APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

(APPELLATE JURISDICTION)

IA NO. 1501 OF 2018

IN

APPEAL NO. 232 of 2014

Dated : 4th January, 2019

PRESENT:HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

IN THE MATTER OF :-

PUNE POWER DEVELOPMENT PRIVATE LIMITED

H 1. "Heera', Heera-Moti Society
Pune – Mumbai Highway
Wakademadi, Shivajinagar
Pune – 411003, Maharashtra

…APPELLANT

AND

1. KARNATAKA ELECTRICITY REGULATORY COMMISSION
   9/2, 6th and 7th Floor
   Mahalaxmi Chambers, M. G. Road,
   Bengaluru – 560001, Karnataka

2. Mangalore Electricity Supply Company Ltd.,
   Paradigm Plaza, 4th Floor,
   9/2, 6th and 7th Floor
   Mahalaxmi Chambers, M.G. Road,
   Mangalore-575101, Karnataka

3. Power Company of Karnataka Ltd.
KPTCL Building
Cauvery Bhavan
Bengaluru – 560009, Karnataka **...RESPONDENTS**

Counsel for the Appellant(s) **:** Ms. Deepa Chawan,
Mr.Hardik Luthra
Mr. Ravindra Chile
Mr. Alok Shukla

Counsel for the Respondent(s) **:** Mr. Sriranga S.
Mr. Balaji Srinivasan
Ms. Srishti Govil
Ms. Pallavi Sengupta
Ms. Pratiksha Mishra
Mr. Mayank Kshirsagar for R2 & R-3

ORDER

PER HON'BLE MR. JUSTICE N. K. PATIL, JUDICIAL MEMBER

PRAYER

1. For the aforesaid facts and circumstances, it is therefore most humbly prayed that this Tribunal may kindly be pleased to –

(i) clarify/modify the order dated 04.09.2018 passed in Appeal No. 232 of 2014 by this Tribunal to the effect that the impugned order dated 10.07.2014 is set aside to the limited extent to which it has been challenged in captioned appeal and to this limited extent the matter

may stand remitted back to the First Respondent/State Regulatory Commission for reconsideration.

(ii) Pass such further order/s as this Tribunal deems fit and proper in the interest of justice and equity.

For such act of kindness, the applicant/appellant, as is duty bound shall every pray.

2. The grievance of the Appellant is that this Tribunal while passing the order dated 04.09.2018 had also observed that the impugned order dated 10.07.2014 has been partly challenged by the Appellant. This Tribunal in Para 4 at page 6 and 7 has referred to as under :-

> "….Not being satisfied with the impugned order passed by the first Respondent herein, the Appellant, questioning the correctness of the Impugned order of the First Respondent to the extent it allows the claim of the Appellant qua open access charges and trading margin, which has been allowed, has not challenged."

3. Further, it is the case of the Applicant/Appellant that though this Tribunal had observed in the order dated 04.09.2018 that the appeal as preferred by the Applicant/Appellant was limited to the extent of challenging the direction of the respondent commission so far as the Appellant herein was directed to pay a sum of Rs. 1,14,62,742.90 (Rupees One Crore Fourteen lacs Sixty Two Thousand

Seven Hundred Forty Two and Paise Ninety only) to the Respondent (MESCOM), however, the order dated 04.09.2018 in Appeal No. 232 of 2014 inadvertently stated in Para 25 as under :-

> "25. Having regard to the facts and circumstances of the case as stated above, the Appeal filed by the Appellant is allowed, the Impugned Order dated 10.07.2014 passed in the Original Petition No. 20 of 2009 on the file of Karnataka Electricity Regulatory Commission, Bengaluru is hereby set aside….".

4. The Applicant/Appellant in view of the above stated facts and circumstances is approaching this Tribunal seeking clarification of the order dated 04.09.2018 to the effect that the captioned appeal preferred by the Applicants/Appellants being limited in challenge to the extent of allowing interest on the assessed value of the quantum of electricity, directing the Applicant/Appellant to pay a sum of Rs. 1,14,62,742.90 (Rupees One Crore Fourteen Lacs Sixty Two Thousand Seven Hundred Forty Two and Paise Ninety only) is set aside and to this limited extent the matter stands remitted back to the First Respondent/State Regulatory Commission for consideration.

