

**Introduction to Law on Electricity**  
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**Lecture: 11**  
**Captive Power Plant and Dedicated Transmission Line**

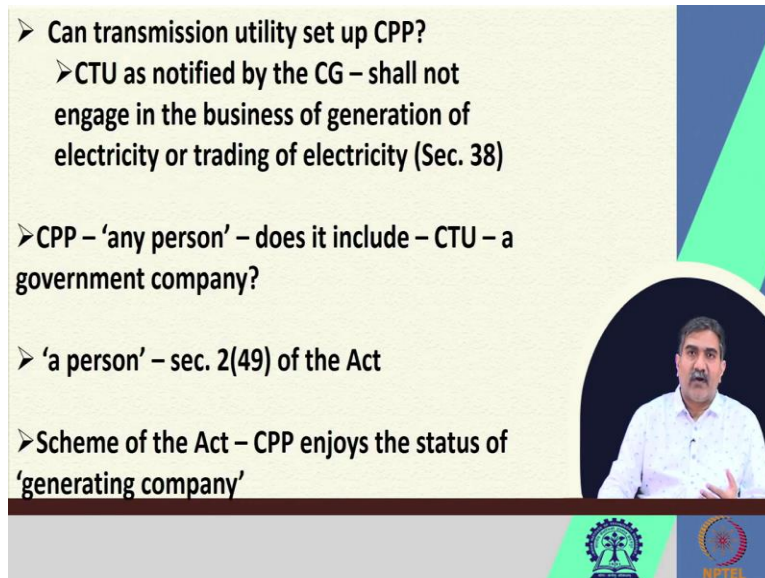
Welcome to all of you again, a new session of the course of Introduction to Law on Electricity. Today, we will be studying captive power plant, which we have also discussed in the last session. And along with that, we will also be discussing dedicated transmission line.

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Now, these are the two concepts which we will be covering today. As I said to you, that I have already given you the idea about the captive power plant, what is the provision, what are the requirements which are laid down, and how the quantification is being done.

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- Can transmission utility set up CPP?
  - CTU as notified by the CG – shall not engage in the business of generation of electricity or trading of electricity (Sec. 38)
- CPP – ‘any person’ – does it include – CTU – a government company?
- ‘a person’ – sec. 2(49) of the Act
- Scheme of the Act – CPP enjoys the status of ‘generating company’

Now, in this regard, I would like to discuss some of the cases with you in order to make the concept clear. And also, to highlight that what kind of issues which have come before the court of law in this issue. And how the captive power plant has been discussed by the court or by the tribunal to clear the ambiguity on the matter.

Before I come to the case laws, I want to raise an important question. The question is that, whether transmission utility be allowed to set up captive power plant? Because when you look at the definition which is given of captive power plant under Section 2 Subsection 8, you would find that it connotes the term any person, who shall be allowed to establish captive power plant for one’s own use, for his own use.

Now, the question is that going by the liberal understanding of the term person, should we allow the transmission utility to also establish captive power plant because we know very well that in the scheme of the Electricity Act, for one’s own consumption an entity is encouraged to establish captive power plant because of the cost issue, because of the efficiency issue, because of the very fact that it does not involve a larger setup.

So, all these factors contribute to the growth of captive power plant on the one hand and also, the players in the market, they are being encouraged to go for it for the reliable

supply of electricity, for the efficient supply of electricity because it is well understood that in captive power plant, the technical and commercial losses will be minimal.

And that is the reason why it has been suggested that why the bigger firms, bigger industries, they generally go for captive power plant. Now, taking the clue from the position, should the transmission utility also establish it? Now, plain reading of the term any person, the way we read it in the legal context, it includes juristic person, it includes natural person.

Now, look at the law to understand the definition of transmission utility. And here, at this instance, we are looking at the definition of central transmission utility, which is given under Section 38. Now, Section 38 says that central transmission utility shall be notified by the central government. So, central government has to notify that an entity is to be considered as central transmission utility under Section 38.

And generally, this will be a company registered under the Companies Act. Now, when you look at the language of Section 38, you would find that under Section 38, transmission utility is prohibited to carry on a business related to generation or trading. There is a very clear embargo which is been laid down under the Act, that they should not be engaging into the business of generation or trading of electricity.

And the rationale is that because they are expected to conduct their affair in a non-discriminatory manner, the law has suggested to eliminate any sort of conflict of interest involving generating company and the transmission utility.

So that when they are making the infrastructural level, they should not get guided by any kind of biasness. Because if they will not have any interest in the generating company, if there is no stake in the generating company, then they will not facilitate the conveyance of electricity through their infrastructure for the generating companies.

