

**IN THE JHARKHAND STATE ELECTRICITY  
REGULATORY COMMISSION AT RANCHI**

**Case No. 25 of 2014**

M/s Usha Martin Limited ..... Petitioner

Versus

Jharkhand Urja Vikash Nigam Limited (JUVNL) & Ors ..... Respondents

**CORAM: HON'BLE MR. (DR) ARBIND PRASAD, CHAIRPERSON  
HON'BLE MR. R.N. SINGH, MEMBER (ENGINEERING)**

For the petitioner : Mr. K. Venugopal, Mr. M.S. Mittal, Sr. Advocates  
Mr. Vimal Kirti Singh, Mr. Sidhartha Singh,  
Ms Shilpi John and Ms. Priyanka Singh and  
Ms Varsha Ramsisaria, Advocates

For the Respondents : Mr. R.P. Bhatt, Sr. Advocate, Mr. Mohit K. Shah,  
Mr. Rahul Kumar, Mr. Naveen Kumar,  
Mr. Amit Sinha and Mr. Amitabh, Advocates

**ORDER**

**Dated: 21<sup>st</sup> February 2019**

1. The petitioner – M/s Usha Martin Limited (hereinafter referred to as “UML”) has filed this petition under Section 86 (1) (f) & (k) of the Electricity Act 2003 seeking the following reliefs:-

- i) For quashing the bill dated 31.10.2014 (hereinafter referred to as “impugned bill”) issued by the respondents demanding Power Factor Surcharge for the period from April 2002 to September 2014 amounting to Rs. 47,15,41,324.00 (hereinafter referred to as “impugned demand”) received by the petitioner on 01.11.2014; and
- ii) For a declaration that the petitioner is not liable to pay any penalty for low power factor in view of the bilateral special agreement entered by the erstwhile Electricity Board with the petitioner for synchronous operation of its CPP dated 25.06.1999, 17.05.2002, 13.07.2004 and even the agreement dated 27.04.2009 and that any such amount is in fact barred under the laws of limitation.

### **Brief fact of the case**

2. The Petitioner, UML, has Captive Power Plants (CPP) aggregating to 95 MW as per agreement dated 27.04.2009 between the petitioner & the respondents.
3. The petitioner is also a producer of wire rope and specialty Steel having its factory at Ghamaria, Adityapur Industrial Area, and at Tatisilwai, Ranchi, in Jharkhand State.
4. In normal course of business, the petitioner injects surplus power to the respondent licensee, and draws power through the same grid for its manufacturing activities. The difference between the power injected and power drawn is billed either by the petitioner or by the licensee.
5. The petitioner had initially set up its plant at Jamshedpur and also installed a 25 MW Captive Power Plant (CPP) and synchronized operation with erstwhile Bihar State Electricity Board. After bifurcation of the State of Bihar in 2000 and creation of Jharkhand State Electricity Board (JSEB), the petitioner signed an agreement dated 17.05.2002. The agreement inter alia provides a general terms and conditions for synchronous operation of the Captive Power Plant.
6. On 27.12.2002 the respondent, JSEB, issued the “Billing procedure for synchronous operation of 25 MW CPP of UML with Jharkhand State Electricity Board system”
7. The capacity of the CPP was increased from time to time and several supplementary agreements were entered into from time to time. The last agreement was entered between the petitioner and respondent on 27.04.2009 which is valid till April 2019.
8. The respondent-JSEB vide its letter dated 18.02.2008 asked the petitioner, UML, to install a capacitor Bank to avoid low power factor. The petitioner, after installing the capacitor bank and certification from Chief Electrical Inspector informed the respondent JSEB about it on 08.08.2009
9. The petitioner received a power bill for the month of August 2008 dated 04.09.2008 in which respondent for the first time charged power factor penalty for the month of August 2008. The petitioner returned the bill vide letter dated 20.09.2008 and letter dated 26.09.2008 requesting the respondent to withdraw power factor penalty.
10. The petitioner paid the bill for the month of August 2008 without paying the power factor penalty. The respondent didn't claim or show any power factor penalty in its subsequent bills.