The learned counsel appearing for the Applicant/Appellant, Ms. Deepa Chawan at the outset submitted that the instant Application is filed under Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 and non-mentioning of the relevant provision of

Section 120 of the Electricity Act, 2003 and read with Section 152 of the Civil Procedure Code, the Applicants/Appellants are entitled to file application for clarification in the event inadvertently left out in the operative portion of the impugned order, the impugned order is set aside only so far it relates to prayer sought in the instant Appeal. Such inadvertent error left out the said portion by not mentioning in the Order, when the Applicant/Appellant has specifically presented the instant appeal so far it relates to prayer sought in the appeal only. Therefore, she submitted that this Tribunal may kindly be pleased to clarify the operative portion of the impugned order to the extent of the impugned order passed in the Appeal only so far it relates to the reliefs sought in the appeal in the interest of justice and nowhere it prejudiced the interest of the Respondent. Therefore, an appropriate order may kindly be passed in the interest of justice and equity to meet the ends of justice.

5. To substantiate her submissions, as stated above, she placed reliance on the judgment of this court dated 06.05.2010 passed in Appeal No. 55 of 2009 on the file of Appellate Tribunal for Electricity (Appellate jurisdiction) wherein the short question which arouse for consideration in this appeal was—

> 'whether the Appellate Tribunal is precluded from invoking provisions of the Code of Civil Procedure in a proceeding before the Tribunal, in view of Section 120 of the Electricity Act, 2003'.

This Tribunal after thoughtful consideration of submissions made by the learned counsel appearing for both the parties and other relevant material on record and in the light of the relevant provisions of the Electricity Act, 2003 and Civil Procedure Code, has held as under :–

> "It has to be held in answering the first question that this Tribunal is adequately empowered to regulate its own procedure and that there is no embargo on this Tribunal from invoking provisions of the CPC."

In view of the said Judgment of this Tribunal and having regard to the facts and circumstances of the case, she most respectfully prayed that an appropriate order may kindly be passed for clarifying the operative portion of the impugned order in the interest of justice and equity.

6. ***Per contra***, the learned counsel appearing for the Respondent No. 2 vehemently submitted that a perusal of the averments in the application would reveal that the Applicant/Appellant has not indicated the provisions of law under which the Application has been filed. Therefore, the Application filed by the Applicant/Appellant is not maintainable and deserves to be rejected. Further, he was quick to point out and submitted that the present Application is in the nature of a review petition filed under the garb of seeking clarification. The Applicant/Appellant is in fact seeking review of the entire order. He further

vehemently submitted that the direction issued is to reconsider the original petition in O. P. No. 20 of 2009 after setting aside the order dated 10.07.2014. In its entirety, the question of issuing clarification as sought for would not arise. Therefore, he submitted that the present application constitutes gross abuse of process of law. Hence the application filed by the Applicant/Appellant deserves to be dismissed with exemplary costs.

7. To substantiate his submissions, he was quick to point out and submitted that in the entire contents of the application, nowhere it is contended that there was an accidental omission. On the contrary, the relief sought is to modify or clarify the order. Even in the Rejoinder to the Statement of Objections, there was no mention of provision of law enabling this Tribunal to pass orders as prayed for. However, in the synopsis of submissions, the Applicant/Appellant has referred to Section 151 and 152 of the Code of Civil Procedure, 1908 and for the first time it is contended that the correction sought is an accidental slip / omission. This establishes beyond reasonable doubt that the same is an afterthought and the submissions are contrary to the pleadings. On this ground, the application deserves to be rejected. In this regard, the learned counsel appearing for the Respondent No. 2 took us through the order of this Tribunal and pointed out towards para 2(e), 17, 18, 20, 23, 24 and 25.