So that is what the idea is. When you look at Section 38, the idea is to make them independent of the activities, taken care the activities carried out by the generating companies. Now, when you look at the definition which is given of a person under Section 2(49), for your reference, I will read the section, which says that person shall

include any company or body corporate or association or body of individuals whether incorporated or not, or artificial juridical person.

This is how the Electricity Act defines the term, a person. Now, going by this definition, apparently, it appears the transmission utility is a person. And if transmission utility is a person, then why not transmission utility should be given advantage of Section 2(8), which defines captive generating plant as a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any cooperative society or association of persons for generating electricity primarily for use of members of such cooperative society or association.

So, why should transmission utility not be given the benefit? Why they should not be allowed to establish the captive power plant? Now, the reading of the bare provisions, certainly help us in building the argument that they are eligible to establish. And therefore, a viable argument can be placed that because they satisfy the definition of person, and because of the term used under Section 2 Subsection 8 of the Act, they should be very well be allowed to set up.

Now, should we allow this understanding, this interpretation of the law, where we read the provisions in fragmented manner? And give the benefit to an entity which is not envisaged under the Act. Now, this argument will not be tenable. The reason being the scheme of the Act. We need to read the very scheme, the object in a composite manner. The whole Act needs to be read together, and not in a piecemeal manner.

That is what is a fundamental rule of interpreting legal provision, interpreting a law. And when you apply this understanding, then you come to this conclusion that captive power plant except for the concessions indicated under Section 9, it operates as a generating company. And what is the concession? As I have discussed in the last session that no surcharge is to be levied under Section 42 of the Act if it is for one's own use. That is what is the benefit which has being given.

And we know very well that in pursuant to the Electricity Policy that I was discussing, the captive power plant is very well allowed to sell this surplus electricity. So, for that

purpose, it becomes a generating company. And if the law has purposefully conferred the status of generating company, then by no imagination, transmission utility should be allowed to engage into the activities which are prohibited under the law.

In this case, the clear demarcation is laid down under the Act. And what is that clear demarcation? That transmission utility shall not be allowed to engage into generating activities. Therefore, the reading of Section 2(49), reading of Section 2 Subsection 8, reading of Section 9 needed to be taken in the context of the scheme of the Act.

And scheme of the Act suggests competitiveness, it suggests non-discrimination, it suggests open access. And all this is aimed to bring in professionalism for the larger benefit of the power sector. And that is why, we must build this understanding that transmission utilities shall not be allowed to set up captive power plants.

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➤ **Jayaswal Neco Industries Ltd. V. Chhatisgarh Electricity Regulatory Commission (APTEL, 2011)**

➤ **Two different CPP – the appellant contended that combined use of electricity should be considered.**

➤ **Held: Requirements under Rule 3 are distinct and separate – each of the two plant has to meet with each of the two requirements.**

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Now, moving further, I want to give you few case laws; I want to bring to your notice certain case laws which gives an idea that how the dispute has revolved around the interpretation of the captive power plant and what has been the clarification given by the tribunal or by the court.

Now, this one is a very interesting case. Jayaswal Neco Industries versus Chhatisgarh Electricity Regulatory Commission. In this case, what has happened, it is a decision of

the appellate authority in the year 2011. The appellant establishes two captive power plants. And in two captive power plants, in the first one, there was captive power plant with two different capacities.

And the other one, where there was only one captive power plant with a different capacities. So, in total, there were three captive power plants which were being established. But the two power plants were under the same umbrella, which was established by the appellant. And the one was under different umbrella where this appellant was having majority shareholding.

Now, as per the law laid down, which we have learned in the last session, that in order to enjoy the benefit of the captive power plant, there shall be minimum 51 percent of the consumption of generated electricity. Now, in this case, what has happened, that the appellant, Jayaswal Neco, which was owning two plants, and having a majority shareholder in other captive power plant, cumulatively using more than 51 percent.

When it was brought to the notice of the regulatory commission that the consumption is not distinct or segregate. It is not that, 51 percent is for first set of captive power plant and 51 percent for the other set of captive power plant. It was cumulative. It was taken all three together. Then Regulatory Commission sent a notice to the appellant seeking his clarification that why the appellant should not be considered to be a generating company and why it should not be considered that it loses the status of captive power plant?

Now, in this case, Jayaswal Neco presented this argument. That let there be, let the calculation be based on collective uses. That what is the total sum and out of that whether 51 percent is consumed or not. The Commission did not agree, and the matter came before the appellate tribunal. The appellate tribunal also said that when you look at the language of Rule 3 or Section 2 Subsection 8 or Section 9, the word a is prefixing before captive power plant.

