the system frequency falls below 49.5 Hz and it shall carry out the load shedding when the frequency falls below 49 Hz to curtail the overdrawl. In this case as per the report of the Northern Regional Power Committee (NRPC) dated 20.3.2009, the Appellants had over drawn electricity at the frequency was below 49 Hz during the period between 20th to 22nd February 2009 on five occasions. In the reply the Appellants, the SLDC stated that as per SCADA records the average frequency had only gone below 49Hz during the time block referred to in the show cause notice and further stated that on some occasions the frequency fell below 49 Hz due to tripping of the generating units and non-availability of generation. This explanation does not justify the overdrawl from the grid at low frequency which affects the system security.

B. Section 32 and 33 of the Act would provide that SLDC is responsible for the integrated operation of the grid and in order to achieve that objective the SLDC shall give such directions and exercise such control as may be considered necessary to protect the grid security. The report submitted by the RLDC had shown that the Appellant had over

drawn heavily during the winter season even at low frequency conditions. The material available on record would not indicate that the Appellants had made efforts or issue any directions to the Distribution Companies to curtail overdrawl when the frequency fell below 49Hz.

C. The Appellants, as SLDC can not escape from its liability by merely stating that he has already given directions to the Distribution Companies by overlooking its statutory obligations to ensure the compliance of its said directions. The Appellants have not produced any material before the Central Commission identifying the feeders by showing names of those distribution companies who are responsible for the non-compliance of the directions and the immediate measures taken by the Appellants to curtail overdrawl.

D. Since the Appellants did not initiate any pro-active action to restrict the overdrawl which has ended up to the overdrawl forcing the frequency to fall below 49 Hz, the order impugned holding the Appellants guilty for the violation of the grid code is perfectly justified.

7. Both the Appellants as well as the Respondents have filed their written submissions. We have heard the learned counsel for the parties and carefully considered their rival contentions.

8. According to the Appellants, the Appellants being a transmission company and SLDC they have not overdrawl from the grid and when ever system frequency fell below 49 Hz they issued immediate directions to the Distribution Companies who have overdrawn during that time and they took immediate action to bring the frequency back to above 49 Hz.

9. According to the learned counsel for the Respondents under Clasue 5.4.2. and 6.4.4. the Appellants should not have allowed the frequency to fall below 49 Hz and should have taken immediate action by carrying out the load shedding to bring back to the normalcy and the materials available on record had not indicated that the Appellants had made efforts to curtail overdrawl when the grid frequency was below 49 Hz. In the light of the above rival contentions the question that arise for consideration is as to whether the Central Commission was right in coming to the conclusion that the Appellants have not established to show that they had taken immediate steps required when the grid frequency was below 49 Hz and consequently, found the Appellants guilty for having not complied with the grid code.

10. At the outset, it has to be taken note of as to the specific charge levied against the Appellants while the penalty proceedings under Section BS

142 and 149 of the Act were initiated against both the Appellants through show cause notice dated 20.03.2009. Let us now refer to the show cause notice which was issued by the Central Commission to the Appellants which is the basis of the final order dated 20.3.2009. As per the show cause notice dated 20.3.2009 the allegation was made against the Appellant that the Appellants overdrew electricity at frequency below 49 Hz on a number of time blocks during 20-22nd February 2009. According to the Central Commission the said action of the Appellant would prima facie amount to contravention of the Grid Code which necessitated the Central Commission to issue show cause notice.

11. At this stage it would be worthwhile to refer to the relevant observations made by the Central Commission in the show cause notice.

“ In keeping with the above noted provisions of the Grid Code, manual load shedding has to be carried out to curtail over-drawl when the grid frequency falls below 49.0 Hz.

It has been reported by Northern Regional Power Committee vide letter No. NRPC/SE/(O)/Vio/EGC/2009 dated 23.2.2009 that the first respondent over-drew electricity at frequency below 49.0 Hzs on a number of time blocks during 20-22 February 2009. The necessary details of over-drawls at frequency below 49.0 Hzs are as under:-

<i>Date & time</i>	<i>Frequency (Hz)</i>	<i>Over drawl (MW)</i>
<i>20th Feb.09 (2306 hrs)</i>	<i>48.95</i>	<i>1095</i>
<i>21st Feb.09 (0543 hrs)</i>	<i>48.96</i>	<i>770</i>
<i>21st Feb. 09 (0645 hrs)</i>	<i>48.89</i>	<i>695</i>
<i>22nd Feb. 09 (1116 hrs)</i>	<i>48.84</i>	<i>448</i>
<i>22nd Feb. 09 (1218 hrs)</i>	<i>48.86</i>	<i>542</i>

Prima facie, the above acts of the first respondent amount to contravention of an non-compliance with the provisions of the Grid Code.”