It would make the intention of the Tribunal amply clear that the matter was intended to be remanded for reconsideration of all issues afresh and not only limited to the issues raised in the appeal. It is of utmost relevance to note that the order sets aside the entire order impugned and the said direction is based on the reasoning that the impugned order is not sustainable in law and that this Tribunal has made it clear that all the contentions of the parties are kept open. Not only in the operative portion but also while considering issues 1 to 3 this Tribunal has recorded the categorical finding that the impugned order is unsustainable. Therefore, these findings make the intention of this Tribunal absolutely clear and unambiguous and the contentions on the contrary are untenable. Therefore, he submitted that it is also relevant to note that the clarification now sought for can in no manner whatsoever be considered to be an accidental slip or omission.

8. He further submitted that, tt ought to have been noted that the present application has been filed over one month after the judgment was pronounced. During this period, there was no review sought of the impugned order. The clarification sought has serious ramifications on the rights of the Respondents herein and it, in fact, aims at taking away the vested rights which have arisen in favour of the Respondents. Therefore, the question of making such correction in the judgment by terming the same as an accidental slip would not arise.

9. Therefore, he submitted that the judgment of this Tribunal is a decree of a court as stipulated under Section 120(3) of the Electricity Act, 2003. Although Section 152 of the Code of Civil Procedure 1908 provides for correction of arithmetical errors, clerical mistakes or errors in judgments, order or decrees of courts, the scope of such correction is limited. To substantiate his submissions, he placed reliance on the judgment of the Apex Court reported in (2004) 1 SCC 328, State of Punjab v. Darshan Singh at para 13, and (1999) 3 SCC 500, Dwarka Dass v. State of MP and Another, at Para 6 and (1996) 3 SCR 99, Master Construction Co, (p) Ltd v State of Orissa at Para 7. In view of the well settled law laid down by the Apex Court in host of judgments as stated supra, the application filed by the Applicant/Appellant deserves to be dismissed with cost.

10. After thoughtful consideration of the submissions of the learned counsel appearing for the Applicant/Appellant and the learned counsel appearing for the Respondent No. 2 and after careful perusal of the reply, written submissions and rejoinder filed by the learned counsel appearing for the Applicant/Appellant and the learned counsel appearing for the Respondent No. 2 and after perusal of the judgment of this Tribunal, the only point that arises for our consideration is whether in the operative portion of the Order, there is an inadvertent clerical mistake or not on the countenance of the Order. It is significant to note that what

emerges from the entire material on record is that at page No. 8, the issue (i) at page No. 2 of the Judgment in question, it is specifically stated that "in so far as it relates to" and in para 4 at page 6 it is stated that "not being satisfied with the Impugned Order passed by the first Respondent herein, the Appellant, questioning the correctness of the Impugned Order of the first Respondent to the extent it allows the claim of the Appellant qua open access charges and trading margin, which has been allowed, has not challenged." However, in the judgment dated 04.09.2018 in Appeal No. 232 of 2014, an inadvertent clerical error has occurred as stated in para 25 of the Order and having regard to the facts and circumstances of the case as stated above, the Application filed by the Applicant/Appellant may be allowed, the impugned order dated 10.07.2014 passed in the Original Petition No. 20 of 2009 on the file of Karnataka Electricity Regulatory Commission, Bengaluru is hereby set aside so far it relates to the reliefs sought in the Appeal only.

11. The learned counsel appearing for the Applicant/Appellant has rightly pointed out that there is an occasion for this Tribunal in its judgment dated 06.05.2010 in Appeal No. 55 of 2009 on the file of the Appellate Tribunal for Electricity (Appellate Jurisdiction) wherein the short question which arose for consideration in the said Appeal that whether the Appellate Tribunal is precluded from invoking the provisions of the Code of Civil Procedure in a proceeding

before this Tribunal in view of Section 120 of the Electricity Act, 2003, this Tribunal, after thorough and critical evaluation of the oral and documentary evidence available on record and thoughtful consideration of the submissions of the counsel appearing for both the parties, in para 27 of the said Judgment held that—

> "**Therefore, it has to be held in answering the first question that this Tribunal is adequately empowered to regulate its own procedure and that there is no embargo on this Tribunal from invoking provisions of the CPC.**"
>
> **(Emphasis supplied)**

The above Judgment is aptly applicable to the facts and circumstances of the case in hand.