11. The petitioner again received a bill dated 14.09.2010 for the month of August 2008 in which respondent again claimed power factor penalty only for August 2008 only which was protested vide letter dated 24.09.2010 with a request to withdraw the bill.
12. The petitioner on 31.10.2014 received a bill (impugned bill) for a sum of Rs. 47,15,41,324/- demanding power factor surcharge from April 2002 to Sep. 2014 which was protested by the petitioner vide letter dated 05.11.2014.
13. Hence, the petitioner filed this petition for quashing the bill dated 31.10.2014 issued by respondent demanding power factor surcharge from April 2002 to Sep. 2014.
14. Before the State of Jharkhand was created, the respondent was Bihar State Electricity Board (BSEB). After bifurcation of the State of Bihar in 2000 and creation of Jharkhand State, Jharkhand State Electricity Board (JSEB) was created. Further, JSEB was unbundled into four companies on 28<sup>th</sup> June, 2013 by the Energy Department, Government of Jharkhand, viz., Jharkhand Urja Vikas Nigam Limited (JUVNL) being the holding company, Jharkhand Urja Utpadan Nigam Limited (JUUNL) undertaking the generation function of the erstwhile JSEB, Jharkhand Bijli Vitran Nigam Limited (JBVNL) undertaking the distribution function of the erstwhile JSEB and Jharkhand Urja Sancharan Nigam Limited (JUSNL) undertaking the transmission function of the erstwhile JSEB. Initially, JUVNL (the holding company) had the responsibility of billing the consumers which was later on taken over by JBVNL as a Distribution Licensee. Therefore, depending upon the period/context, the respondent is variously referred to as BSEB, JSEB or JUVNL in the case but they all refer to the entity which was responsible for billing at the given time. This function is now being handled by JBVNL.

#### **Submission of the Petitioner**

15. Learned Counsel for the petitioner submitted that the petitioner installed CPP of 25 MW and entered into an agreement dated 25.06.1999 with BSEB. After formation of JSEB, the petitioner entered into similar agreement with JSEB dated 17.05.2002 and thereafter on 27.04.2009.
16. Learned Counsel submitted that in all the agreements of the petitioner with the respondent, power evacuation system, synchronization, Grid Discipline, protection, safety requirement, meter arrangement and billing procedure have been dealt with elaborately but no provision was made/dealt for charges on account of low power factor penalty.

17. Learned Counsel submitted that the petitioner is although a consumer but not a normal consumer as mentioned under section 2 (15) of the Electricity Act which is as under

*“Consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a Licensee, Government or such other person, as the case may be;*

Learned Counsel submitted that the petitioner is not a Consumer that simply consumes power from JSEB but instead is a hybrid entity having a “dual capacity” in which its generating plant is run in parallel with JSEB’s Grid so that it simultaneously supplies power to JSEB’s Grid and also procures power from JSEB’s Grid.

18. Learned Counsel submitted that the system involved for synchronous operation is that whenever there is excess power generation in the petitioner’s power plant, the power flows to JSEB and when the petitioner requires power, power flows to the petitioner unit from JSEB and there is two way meter installed which records, the both inflow of energy as well as outflow of energy and at the end of the month, total calculation of inflow and outflow is made. He further submitted that in other categories of consumers like HT consumers who avail power from JSEB, flow of power is only one sided.
19. Learned Counsel submitted that the petitioner by executing a bi-lateral agreement is governed by the bi-lateral agreement and the rights and obligations of the petitioner are governed by contracts dated 17.05.2002 and 27.04.2009.
20. Learned Counsel submitted that under clause 10 of 2002 agreement and clause 11 of 2009 agreement JSEB specifically mentioned that UML will guarantee to meet with 10 MW survival power to JSEB in case of emergency. Such system doesn’t prevail in case of any other category of consumer, which makes it clear that the petitioner is not a consumer but rather a hybrid entity which both generates and consumes power. As such, the petitioner is not subject to the provisions of the Act, the Rules and Regulations made there under or even the Tariff notification that applies to the “Consumers” strictly so called. Hence, respondent’s contention that terms of the tariff notification would apply is clearly misconceived. He further submitted that the tariff notification is not one of the document mentioned in either, the 2002 agreement or 2009 agreement. As such the

parties clearly didn't intend the tariff notification to apply to the 2002 agreement or 2009 agreement.