12. On the basis of the above allegation the Appellants were directed to show cause why penalty be not imposed on them under Section 142 & 149 of the Electricity Act, 2003.

13. In reply dated 1.4.2009 filed by the Appellants they have stated that as per SCADA record of the SLDC, the average frequency had only gone down below 49 Hz during the time blocks mentioned in the show cause notice, because the two STPS units tripped on 20.2.2009 at 21.49 hrs and at 22.33 hrs, resulted in reduction in availability of the electricity to the extent of 500 MW and immediate load shedding was resorted to BS

keep up the situation in addition to the running of Mahi Hydel Station and purchase of bi-lateral power to keep drawl within the schedule. It was further stated in the reply filed by the Appellant that because of the increase in demand during morning 0500 to 0700 hours and during night from 2300 hrs to 2400 hrs the impact of the measures taken by them was not visible and because load management is a dynamic process and there is a possibility of mismatch between the drawl and the schedule of drawl.

14. However, the Central Commission after having heard the parties and perused the records was satisfied that the Appellant had over drawn on all the five occasions noted in the show cause notice when the frequency was below 49 Hz and consequently conclusion had been arrived at by the Central Commission that the Appellant No. 1 was guilty for the contravention of the Grid Code. In the impugned order it further observed that it can not be inferred from the affidavit on record that the 2nd Appellant had made efforts or issued directions to curtail over-drawl when the frequency was below 49 Hz.

15. Let us now go into the reasoning and the findings given by the Central Commission in the impugned order in finding the Appellants guilty.

“We have very carefully considered the reply to the show cause notice. From Annexure B of the reply, containing the details of frequency and over-drawls furnished by the respondents, it is noted that the first respondent had over-drawn on all the five occasions noted in the show cause notice dated 20.3.2009, in addition to over-drawl on other hours on those days. The necessary details in this regard are given on page 41 of the Appeal paper book.”

16. The reference about the details of records between 20-22 February, 2009 is made in para 11, 12 & 13 of the impugned order reproduced below:-

“11. From the above details, it is clear that on the respondents own admission, the first respondent had over-drawn electricity from the regional grid at frequency below 49.0 Hz not only at the time hours given in the show cause notice, but also on many other occasions.

12. It is noted from the respondents reply that the relief from the load-shedding was not adequate in view of the quantum of over-drawl. In regard to tripping of generating units and non-availability of generation, it is mentioned that these transient conditions are normal in system operation and the first respondent had to be prepared for such conditions. The non-

availability/outage of generation does not justify over-drawl from the regional grid at low frequency, which affects the system security and also makes the grid vulnerable to collapse. We agree with the contention of NRLDC that the average frequency during the 15 minute time-block can not be the criterion for operation of grid. Over-drawl at low frequency at any moment can spontaneously and instantly cause tripping of the grid and this can have disastrous effect. Therefore, average frequency during a 15 minute time –block has no relevance for maintenance of grid discipline.

13. In the light of the above discussion, the charge of contravention of and non-compliance with the provisions of the Grid Code by the first respondent has been proved to the hilt.”

17. The details of the findings are given below:-
- i) Even from the reply to the show cause notice and the Annexure ‘B’ of the reply of the Appellants, it is clear that the Appellants themselves had admitted that they had overdrawn from the grid at the frequency below 49 Hz on all the five occasions.
 - ii) The Appellants reply that the relief from the load shedding was not adequate in view of the quantum of over-drawl and these transient conditions are normal in system operation and the

Appellants have to be prepared for such conditions in that period. This explanation of the Appellants is not satisfactory. The non-availability/outages of generation does not justify over-drawl from the regional grid at low frequency, which affects the system security and makes the grid vulnerable to collapse.

iii) The average frequency during the 15 minute time-block can not be the criterion for operation of grid. As over-drawl at low frequency at any moment can cause tripping of the grid and disastrous effect. Therefore, the explanation is not accepted. As such the non-compliance of the provisions of the Grid Code by the Appellants has been established.

