

**COURT - I**

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

**Appeal No. 105 of 2009**

**Dated: 7<sup>th</sup> May, 2010**

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

Lavasa Corporation Ltd. ... Appellant (s)

Versus

M.E.R.C & Ors. ... Respondent (s)

Counsel for the Appellant (s) : Mr. Abhay Nevagi &  
Ms. Sampada Narang

Counsel for the Respondent (s) : Mr. Abhishek Mitra & Mr. Raunak Jain  
for R.2

**OR`DER**

Heard the learned counsel for the parties.

In para 'M' of the Appeal, it is specifically stated by the Appellant that in the Application filed by him requesting for putting it in HT-I Industrial or/and in the alternative put it in separate category for the development of the hill station on various grounds, but the State Commission instead of hearing the learned counsel for the Petitioner-Appellant on merits of the grounds, heard the learned counsel for the Petitioner only on the question of maintainability of the Petition on the basis of the objection raised by the Distribution Company-

Respondent with regard to the maintainability. According to the learned counsel for the Appellant, the Order impugned shows that it was considered on merits without hearing the Appellant and without referring to the maintainability question, which was argued. On this ground, the Appellant has sought for a Remand to enable him to argue the matter on merits.

The relevant paragraph 'M' of the Appeal paper book is as follows:

***“M. The Appellant states that the petition of the appellant was served on the Respondent No.2 and was kept for hearing on 22<sup>nd</sup> July 2008. The Respondent No.2 appeared in the matter and objected to the maintainability of the petition. The learned Members heard the arguments on maintainability of the petition. However, instead of deciding whether the petition is maintainable under the Electricity Act 2003 dismissed the petition on merits.”***

In Reply to the said ground mentioned in the Appeal, the Distribution Company, namely R.2, did not dispute it and on the other hand, they referred to the various other aspects

with regard to the merits of the matter. Thus, it is clear that the fact that the Appellant has not been heard on merits, as stated by the Appellant in Para M has not been specifically denied. The Commission also has not been represented by any counsel.

Though the learned counsel for the Respondent argued on merits in justification of the impugned Order passed by the Commission, We are not inclined to go into the merits since we deem it fit that the matter should be remanded to the Commission to give opportunity to the Appellant to argue the matter on merits.

We are not expressing any opinion on the merits of the matter. It is contended by the learned counsel for the Respondent that the Order of penalty passed by the Respondent-Distribution Company is subject matter of the Appeal before the Appellate Authority under Section 127 of the Electricity Act, 2003. In this Appeal, we cannot consider the aid aspect.

However, it is for the Commission to consider all the aspects including the merits of the matter and decide the matter in accordance with law.

With these observations, the impugned Order dated 19.12.2008 passed in Case No. 34 of 2008 is set aside and the matter is remanded to the State Commission directing it to give opportunity to the Appellant herein to make his submissions with regard to the merits of the matter and to the Respondent to make his Reply submissions. Thereafter, the Commission shall decide the matter on merits uninfluenced by the findings recorded by it in the impugned Order dated 19.12.2008.

With these observations, the appeal is allowed. No costs.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**