21. Learned Counsel submitted that the petitioner learned after resorting his rights under RTI Act 2005 that General Manager-cum-Chief Engineer, Transmission, had written a letter on 02.12.2011 to the Chief-Engineer, Commercial, that the agreements do not provide for the imposition of "Power factor Surcharge". This casts serious doubts upon JUVNL's bonafides in raising the impugned Bill.
22. Learned Counsel for the petitioner while quoting *Rajasthan State Industrial Development and Investment Corporation Vs. Diamond and Gem Development Corporation Limited, (2013) 5 SCC 470* expressed that a party cannot claim anything that goes beyond the four corners of the contract itself.
23. Learned Counsel submitted that the impugned bill is clearly time barred to the extent that it has been raised more than 3 years after the dispute arose when the initial demand was made by the JSEB in its bill dated 04.09.2008 in respect of Low Power Factor for the month of August 2008. In fact more than 3 years elapsed even after the JSEB raised a similar demand in its bill dated 14.09.2010 in respect of the Low Power Factor for August 2008. Also, after these bills, no demand was raised nor was shown as arrears in any of the respondents bills till the impugned bill was raised more than four years later i.e. on 30.10.2014. Hence, the claim raised by respondent JUVNL in the impugned bill 30.10.2014 is clearly time barred.
24. Learned Counsel for the petitioner further submitted that Section 17(1) of the Limitation Act, 1963, provides that limitation period in case of fraud or mistake would begin from the date of discovery of such fraud or mistake and also, has no application in the present case. Here, JSEB admittedly knew about the dispute relating to allegedly Low Power factor as far back as on 04.09.2008, when it raised the first bill and again on 14.09.2010 when it raised the second bill. In this regard, Learned Counsel quoted *A.P. Power co-ordination committee Vrs. Lanco Kondapalli Power Limited (2016) 3 SEC.468 Para (31.* in which Hon'ble Supreme court held that " *the claim coming before the Commission cannot be entertain or allowed if it is barred by Limitation prescribed for ordinary suit before the Civil Court.*"
25. Learned Counsel submitted that vide protest letter dated 26.09.2008 after bill dated 04.09.2008 (for the month of August 2008) and vide protest letter dated 24.09.2010 after bill dated 14.09.2010 (for the month of August 2008) the petitioner requested the respondent to withdraw the charges for power

factor penalty. Thereafter, respondent JSEB allowed the petitioner to pay the bill for the month of August, 2008 without Power Factor Penalty charges and even didn't claim any power factor penalty charges in its subsequent bills.

26. Learned Counsel submitted that as the respondents have not carried over the amount of penalty so raised by them vide bills dated 04.09.2008 or 14.09.2010, the same amount cannot be demanded from the petitioner after a lapse of so many years.
27. Learned Counsel submitted that Section 56 of the Electricity Act, 2003 would not have any application here and in this regard quoted *Ajmer Vidyut Nigam Limited Vs Rajasthan Electricity Regulatory Commission and ors.*, (Appeal no. 74/2007) in which Hon'ble APTEL held that bill for dues would *"be subject to the general law of Limitation and anything falling due prior to three years from the date on which the claim is made would be barred by Limitation as prescribed by the limitation Act, 1963."*
28. Learned Counsel submitted that the impugned demand was raised without any notice or opportunity of hearing to the petitioner and is in violation of the principles of natural justice and hence is null and void.
29. Learned counsel also submitted that the agreement dated 27.04.2009 specifically provides that *"all the earlier agreements between JSEB and UML will rescind on execution of this agreement."* However, respondent JUVNL is attempting to claim power factor surcharge arising out of the 2002 agreement in 2014. The 2009 agreement completely substitutes 2002 agreement as such 2002 agreement was no longer enforce in 2014 and hence there is no question of raising claims under it.
30. Learned counsel for the petitioner in its conclusion submitted that the bill dated 31.10.2014 for a sum of Rs.47,15,41,324/- demanding power factor surcharge from April 2002 to September 2014 is time barred under the Electricity Act 2003 and or, barred by law of limitation, contrary to the agreement between the parties , contrary to the Electricity Act 2003 and Regulations framed thereunder. As such, the impugned bill is fit to be set aside.