The above finding would make it clear that the said finding was mainly based upon the admission of the Appellant that the electricity was overdrawn when it was below 49 Hz.

18. As indicated above, the violation of Clause 5.4.2 and 6.4.4 of the Grid Code is a subject matter of the accusation. Let us now reproduce both these clauses:-

“5.4.2 Manual Demand Disconnection

(a)As mentioned elsewhere, the constituents shall endeavour to restrict their net drawl from the grid to within their respective

drawl schedules whenever the system frequency is below 49.5 Hz. When the frequency falls below 49.0 Hz, requisite load shedding (manual) shall be carried out in the concerned States to curtail the over-drawl.

19. This clause would contain two parts:-

- i) When the system frequency is between 49.5 Hz and 49.0 Hz the endeavour has to be made to restrict the net drawl from the grid within their drawl schedule.
- ii) Whenever the frequency falls below 49.0 Hz the load shedding shall be carried out to curtail the over-drawl.

20. With regard to the first clause it merely says about the endeavour or the efforts to be taken to restrict the net drawl when the frequency was between 49.5 Hz and 49.0 Hz. In regard to the 2nd part it specifically says that whenever the frequency falls below 49.0 Hz the load shedding shall be carried out to curtail the over-drawl. So the first part relates to the endeavour to be made by the constituents to restrict their net drawl when the frequency was between 49.5 and 49.0 Hz. On the other hand, the 2nd part mandates that the moment the frequency falls below 49.0 Hz the requisite load shedding shall be carried out to curtail the over-drawl.

21. Let us now quote 6.4.4.:-

6.4.4 Demarcation of responsibilities.

“Provided that the States, through their SLDCs, shall always endeavour to restrict their net drawl from the grid to within their respective drawl schedules, whenever the system frequency is below 49.5 Hz. When the frequency falls below 49.0 Hz. Requisite load shedding shall be carried out in the concerned State(s) to curtail the over-drawl”.

22. This clause also would contain two parts as contained in 5.4.2. This clause would specifically provide for the duties indicated upon the SLDCs.

- i) The first point relates to the endeavour to be taken by the SLDCs. This clause is also similar to 5.4.2. When the frequency is between 49.5 and 49.0 Hz, the endeavour has to be made to restrict the net drawl from the grid within their schedule of drawl.
- ii) The 2nd part mandates that the moment the frequency falls below 49.0 Hz, the SLDCs shall carry out the requisite load shedding shall be carried out to curtail the over-drawl.

23. Admittedly, the show cause notice did not deal with any aspect in regard to the frequency between 49.5 and 49.0 Hz. On the other hand there is no allegation in the show cause notice that the Appellants acted in violation of the Grid Code in regard to the drawl when the frequency was between 49.5 and 49.0 Hz. It is not the case as mentioned in the show cause notice that the Appellant had not taken any steps or endeavour some act when the frequency was hovering around 49.0 Hz or the Appellants have not prevented the frequency from falling below 49.0 Hz. On the other hand the specific accusation alleged against the Appellants, as per the show cause notice, was in regard to the over-drawl or continued over-drawl of electricity when the frequency fell below 49.0 Hz in contravention of the 2nd part of Clause 6.4.4. of the Grid Code.

24. According to the Appellants, the Appellants had demonstrated before the Central Commission that within a few minutes or within the time block of 15 minutes or within the next time block the frequency had been brought back to 49.0 Hz and above. It is also submitted by the learned counsel for the Appellants that the Appellants have produced material and details from the documents before the Central Commission to show that they had taken required steps as provided for in Clause 5.4.2. and 6.4.4 of the Grid Code to curtail the over-drawl in the state, but even then the Central Commission without adverting the pleas of the
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Appellants that sufficient action had been resorted to by the Appellants through the material and however, the Central Commission mechanically proceeded on the basis that there was over-drawl below 49 Hz and therefore the Appellants should be punished even without considering credibility of the material produced by the Appellant, we find substance in this contention.

25. As indicated above, it has to be mentioned that mere frequency fall below 49 Hz can not be taken straight away as an automatic contravention of Grid Code which envisages that whenever there is a fall in frequency below 49 Hz the requisite load shedding shall be carried out to curtail the over-drawl. Therefore, merely there was a fall in frequency below 49 Hz and during that period there was an over-drawl can not be the subject matter of the accusation relating to the non-compliance or contravention of the Grid Code. On the other hand, we are only concerned with the mandate of the Grid Code to the effect that whenever the frequency falls below 49 Hz the requisite load shedding shall be carried out to curtail the over-drawl. Therefore, we are more concerned with the genuine action or steps taken by the SLDC to carry out the requisite load shedding to curtail the over-drawl.

