

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL NO. 72 OF 2021 &  
IA NOS. 82 OF 2021 & 1025 OF 2022**

**Dated: 23.08.2022**

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**In the matter of:**

**Noida Power Company Limited**

Through Its Authorized Representative  
Plot No. E.S.S., Knowledge Park – IV,  
Greater Noida, Uttar Pradesh – 201310

**...Appellant**

**Versus**

**Uttar Pradesh Electricity  
Regulatory Commission**

Through Its Secretary  
Vidyut Niyamak Bhawan, Vibhuti Khand,  
Gomti Nagar, Lucknow – 226010

**...Respondent**

**Counsel for the Appellant(s) :**

Mr. Sanjay Sen. Sr.Adv.  
Mr. Amit Kapur  
Mr. Vishal Gupta  
Mr. Akshat Jain  
Ms. Divya Chaturvedi  
Ms. Debolina Roy  
Mr. Saransh Shaw  
Mr. Avdesh Mandloi  
Ms. Srishti Rai  
Mr. Sumeet Sharma  
Mr. Divyanshu Gupta  
Mr. Paras Choudhary  
Mr. Tenzen Tashi Negi  
Mr. Pratibhanu Singh Kharola  
Ms. Raksha Agrawal  
Mr. Sharan Balakrishnan

Counsel for the Respondent(s):                      Mr. Parag P. Tripathi, Sr.Adv.  
   Mr. C.K. Rai  
   Mr. Sumit Panwar  
   Ms. Tanzeela Mubashsharah  
   Vishakha for Respondent

## **J U D G M E N T**

### **PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. A narrow, yet significant issue has come up for consideration in this appeal concerning the extent of the terms of a deemed licensee under first proviso to Section 14 of Electricity Act, 2003. The appellant, the deemed licensee, claims rights in perpetuity in terms of grant under now repealed Electricity Act, 1910. The sector regulator has repelled the said contention and yet determined the remaining tenure invoking the provisions of the repealed legislation.

2. Noida Power Company Limited, the Appellant has filed the present Appeal assailing the MYT Order dated 26.11.2020 (the "Impugned Order") passed by the Uttar Pradesh Electricity Regulatory Commission (hereinafter the "State Commission" or the "Respondent Commission") in Petition No.1526 of 2019 ("Petition") filed by the Appellant for approval of its Business Plan for Multi Year Tariff ("MYT") Control Period FY 2020-21 to FY 2024-25.

3. The State Commission while approving the Business Plan has observed that:

*“It is noted that the NPCL License is upto August 30, 2023 and the License of NPCL will expire within the Control period. Considering the importance of all the elements in the business of distribution licensee and to ensure business continuity, the Business Plan is approved subject to the following:*

*A. Business plan upto the period of license of NPCL is approved in respect to billing determinants, loss trajectory and other directions in respect to various matters.*

*B. Business plan for remaining period is taken on record for business continuity and subject to the decision taken by the Commission on the renewal/ grant of license from August 30, 2023 onwards.”*

4. The Appellant is aggrieved by the said observation of the State Commission declaring the term of the Licence upto 30.08.2023 and approving the Business Plan accordingly and therefore, filed the captioned Appeal.

5. Therefore, the main issue emerging out is the term of Licence granted to the Appellant inter alia rejection of some of the claims pleaded by the Appellant in the Petition.

***Parties: -***

6. The Appellant, Noida Power Company Limited (in short “NPCL” or the “Licensee”), is a Company incorporated under the provisions of the Companies Act, 1956 read with the Companies Act, 2013 having been granted licence on 30<sup>th</sup> August 1993 (“the 1993 Licence”), further amended on 18th July 1996 (“the Amended Licence”) (hereinafter collectively referred to as the “Licence”) for distribution and retail supply of electricity in the

Greater Noida of the State of Uttar Pradesh under the Indian Electricity Act, 1910 (in short “Act 1910”).

7. The Respondent, the Uttar Pradesh State Electricity Regulatory Commission, a statutory body constituted under the Electricity Regulatory Commissions Act, 1998 (“Act 1998”) read with the Uttar Pradesh Electricity Reforms Act, 1999 (“Reforms Act”) and the Electricity Act, 2003 (in short “Act 2003”), is responsible for discharging its functions envisaged under the Act 2003 inter-alia to regulate and adjudicate the issues under challenge.