#### **Submission of the Respondent**

31. Learned Counsel for the respondent submitted that the petitioner is functioning as two separate bodies i.e. bi-directional. If surplus power is delivered (exported) to the respondents, it can be treated as CPP and in case the petitioner draws power (imports) from respondents/JSEB it is a consumer and the charges will be recovered as per clause 3.1, 3.3 and 17 of

JSERC (Electricity Supply Code) Regulations 2005 for which it has clearly been mentioned in the agreement that 132 KV EHT/HTS tariff will be applicable for the billing purpose, and the tariff comprises of energy charges, demand/fixed charges, power factor rebate/penalty, load factor rebate, voltage rebate etc

32. Learned Counsel submitted that it is an admitted position that the petitioner is drawing power from the system of the respondents for which the respondents are billing the petitioner as per the prevailing tariff and the petitioner is an HT consumer of the Board as well.
33. Learned Counsel submitted that the petitioner is a “Consumer” within the meaning of Regulation 2.1(n) of the JSERC (Electricity Supply Code) Regulations, 2005
34. Learned Counsel submitted that the agreement in question i.e. the one dated 27.04.2009, provides for the same being governed by the Electricity Act, 2003, Rules and Regulations framed by the Central and State Regulatory Commission as well as the I.E. Grid Code and State Grid Code. As such, the petitioner is governed by the Act, rules and Regulations and JSERC (Electricity Supply Code) Regulations 2005 provides for billing with regard to surcharge for low power factor.
35. Learned Counsel submitted that the agreement dated 25.06.1999, 17.05.2002 and 27.04.2009 entered into between the petitioner and the respondent provides for billing of the petitioner on the basis of 132 KV EHT/HT tariffs of the Board / Company.
36. Learned Counsel further submitted that the demand (impugned demand) is not time barred under section 56(2) of the Electricity Act, 2003 and quoted W.P. (C) No. 2777/2007 (M/s Tata Steel Ltd. & Ors. Vs. Jharkhand Steel Electricity Board & Ors.) of the Hon’ble Jharkhand High Court in which, Hon’ble High Court held that the liability may be said to be created earlier in accordance with the tariff order, but the amount of short payment becomes due only after realization of mistake and the assessment of the short charged amount and on raising the bill for the same. The Hon’ble High Court has further held that the recovery of the amount of the impugned bill cannot be said to be hit by the provisions of section 56 (2) of the Electricity Act, 2003, as such the amount of impugned bill cannot be said to be unrecoverable and barred under section 56 (2) of the said act.
37. Learned Counsel submitted that the before raising a bill, no notice is ever given to the consumer and further there is no requirement in any statute /

Act / Rules / Regulations / Tariff to give a notice or opportunity of hearing to the consumer before raising the bill.

38. Learned Counsel submitted that low power factor causes adverse effect on electrical transmission / distribution system and increases the power loss in transmission lines due to unnecessary reactive power present in the system which varies as the square of the resistive current or as the inverse of the power factor and low power factor increases, the voltage drops in the transmission line.
39. Learned Counsel submitted that CEA Grid connectivity standards also speak that power factor of the distribution system and bulk consumer shall not be less than 0.95 and all State utilities have mandated for installation of shunt capacitor or capacitor bank by the LT/HT industrial consumers. He further stated that the capacitor bank and harmonic filter installed in the premises of the petitioner UML was found defective, at the time of inspection.
40. Learned Counsel quoted the Clause 3.3.1 and 3.3.4 of the JSERC (Electricity Supply Code) Regulations, 2005 as under:

*“3.3.1 The distribution licensee shall recover the electricity charges for the electricity supplied to the consumer as per tariff determined by the Commission from time to time in accordance with the provision of Electricity Act, 2003.*

*3.3.4 The charges for electricity supplied may include fixed charges, energy charges, minimum charges and all other surcharges including FPA, DPS as per tariff in force from time to time.”*

If further expressed that tariff includes fixed charge, energy charge, power factor surcharges, power factor rebate, voltage rebate, timely payment rebate etc. and the contention of the petitioner that the tariff determined by this Commission is not applicable to the petitioner in its entirety, but is applicable to the extent as agreed in the contract between the parties is contrary to the Electricity Act and the Regulations made thereunder.

41. Learned Counsel submitted that as per the bilateral agreement between the parties the 132 KV tariff is applicable to the petitioner in case it draws power from JSEB system and the 132 KV tariff is inclusive of rebate as well as surcharge and the petitioner cannot claim only the rebate part leaving the surcharge.
42. Learned Counsel submitted that there is no specific provision of the voltage rebate in the agreement, but the petitioner is availing voltage rebate constantly. The voltage rebate as well as power factor surcharge / rebate are levied to the consumers as per the tariff. He emphasized that any surcharge /



rebate are being imposed / allowed to any consumer in view of impact of the same on transmission / distribution system.

43. Learned Counsel submitted that the demand of power factor surcharge has been raised upon the petitioner is in consonance with the Electricity Act 2003, JSERC (Electricity Supply Code) Regulations, 2005, Rules and Regulations made thereunder, prevailing Tariff from time to time and on the principles of maintaining grid discipline. Hence, the impugned bill amounting to Rs.47,15,41,324/- is in accordance with the Tariff Order issued by this Commission and does not require any interference.

### **Commission's Findings**

44. The fundamental issue to be decided first is whether the petitioner is a generating company, and the dispute is between a generating company and the distribution license under section 86 (1) (f) as has been claimed by the petitioner, or the petitioner is a consumer and the dispute is between a consumer and the distribution licensee to be covered under section 56 (2) of the Act, as has been submitted by the respondent.
45. This is important because applicable laws on the jurisdiction of the Commission, laws of limitations, and Judgments of the Superior courts on these two provisions of the electricity Act 2003 are quite distinct.
46. Claiming that it is a Captive Power Plant with manufacturing facilities which require exchange of power through grid with the respondent JUVNL, the petitioner filed this petition under section 86 (1) (f) & (k) before this Commission. Section 86 (1) (f) covers the dispute between a generating company and a distribution licensee and gives the State Commission jurisdiction to adjudicate.
47. The respondent vide its affidavit dated 12.12.2015 challenged the maintainability of the petition before the Commission and submitted that the dispute is between a consumer and a distribution licensee, and is covered under section 56(2) of the Act. This Commission therefore has no jurisdiction in the matter.

The relevant submission of the respondent is quoted below:

*“6. That the prayer made in the application filed by and on behalf of M/s Usha Martin Ltd. is not maintainable before this learned Commission. The petitioner has attempted to bring this dispute under section 86(1)(f) and (k) of the Electricity Act, 2003 (Act) but the fact remains that the petitioner is merely having a captive power plant/captive generating plant which cannot permit them to claim themselves as a generating company. The present matter is not maintainable before this learned Commission in the form as claimed and since the dispute being raised by the petitioner can at*

*best be said to be a consumer dispute, in view of the law laid down by the Hon'ble Supreme Court in the case of Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. & Ors. [(2007) 8 SCC 381], the petitioner can only approach the Forum or any other competent court as per law.*

*7. That in the aforesaid judgment namely, [(2007) 8 SCC 381] the Hon'ble Supreme Court very categorically held that the State Commission has only power to adjudicate upon disputes between licensees and generating companies, thus unless this learned Commission holds and recognizes the petitioner's CPP in particular or the petitioner in general as a generating company, the dispute being raised by the petitioner shall be treated to be an individual consumer's grievance which cannot be adjudicated upon by this Commission as per the law laid down by the Hon'ble Supreme Court.*