26. As pointed out earlier the impugned order does not show that any analysis had been done by the Central Commission in regard to the credibility of those materials. On the other hand, the reply of the Appellants was rejected on the ground that the explanation that the over-drawl was due to non-availability /outages in generation can not be accepted. This reasoning to reject the explanation can not be considered as the valid reasoning in as much as the duty enjoined upon the Central Commission to verify as to whether genuine efforts have been made to curtail the over-drawl by resorting to the load shedding and in the process, it was brought above 49 Hz. This aspect has not been analysed in the impugned order.

27. Now let us see the materials contained in the reply filed by the Appellants before the Central Commission with reference to the efforts taken by the SLDC, the Appellants to curtail the over-drawl by resorting to the load shedding in consonance with the 2nd part of the Clause 5.4.2 and 6.4.4. of the Grid Code.

28. The gist of the reply dated 1.4.2009 filed by the Appellants before the Central Commission is as follows:-

- i) The block-wise details at 30 second interval as given in Annexure 'B' would reveal that system frequency had

remained below 49 Hz for a period of 3 to 6 minutes only in the reported instances.

- ii) On noticing that the frequency trend going below 49 Hz SLDC has resorted to manual load shedding in the reported instances, the details of which have been given in Annexure 'C'.
- iii) The un-scheduled load shedding had been carried out by the SLDC through 220 KV, Grid Sub-Station (GSS) by giving the telephonic messages both verbally and in writing. Each 220 KV GSS is feeding 4 to 5 numbers of 132 KV GSS and each 132 KV GSS in turns feed 3 to 4 numbers 33 KV feeders. One message from SLDC results in load shedding of minimum 12 numbers of 33 KV feeders. The instructions of SLDC conveyed through 220 KV GSS takes about 15-20 minutes to the actual locations of 33 KV & 11 KV feeders from where load is being shed.
- iv) It was apprehended that heavy load shedding may result in law and order problem.
- v) On 20.2.2009 HTPS units II & I each of 250 MW capacity of tripping at 2149 hours and 2235 hours respectively were causing immediate reduction of availability of power to the

tune of 500 MW. To cope up with increased drawl from the Grid, SLDC has immediately resorted to load shedding.

- vi) The SLDC, Jaipur had enforced manual load shedding to reduce over-drawl from the Grid. By an act of SLDC, the over-drawl from the Grid has been controlled, but due to rising trend of load during 0005 to 0007 hours and 2300 to 2400 hours, the net impact was not visible in the report.
- vii) The SLDC had already purchased bi-lateral power so as to keep the drawl from the Grid within the schedule of drawl.
- viii) The manual verbal instructions have been passed on to the Distribution Companies to contain the drawl within the schedule so as to avoid any threat to the security of the Grid.

29. On perusal of the reply, it is clear that the SLDC took efforts. SLDC on noticing that the frequency level is falling below 49 Hz took efforts to curtail the over-drawl from the Grid both by giving immediate directions to the Distribution Companies and also by resorting to load shedding. The 2nd part of 6.4.4. of the Clause of Grid Code, as indicated above would merely mandate that the SLDCs shall carry load shedding whenever the frequency falls below 49 Hz. Therefore, it shall be verified by the Central Commission whether the 2nd part of Clause 6.4.4 had been complied with by the SLDC by resorting to the load schedule through

genuine efforts made by the SLDC or not. Admittedly, these details had been given by the SLDC, the Appellant, to the Central Commission through the reply as well as through various Annexures about the action taken by the SLDC to contain the over-drawl from the Grid within the schedule. It can not be merely pleaded that there were overdrawl on 5 occasions during the period between 20-22 February, 2009. But the question arises in this case as to whether the SLDC has taken the process of load shedding to curtail the overdrawl when the frequency falls below 49 Hz. It must be made clear that as referred to above we are not concerned that the question as to whether any action has been taken by the SLDC when the frequency falls between 49.5 to 49.0 Hz. We are only concerned that the question (1) as to whether the frequency fell below 49 Hz and (2) during that period whether SLDC had taken efforts to curtail the overdrawl by resorting to load shedding. In the present case, as detailed above, the particulars have been given both in the reply and Annexures filed along with that to indicate that load shedding process had been carried out. If that is so, there is no reason as to why the Central Commission did not consider that aspect and given their findings. In this case the Central Commission merely has given a finding that SLDC have overdrawl when the frequency was below 49 Hz on all the five occasions, as admitted by the SLDC itself and the explanation that the overdrawl was due to non-availability of power and outages can not be accepted and