***Factual Matrix: -***

8. On 18<sup>th</sup> March 1910, the Act 1910 was promulgated by the Central Government to amend the law pertaining to the supply and use of electricity energy, section 3 of the 1910 Act empowered the State Government to grant a licence to any person to supply electricity in any specified area, after consultation with the then existing State Electricity Board.

9. On 11<sup>th</sup> December 1992, Greater Noida Industrial Development Authority (GNIDA), a public authority of the Government of Uttar Pradesh, signed a Memorandum of Understanding with CESC Limited (now known as CESC Limited), thereby promoting the Appellant, for the purpose of undertaking supply of electricity to the consumers in the Greater Noida area, as a distinct and separate venture from the then existing Uttar Pradesh State Electricity Board (“UPSEB”), which was undertaking such distribution and supply of electricity in the State of Uttar Pradesh. GNIDA holds approximately 27% equity shareholding in the Appellant and the balance shareholding of approximately 73% is held by CESC Limited, which is a listed Company, the Chairman of GNIDA is also the Chairman of the Appellant.

10. Thereafter, on 30<sup>th</sup> August 1993, the State Government of Uttar Pradesh granted the Distribution Licence to the Appellant for distribution and retail supply of electricity in Greater Noida under section 3 of the Act 1910, which was further amended on 18<sup>th</sup> July 1996 whereby the licenced area of the Appellant was extended.

11. The relevant provisions (section 3) of the Act 1910 are reproduced below for reference:

*“3. Grant of licenses. –*

*(1) The State Government may, on application made in the prescribed form and on payment of the prescribed fee (if any) grant after consulting the State Electricity Board, a license to any person to supply energy in any specified area, and also to lay down or place electric supply-lines for the conveyance and transmission of energy, - ----”*

12. However, the Licence granted under section 3 of the Act 1910 has no provision of term for expiry, the only provision as mandated under the said Act can provide change in the ownership through purchase under section 6 of the Act 1910 after a specified period of 30 years or subsequent period of 20 years thereafter. The Appellant, accordingly, pleaded that Licence so granted shall continue till such time it is purchased under the procedure laid down or revoked under section 5 of the said Act. The section 6 of the Act 1910 is reproduced below for reference:

*“6. Purchase of undertakings. –*

(1) *Where a license has been granted to any person, not being a local authority, the State Electricity Board shall –*

*(a) In the case of a license granted before the commencement of the Indian Electricity (Amendment) Act, 1959 (32 of 1959), on the expiration of each such period as is specified in the license; and*

***(b) In the case of license granted on or after the commencement of the said Act, on the expiration of such period not exceeding thirty years and of, every such subsequent period, not exceeding twenty] years, as shall be specified in this behalf in the license, have the option of purchasing the undertaking and such option shall be exercised by the State Electricity Board serving upon the licensee a notice in writing of not less than one year requiring the licensee to sell the undertaking to it at the expiry of the relevant period referred to in this subsection.***

*(2) Where a State Electricity Board has not been constituted, or if constituted, does not elect to purchase the undertaking, the State Government shall have the like option to be exercised in the like manner of purchasing the undertaking.*

*(3) Where neither the State Electricity Board nor the State Government elects to purchase the undertaking, any local authority constituted for an area within which the whole of the area of supply*

*is included shall have the like option to be exercised in the like manner of purchasing the undertaking.*

*(4) If the State Electricity Board intends to exercise the option of purchasing the undertaking under this section, it shall send all intimation in writing of such intention to the State Government at least eighteen months before the expiry of the relevant period referred to in subsection (1) and if no such intimation as aforesaid is received by the State Government the State Electricity Board shall be deemed to have elected not to purchase the undertaking.*

*(5) If the State Government intends to exercise the option of purchasing the undertaking under this section, it shall send an intimation in writing of such intention to the local authority, if any, referred to in subsection (3) at least fifteen months before the expiry of the relevant period referred to in sub- section (1) and if no such intimation as aforesaid is received by the local authority, the State Government shall be deemed to have elected not to purchase the undertaking.*