We follow the abovesaid Judgment in the instant case. In fact the Application has been filed under Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 and non-mentioning of the relevant provisions of Section 120 read with Section 152 of the CPC does not take away the rights and contentions of the party for pointing out an inadvertent error in the operative portion of the impugned order. In view of the well settled law laid down by the Apex Court, High Courts and this Tribunal in catena of judgments that if inadvertently parties, counsel or representatives failed to mention the relevant provisions for filing the Application redressing their grievance, it does not take away the rights of the Applicant/Appellant.

12. Regarding the reliance placed by the learned Counsel appearing for the Respondents on the catena of judgments of the Apex Court as stated supra, it is not in dispute or a quarrel regarding the well settled law laid down by the Apex Court.

The ratio of the law laid down by the Apex Court is neither applicable to the facts and circumstances of the case in hand, nor helpful in any way to substantiate the submissions of the learned counsel appearing for the Respondent No. 2.

13. After careful reading of the core issue in totality, what has emerged is that the Applicant's/Appellant's contention so far it relates to the prayer sought only and answering the issue Nos. 1 & 2, the impugned order passed by the first Respondent is set aside. It means that the order is set aside only in respect of the prayer sought by the Applicant/Appellant and not the entire order itself. Therefore we do not find any force in the submission of the learned counsel appearing for the Respondent no. 2 in their reply, written submission and having regard to the facts and circumstances of the case as stated supra.

It is a well settled principle of law that the mentioning of a wrong provision or non-mentioning of a provision does not invalidate an Order if the Courts or/and Statutory Authority had the requisite jurisdiction thereon. It is worthwhile to follow the Judgments of the Supreme Court in the case of Ram Sunder Ram v. Union of India & Ors. [2007(9)SCALE 197]. We thus hold that it is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a **wrong provision** of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.

Further, in the case of N. Mani v. Sangeetha Theatre and Ors. (2004) 12 SCC 278], wherein it is held that quoting of **wrong provision** of a Section in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under the relevant provisions of the Act. Therefore, the order of discharge of the appellant from the service cannot be vitiated on this sole ground as contended by the Learned Counsel for the appellant.

The Apex Court in the case of P. K. Palanisamy v. N. Arumugham & Anr [2010(1)R.C.R.(Civ) 129] held as under :-

> "Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity.
>
> It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor."

In view of the well settled law laid down by the Apex Court in catena of judgment and by this Tribunal as stated supra, , we hold that the application filed by the Appellant is maintainable.

Further, it is significant to note that merely mentioning of a wrong provision of law itself does not render the action to be bad in law. Once it is clear that this Tribunal is empowered under the statutory provisions to do an act or to perform a particular function, merely because while doing the act or performing the particular function, if the Applicant/Appellant mention a wrong provision of law, that by itself cannot render the exercise of the powers to be bad in law. And for

the same reason, the performance of the function cannot be a nullity. Viewed from this angle, therefore, even though the application filed under Rule 30, by itself, will not be rendered to be bad in law once such power is available in relevant provision, Section 120 of the Electricity Act, 2003, read with the relevant provision, Section 152 of the Code of Civil Procedure. Therefore, we hold that the instant Application filed by the Applicant/Appellant is maintainable for seeking clarification in the operative portion of the judgment about inadvertently left out portion thereof. Therefore, in the interest of justice and having regard to the facts and circumstances of the case, we hereby clarify that in the impugned Judgment, the order passed by the State Regulatory Commission is set aside only so far as it relates to the prayer sought in the instant Appeal.

14. For the foregoing reasons as stated above, the instant Application filed by the Applicant/Appellant stands disposed of clarifying that the impugned order passed by the first Respondent/State Regulatory Commission dated 10.07.2014 passed in Original Petition No. 20 of 2009 is hereby set aside only so far as it relates to the prayer sought by the Appellant in the instant Appeal.

With these observations, the application filed by the Applicant/Appellant stands disposed of.

(S.D. Dubey) **(Justice N.K. Patil)**
Technical Member **Judicial Member**

√REPORTABLE / ~~NON-REPORTABLE~~

Bn