*8. That admittedly, this learned Commission has only recognized and notified Jharkhand Urja Utpadan Nigam Limited, Tata Power Company Limited, Tenughat Vidyut Nigam Limited, Rake Power Limited as generators in the State of Jharkhand, so far the Commission has not recognized or notified the petitioner M/s Usha Martin Limited or its unit as a generating company or generator operating in the State of Jharkhand, thus as a preliminary issues this learned Commission must decide as to whether the petitioner can be treated to be a generating company to maintain the instant proceeding and if this Commission is of the view that the petitioner cannot be treated to be a generating company only because of having a small captive power plant, the connected dispute may not be entertained and the petitioner may be asked to approach a competent forum/court as per law."*

48. After hearing both the parties, the then Commission headed by Hon'ble Justice (Retd.) N.N. Tiwari alongwith Hon'ble Member (F) Shri Sunil Verma, decided that the dispute is covered under section 86 (1) (f) and the Commission has the jurisdiction in the matter. The relevant part of the Order of the Commission dated 08.02.2016 is quoted below:

*"The respondent had raised preliminary objection regarding the maintainability of the petition.*

*The main objection of the respondents was that the case is regarding the dispute of energy bill between a consumer and the licensee and the same does not fall within the ambit of Section 86(1)(f) of the Indian Electricity Act, 2003 (hereinafter referred to as "the Act") and the petition is not maintainable before the Commission. He further submitted that the hearing on this preliminary point continued for several dates and the case was finally fixed "For Orders" on the preliminary issue. Subsequently the petitioner discovered some additional points/documents and prayed for and was allowed to bring the same on record.*

*Learned counsel submitted that in view of the decisions of the Hon'ble APTEL brought on record, the preliminary issue is not longer 'res integra'. The petitioner is not only a general consumer but also having a captive power plant and the Hon'ble APTEL, in his various decisions, has held that captive power plant is also a Generating Company within the meaning of Section 2(28) of the*

*Indian Electricity Act and the dispute between the Captive Generating Plant and the Licensee falls within the ambit of Section 86 (1)(f) of the Act and the State Electricity Regulatory Commission has got jurisdiction to entertain and adjudicate upon disputes arising between the Captive Power Plant and the distribution licensee.*

*Learned counsel has referred to and relied on the following decisions of the Hon'ble APTEL: (i) APTEL Case No. 116 of 2009 (IA No. 218 & 219 of 2009) (Chattisgarh State Power Distribution Company Ltd., Daganiya, Raipur Vs. Hira Ferrow Alloys Ltd., and others); (ii) APTEL: Appeal No. 120 of 2009 (Chattisgarh State Power Distribution Company Ltd. Vs. Godawari Power & Ispat Limited); (iii) APTEL Case No.270 of 2009 (Chattisgarh State Power Distribution Company Ltd. Vs. Shri J.P. Saboo, Urla Industries Association Limited and other Power & Ispat Limited) and (iv) APTEL Appeal No. 25 of 2010 (Chattisgarh State Power Distribution Company Ltd., Daganiya, Raipur Vs Arshmeta Captive Power Company Limited and others).*

*Though opportunity was given to the respondents to meet the said contention and submissions of the petitioner base on the aforesaid decisions of the Hon'ble APTEL, no material has been brought on record to controvert the same.*

*Since the decision of the Hon'ble APTEL is binding on the Commission, there is no option than to hold that the petition is maintainable.*

*In view of the above, the preliminary issue is accordingly, decided in favour of the petitioner”.*

49. The respondent JUVNL filed a review before the Commission against the above finding of the Commission that the dispute is covered under section 86(1) (f) of the Electricity Act, which gives jurisdiction to the Commission to adjudicate disputes between a generating company and a distribution licensee.
50. The then Commission vide Order dated 14.06.2016 rejected the review petition of the respondent and concluded that the dispute is between generating company and a distribution licensee.