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therefore, the SLDC is liable to be penalised. Thus it is clear that the Central Commission had not adverted to the aspect of load shedding carried out as claimed by the SLDC through the reply and Annexures and the Central Commission had not given any finding with regard to that.

30. It is contended by the learned counsel for the Central Commission that the SLDC is required to take pro-active action to curtail the overdrawl when it finds that the frequency is dropping below 49 Hz. There is no dispute over this legal position. The question is whether such a pro-active action has been taken or not had got to be considered. Even according to the learned counsel for the Central Commission that such pro-active action would include directing the generating stations in its control area to maximise the generation or directing the Distribution Companies to cut the drawl of load shedding within their schedule or to carry out manual load shedding so as to curtail overdrawl. According to the Appellant, through the reply along with the documents specifically pleaded that such instructions or directions had been given to the Distribution Companies and in addition to that it had carried out requisite manual load shedding in order to curtail overdrawl. The Central Commission did not go into the question whether this plea with regard to the action taken by the SLDC by giving direction to the Distribution Companies and resorting to load shedding is true or not. When it is

pleaded by the SLDC that it had taken continuous efforts through all the processes of curtailing overdrawl, the duty that is enjoined upon the Central Commission to find out whether efforts were taken and whether those efforts were genuine.

31. As pointed out by the learned counsel for the Appellants that SLDC can not be penalised merely because the frequency level had fallen below 49 Hz. On the contrary the Central Commission before imposing the penalty on the SLDC shall have to be satisfied that there is no action taken or no load shedding exercise was carried out by SLDC to restrict the frequency above 49 Hz. In this case, according to the reply of the Appellants, action had been taken immediately and frequency had dropped only for very short period within which time the remedial measures including the directions to the Distribution Companies and also manual load shedding was carried out by the Appellant as contemplated by the 2nd part of the Clause 6.4.4. Those materials have been placed before the Central Commission by the SLDC. The Central Commission can not ignore those materials and rush to the conclusion that the SLDC is liable to be penalised merely because the frequency level during that period had fallen below 49 Hz without assessing the credibility of those materials.

32. Strangely, the learned counsel appearing for the Central Commission would submit that even though the Appellants in the reply and other documents had shown that load shedding was carried out but said load shedding was inadequate to curtail the overdrawl. This is new case projected by the learned counsel for the Central Commission. The Central Commission has never given any finding in the impugned order that the efforts taken by the SLDC to carry out the load shedding was inadequate. Therefore, there is no legal basis for this contention.

33. One more argument was advanced by the learned counsel for the Central Commission before this Tribunal. It is submitted by the learned counsel for the Central Commission that the Appellants ought to have taken steps even when the frequency was between 49.5 to 49.0 Hz, and the Appellants have failed to take step to prevent the frequency going through 49.0 Hz. This is not the charge as per the show cause notice. Further, the Central Commission has formulated the availability based tariff mechanism. As per this mechanism the beneficiaries are required to pay compensation charges namely U.I. charges when there was a variation in the grid frequency up to the permissible level namely from 50.5 Hz to 49.0 Hz during the relevant period. Therefore, the Respondent, SLDC at frequency above 49 Hz cannot proceed to the mechanism of disconnection on its own. As the mechanism formulated

by the Central Commission itself permits the utilities to deviate from the scheduled drawl by paying the compensation. Such being the situation the contention urged by the learned counsel for the Respondent Commission that the Appellant ought to have taken steps preventing the frequency to go below 49 Hz can not be held legal.

34. In view of the foregoing discussions made in the earlier paragraphs, we are of the considered opinion that the impugned order imposing penalty on the Appellants does suffer from the infirmities and, therefore, liable to be set aside. Accordingly, the same is set aside. The Appeal is allowed. No order as to the costs.

(H.L. Bajaj)
Technical Member

(Justice M.Karpaga Vinayagam)
Chairperson

Dated: 13th January, 2010.

INDEX: Reportable/Non/Reportable.`