*(6) Where a notice exercising the option of purchasing the undertaking has been served upon the licensee under this section, the licensee shall deliver the undertaking to the State Electricity Board, the State Government or the local authority, as the case may be, on the expiration of the relevant period referred to in subsection (1) pending the determination and payment of the purchase price.*

*(7) Where an undertaking is purchased under this section, the purchaser shall pay to the licensee the purchase price determined in accordance with the provisions of sub-section (4) of Section 7A.”*

***(Emphasis given)***

13. Section 6, however, prescribes that option of purchase was exercisable only upon serving of a notice in writing, of not less than 1 (one) year, requiring the licensee to sell its undertaking at the expiry of the relevant period. Further, the terms of purchase can be amended by the State Government under section 10 of the Act 1910, quoted as under:

*“10. General power for Government to vary terms of purchase. –*

*Notwithstanding anything in Sections 5, 6 and 8, the State Government may, in any license to be granted under this Act, -*

*(a) Vary the terms and conditions upon which, and the periods on the expiration of which, the licensee shall be bound to sell his undertaking, or*

*(b) Direct that, subject to such conditions and restrictions (if any) as it may think fit to impose, the provisions of the said sections or any of them shall not apply.”*

14. The Appellant submitted that the State Government of Uttar Pradesh granted the Distribution Licence to the Appellant on 30<sup>th</sup> August 1993, under Section 3(1) of the 1910 Act, however, the Licence has not stipulated any term or tenure of its validity and only provides a term for the purchase of undertaking under Clause 10 of the Licence, therefore, added that the



Licence so granted is perpetual in nature or otherwise revoked or purchased under the prescribed laws. The Clause 10 of the Licence is reproduced here under:

***“Purchase of Undertaking***

***10. The option of purchase given by subsection (1) of section 6 of the Act shall be exercisable on the expiry of a period of 30 years from the date of the notification of this licence or on the expiry of every subsequent period of 20 years, as the case may be. The terms of such purchase shall be the percentage of the value to be determined in accordance with the provisions of Section 6, 7 and 7sA of Indian Electricity Act, 1910 as amended from time to time, in its application to Uttar Pradesh together with solatium on such value on account of compulsory purchase as shall be determined by the State Government.”***

15. The claim of Appellant, regarding perpetuity of the term of Licence stating that neither the Act 1910 or the Licence granted to the Appellant has any provision under the Licence for the expiry of the Licence except that it can be purchased under section 6 or revoked under section 5 of the Act 1910, has been strongly contested by the Respondent Commission citing that no licence can be granted with perpetuity. We shall take up the issue later as the Act 1910 has already been repealed.

16. On 10<sup>th</sup> June 2003, the Act 2003 came into force which inter-alia repealed the Act 1910 and is the extant legislation holding the field, the Appellant continued as a deemed distribution licensee in terms of the first proviso to Section 14 of the Act 2003, also any provision of the Act 1910 shall

remain applicable till such time it is not inconsistent with any provision of the Act 2003. The relevant section (section 185) of the Act 2003 is reproduced here under:

*“185. (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.*

***(2) Notwithstanding such repeal, -***

***(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.***

*-----”*

***(Emphasis given)***

17. Therefore, it is important to note here the relevant provisions of the Act 2003 regarding grant of distribution licence, its term and other related conditions. The relevant sections are quoted here under for reference:

## **2. Definitions**

*In this Act, unless the context otherwise requires, --*

*(38) "licence" means a licence granted under section 14;*

*(39) "licensee" means a person who has been granted a licence under section 14;*

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#### **14. Grant of licence**

*The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person--*

- (a) to transmit electricity as a transmission licensee; or*
- (b) to distribute electricity as a distribution licensee; or*
- (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:*

*PROVIDED that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, **and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:***

*PROVIDED FURTHER that the **Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:***

*PROVIDED also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government **shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:***

*PROVIDED also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, **shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act** and the provisions of the Damodar Valley Corporation Act, 1948, insofar as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:*

*PROVIDED also that the Government company or the company referred to in subsection (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, **shall be deemed to be a licensee under this Act:***

*PROVIDED also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (relating to the capital adequacy, Credit*