This word A signifies that the requirement laid down under Section 3 must be fulfilled in relation to that generating plant, not by taking all of them together and fulfilling the criteria laid down under the law. So, the court, this is what is important; as a law student,

we need to learn that how to read the statutory provision. When you read, that is why, you need to focus on the reading of the bare Act.

It is extremely advisable that one should be very, very careful in reading the language which is given in the Act. Because no expression is being used without any purpose. And in this case, very rightly, the appellate tribunal emphasized on the word a. And said, look at the way, it is placed at all the places, be it Section 2 Subsection 8, be it Section 9 or Rule 3 of 2005.

And on this premise, the court, the tribunal said that each of the two plants to meet with each of the two requirements. What are the two requirements? One is on the consumption, 51 percent, another is on the ownership, that is, 26 percent.

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➤ **JSW v. Maharashtra Electricity Regulatory Commission (Appeal No. 311 of 2018)**

➤ **Does the law recognise captive consumer and converted captive user (Group Captive Power Plant)?**

➤ **Can there be imposition of surcharge on such converted user?**

➤ **Held: Only recognition 'CPP' and 'Captive User'**

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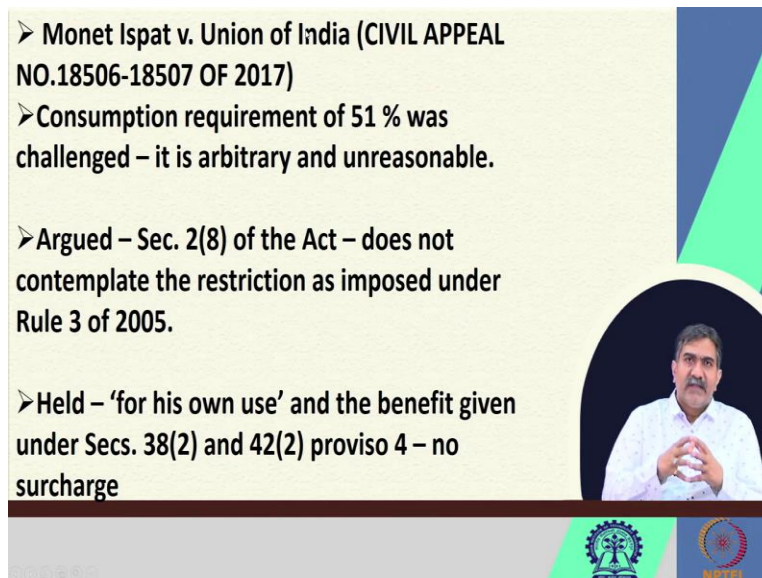
Now, look at another important case. In this case, a question was being raised that whether captive user for the purpose of applying the law be classified into two different categories. One is the captive user, and other is the converted captive user. Why this question was brought in? Because independent power producers, they converted themselves to captive generating plant and from there, they started drawing the benefit which is being accorded in the law to the captive user.

And what is that benefit? As given under Section 9, read with Section 42, no surcharge and no license. So, the question was raised that whether once the conversion happens, what was not earlier a captive generating plant. If it gets converted into captive generating plant, and whether the end user becomes converted captive user, can there be a surcharge in that situation?

Now, here again, the careful reading of the law was done by the court. And in this case, the court said that when you look at the language, the only recognition is of the captive power plant or captive generating plant and captive user. So, if the independent power producers decide to convert their status from independent power producer to captive generating plant, what they need to comply is, comply with Rule 3 of the Electricity Rules of 2005.

If they are complying with it, they will get the benefit given under Section 42, that is, no surcharge. If they do not comply, they will be treated as a generating company. So, the court said in this case that otherwise, it would be a wrong classification of captive user and converted captive user for the purposes of levying surcharge.

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➤ **Monet Ispat v. Union of India (CIVIL APPEAL NO.18506-18507 OF 2017)**

➤ **Consumption requirement of 51 % was challenged – it is arbitrary and unreasonable.**

➤ **Argued – Sec. 2(8) of the Act – does not contemplate the restriction as imposed under Rule 3 of 2005.**

➤ **Held – ‘for his own use’ and the benefit given under Secs. 38(2) and 42(2) proviso 4 – no surcharge**



This is another important case. Monet Ispat versus Union of India. Here, the appellant has raised a very fundamental question, and that is the very formulation of the criteria to



identify captive generating plant. The appellant said that look, the language of Section 2(8) says that any person can establish the generating plant, and it acquires the status of captive generating plant if the consumption is for one's own use.