The relevant part of the Order of the Commission dated 14.06.2016 is quoted below:

*“Having heard the learned counsels, we find much substance in the contentions of the petitioner which is also supported by the decision of the Hon'ble Appellate Tribunal for Electricity. At the time of passing the order on the preliminary issue of maintainability the decisions of the Hon'ble Appellate Tribunal for Electricity were considered and relied upon. There is no denial on behalf of the respondents that the petitioner has made his claim on the basis of being a captive generating plant which according the decision of the Hon'ble Appellate Tribunal for Electricity is not a general consumer rather is a generating plant and a dispute at their instance falls within the adjudicatory jurisdiction of the State Commission.*

*In view of the above, the order is well reasoned and based on the binding decision of the Hon'ble Appellate Tribunal for Electricity. There is, thus, no error in the order warranting recall/review of the same."*

51. The respondent again filed a petition and made the submission before the Commission on 16.11.2017, for recalling the order dated 08.02.2016 and order dated 14.06.2016, by which the Commission had concluded that the petition under consideration is a dispute between a generating company and the distribution licensee and is covered under section 86 (1) (f), and the Commission has the jurisdiction to decide the matter.
52. However, on 12.12.2017, the respondent withdrew its petition for the recall/review of the order.
53. Thus, the matter has been conclusively settled in this case that the dispute is between a generating company and a distribution licensee, and is covered under 86 (1) (f) & (k) and is to be decided by the Commission. It is not open to us at this stage to take a contrary view in the matter, and therefore we proceed to further examine this matter as a dispute between a generating company and a distribution licensee.
54. Hence, the laws, regulations, and judicial pronouncements relevant for deciding the present case are those applicable under section 86 (1) (f), for disputes between a generating company and a distribution licensee, and not those relevant for a dispute between a consumer and distribution licensee covered under section 56 (2) of the Act.
55. Next issue to be considered is whether the petitioner is liable to pay power factor surcharge or not.
56. The petitioner's claim is that the relationship between the petitioner and the respondent is entirely covered by the agreements signed between them; and the tariff order applicable for the general consumer which provides for power factor surcharge is not applicable for the petitioner at all. We examined the agreements between the parties in detail. The relevant extracts of the agreement dated 27.04.2009 is quoted below:

**"3. CONTRACT DEMAND**

*3 (i) UML shall have the contract demand of 46.11 MVA from the date of execution of this agreement.*

*3 (ii) Minimum billing to UML shall be at the agreed contract demand of 46.11 MVA w.e.f. the date of execution of this agreement with JSEB irrespective of full/part generation of CPP and its load condition. The bill shall be raised for 46.11 MVA or on the actual recorded demand whichever is higher, at the normal rate of demand Charge applicable for 132 KV HTS tariff of JSEB during the month provided the recorded maximum demand does not exceed the contract demand.*

.....

4. SCHEDULED OUTAGE OF CPP

*During the scheduled outage of CPP, for a period not exceeding 45 days in a year, UML may draw power upto its full demand i.e 135 MVA from JSEB system on the following terms and conditions:*

*4(i) In case the Scheduled outage is completed within 30 days, UML shall pay demand charge (for the Contract Demand or the recorded maximum demand whichever is higher) for the whole month. UML shall also pay the MMG/MMC on pro-rata basis for the days of outage if the units (KWH) consumed/Charges fall short of the MMG units/charges on the basis of the recorded maximum demand or contract demand whichever is higher. **132 KV HTS Industrial tariff of the Board shall be applicable.***

*(Emphasis added)*

.....”