So, the appellant says from where this criteria of 51 percent is coming. Appellant says this is an arbitrary fixation of the quantum. Appellant says that it is a case of excessive delegated legislation under Section 176 of the Act, which allows the government to formulate rules to make the law operational, said that no such power is given. From where this 51 percent is coming?

If it is for one's own use, going by the language of Section 2(8), it shall be considered as captive generating plant. Now, very interesting argument, which was indicated. Now, in this case, the court said, and matter went all the way to the Supreme Court; Supreme Court said that look at the scheme.

There are certain benefits which are given to captive generating plant. And there, technically for the purpose of law, legally speaking, enjoys a distinct status than the generating company. And that is what is clearly envisaged under the Act when you read section 38(2) or 42(2) proviso 4.

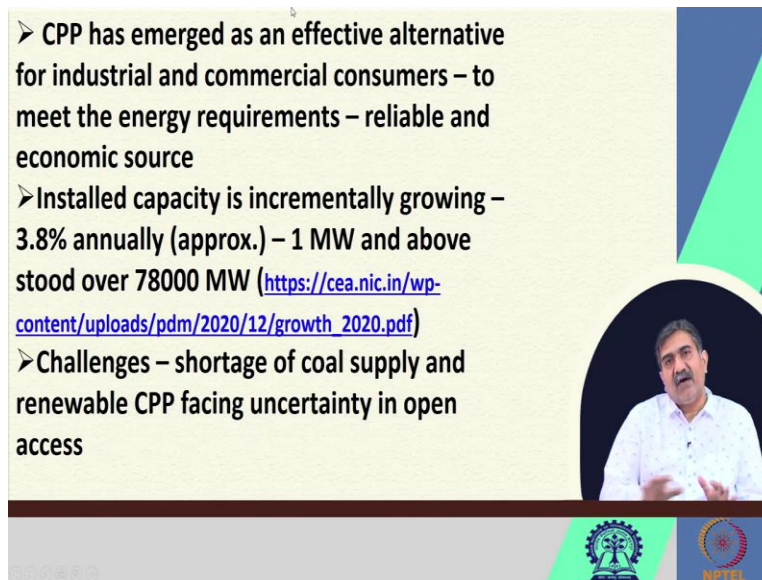
And what is that? That they get certain concession. As I said, no surcharge. So, which all entities shall be eligible to enjoy this? That is something which is needed to be defined under the law. And because the main Act has not defined it, it is the responsibility of the government to frame the rules in pursuant to the relevant provision.

And that is how the government has done it because Section 2(8) says for his own use. So, how this expression has to be understood? How do we understand that it is for one's own use? Because Section 9 Subsection 2 also allows captive generating plant to supply the electricity to licensee or to the consumer.

As I said in the last session that electricity should not be allowed to go waste. And therefore, they are allowed to sell the surplus electricity. So, what shall be the criteria? In order to determine the same, this 51 percent formula was laid down.

And thus, the court, in this case, suggested that the rule laid down in pursuant to Section 176 of the Act is a valid rule, and it is not arbitrary; it is not unreasonable.

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- **CPP has emerged as an effective alternative for industrial and commercial consumers – to meet the energy requirements – reliable and economic source**
- **Installed capacity is incrementally growing – 3.8% annually (approx.) – 1 MW and above stood over 78000 MW ([https://cea.nic.in/wp-content/uploads/pdm/2020/12/growth\\_2020.pdf](https://cea.nic.in/wp-content/uploads/pdm/2020/12/growth_2020.pdf))**
- **Challenges – shortage of coal supply and renewable CPP facing uncertainty in open access**

Now, let me conclude this discussion on captive power plant and then I will move to dedicated transmission line. It appears that the very liberal design which has been given under the law to encourage the captive generating plant has been successful. Captive power plant is being flourishing in this country.

Particularly, it is coming as a great rescuer for industrial and commercial consumers. For the very reason that it is more reliable, it is economic and also for meeting the energy requirements. They need not depend upon grid-based electricity. They have their own source and therefore, they can very well plan their activities accordingly, and they can minimize the dependency on grid-supplied electricity.

And that is what I was also indicating that large industries, they are establishing captive power plant, good in number. And when you look at the installed capacity, you would find that the installed capacity of captive power plant has been growing phenomenally. The installed plant of 1 megawatt and above capacity is something around 78,000 megawatts. And this certainly eases the burden on grid, and also, contributes in the growth of the power market. Having said so, there are challenges.

Challenges are based on multiple fronts; prominently, one is fuel, and the other is the regulatory. Majority of the captive power plant is coal based, and shortage of supply of coal is a matter of concern. Though the government has now come up with the liberalized regime on allotment of coal blocks, and that certainly would improve the situation. And the second one is the uncertainty in providing open access to renewable captive power plant. So, these are certain challenges which are there.

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➤ **Group Power Plant – taking undue advantage of privileges given –**

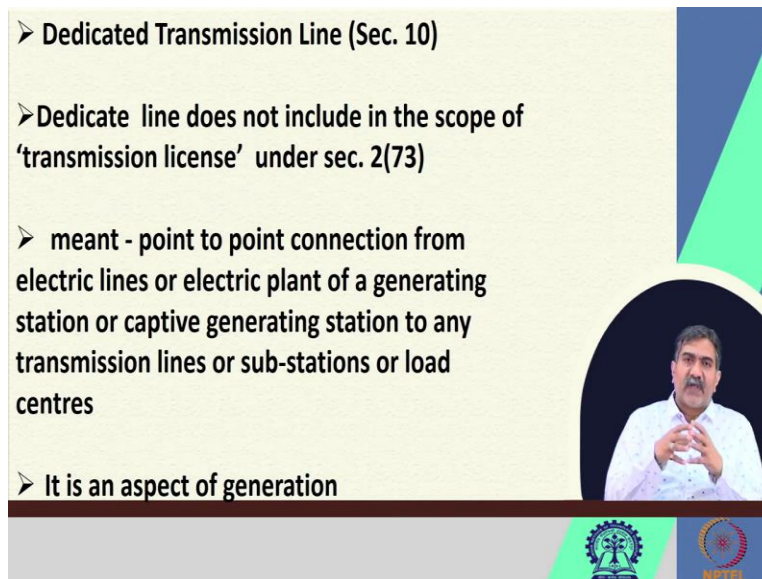
- suggested to amend the rule
- **Ownership in terms of value of capital along with voting rights not only in terms of number of shares**

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The other one is, sort of misuse of the provision where as I said, one instance we have seen about the case where group, independent power producers converting into captive generating plant. The other is group power plant coming together and claiming the status of captive generating plant. And in that, what happens is that the way the captive generating plant, they have been established, somewhere, they deviate from the defined rule.

And that is why it has been suggested in 2018; there is an amendment which has been proposed in the rule that as far as the ownership criteria is concerned, it is advisable that the value of capital is to be taken note of for the purpose of 26 percent and not in terms of number of shares which is there. So that the undue advantage, not to be allowed to be taken by the market players. So, this is on captive power plant.

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➤ **Dedicated Transmission Line (Sec. 10)**

➤ **Dedicate line does not include in the scope of 'transmission license' under sec. 2(73)**

➤ **meant - point to point connection from electric lines or electric plant of a generating station or captive generating station to any transmission lines or sub-stations or load centres**

➤ **It is an aspect of generation**

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Now, let me also discuss on dedicated transmission line. If you look at the language of Section 10, you would find that generating company is allowed to lay down dedicated transmission line. I have also discussed briefly in the last session. Now, this dedicated transmission line is allowed to be set up by the generating company.

Now the question is that when generating company sets up a transmission line, and which is of long-distance, whether that transmission line acquires the status of transmission utility. And thus, such utilities, or in such a situation whether there is a need to obtain transmission license. Because except generation, all other activities are licensed activities.

Now, the question is that when the dedicated transmission line is being established by the generating company, should they be allowed to, or should they be compelled to go for obtaining the license to carry on the transmission activity? Now, when you look at the definition which has been given of transmission license and the way dedicated transmission line has been defined under the Act.

Dedicated transmission line has been defined that point to point connection from electric lines or electric plants of a generating station or captive generating station to any transmission lines or substations or loads at centers. So, by definition of dedicated

transmission line, it is clearly indicated that under the law, the very activity connected with laying down the transmission line up to transmission utility is the job of the generation. That's how the law has been defined.

It says that dedicated transmission line is being ideally designed under the law, so that generating company can lay down its own infrastructure for evacuating the power from the source to the, if it is for one's own use for captive generating plant, up to that or up to the transmission utility. And considering this aspect, considering this clarification, it is suggested that dedicated transmission line is for the purpose of law and aspect of generation.

It is not crossing the boundary and acquiring the status of transmission utility. And for this purpose, they shall be given the same treatment as it is provided in the law for the generating company. And they should not be considered as transmission utility and the necessary law shall be applicable accordingly. So, this is what is important to understand. So, this is all for today's session. Thank you very much.