57. It has clearly been mentioned in the agreement that 132 KV EHT/HTS tariff of JSEB will be applicable for billing purpose and as per the JSERC (Electricity Supply Code) Regulations 2005 tariff comprises of energy charges, demand/fixed charges, power factor rebate/penalty, load factor rebate, voltage rebate etc.
58. Also, for any Generator/bulk user connected to the Grid, it is mandatory to maintain the healthiness of the equipment installed in their (Generator/ bulk user) premises and if there is any failure of such equipments, it must be immediately communicated to Grid owner / SLDC to get the Grid discipline strictly maintained. UML was asked by the Commission vide order dated 07.07.2018 in this case to provide the Equipment Maintenance History Register (Comprising Shunt Capacitor) and approved schematic diagram of the switchyard in their premises but UML failed to submit it. Moreover, PF surcharge is simply in a way, cost to energy consumed and non-billing / non-recovery on the part of JSEB / licensee is just a loss of public money which will overburden general consumers due to negligence on their part.
59. We, therefore, conclude that maintenance of power factor is fundamental for maintaining grid discipline. Careful and closer reading of agreements along with the Electricity Act 2003, Rules and Regulations made thereunder, JSERC (Electricity Supply Code) Regulations, 2005, Tariff Orders issued from time to time, and the principles of maintaining grid discipline imply that the petitioner is required to pay the power factor surcharge as per the applicable tariff even if their relationship with the respondent is taken to be that of a generator and a distribution licensee governed by the agreements between them.

60. Having held that the petitioner is liable to pay the power factor surcharge, the issue to be now determined is whether the demand is barred by the limitation.
61. As submitted by the respondent through there additional written submission that the limitation Act has no applicability before the proceedings of the Commission.

The relevant para of the additional written submission is quoted below:

*“That it may be relevant to mention here that the LD. APTEL as well as the Hon’ble Supreme Court of India has clearly held that the Limitation Act is inapplicable before the State Commission. Reference be had to a Judgment reported in 2014 (11) SCC 53, and the one passed by the Hon’ble Appellate Tribunal for Electricity at New Delhi in Appeal No. 169 of 2013 on 1<sup>st</sup> July, 2014 in the matter of GRIDCO Limited Vs. M/s. Bhushan Power & Steel Limited.”*

62. Also, to the query raised during the hearing, the respondent submitted that no limitation at all will be applicable even if the bill is raised after 25 or 30 years, as statute does not provide for it. Learned Counsel submitted that it is a settled law by various judgments of the Hon’ble High Court of Jharkhand & Delhi.
63. Learned Counsel further submitted that Section 17(1) of the Limitation Act, 1963, provides that the limitation period in case of fraud or mistake begin from the date of discovery of such fraud or mistake.

The relevant part of the section reads as follows:

***“17. Effect of fraud or mistake – (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act, -***

- (a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
- (b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*
- (c) the suit or application is for relief from the consequences of a mistake; or*
- (d) Where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;*

*the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document of compelling its production:.....”*

64. This provision of detection of fraud or mistake is not applicable in the present case as the respondent admittedly knew the dispute relating to low power factor as far back as on 14.09.2008 when it raised penalty for the

power factor for the first time, and again on 14.09.2010., when it raised the second bill with the power factor penalty.

65. In this regard, Hon'ble Supreme Court, in the case A.P. Power Co-ordination Committee Vs Lanco Kondapalli Ltd (2016) 3SCC 468, (Para 31), held that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court.
66. Relying on the above judgement of the Hon'ble Supreme Court which is of 2016, we feel that such an interpretation with an open ended power to the distribution licensee, to raise bills and claims, after keeping the matter pending for more than a decade would be arbitrary and violative of law of limitation and natural justice. A business entity producing goods and services factors in the cost of electricity before it sells its products in the market. If the distribution licensee is allowed to go back to indefinite period to raise its claims, the business entity would be in a disastrous situation as it cannot claim the higher cost of production for products sold long before. The law of limitation is the legal provision of the rules of prudence requiring any party to be vigilant to protect its rights. The whole purpose of law of limitation is to disentitle a party to recover its clam if it has been sleeping over its right indefinitely.
67. Accordingly, we hold that JUVNL cannot make any claim in respect of power factor surcharge for a period prior to 3years from 31.10.2014, the date on which the impugned bill was issued.

### **ORDER**

68. In view of the findings and reasons recorded above the impugned bill dated 31.10.2014, covering a period from April 2002 to September, 2014, is set aside and quashed. Keeping in mind the limitation of 3 years as per the Limitation Act, the respondent is directed to raise a fresh bill covering the period from October 2011.
69. In view of the above findings and orders this petition is disposed off.

Sd/-  
Member (E)

Sd/-  
Chairperson