

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL NO. 174 OF 2008
I. A. No 235 OF 2008 & I. A. NO. 124 OF 2009

Dated: 23rd April, 2009

Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member

IN THE MATTER OF:

Dr. D. Y. Patil Sports Academy ... Appellant (s)
Versus
Maharashtra Electricity Regulatory Commission ... Respondent (s)

APPEAL NO. 175 OF 2008
I. A. No 237 OF 2008 & I. A. 129 OF 2009

IN THE MATTER OF:

Ramrao Adik Education Society ... Appellant (s)
Versus
Maharashtra Electricity Regulatory Commission ... Respondent (s)

APPEAL NO. 176 OF 2008
I. A. No 239 OF 2008 & I. A. NO. 128 OF 2009

IN THE MATTER OF:

Continental Medicare Foundation ... Appellant (s)
Versus
Maharashtra Electricity Regulatory Commission ... Respondent (s)

Counsel for the Appellant/ (s) : Ms. Amrita Narayan

Counsel for the Respondent (s) : Mr. Varun Agarwal for MSEDCL
Mr. Buddy A. Ranganadhan for Resp. 1

Judgment

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

1. Since the Appellants have filed separate Appeals challenging the common impugned order passed by the Commission claiming themselves as educational institutions, we deem it appropriate to pass this common order in all these three Appeals.

2. Ms. Amrita Narayan, the learned counsel for the Appellants submits that the Appellants have preferred these Appeals on being aggrieved by the manner in which re-categorisation of the tariff plan has been done in these cases whereby the Appellants despite being a charitable organization are being put in the same bracket as that of multiplex and malls which are profit making organizations that too without notice to them.

3. The learned counsel for the Appellants ultimately would request this Tribunal to remand the matter to the Commission so that the Appellants would present their case and place their materials and the facts which would be of relevance and would facilitate the Commission to arrive at a correct decision which may be favourable to the consumers at large.

4. The points on the basis of which the remand is sought for are as follows:

- (a) The Appellants are a charitable trust and carry out their works for the benefits of the society at large by providing free service. The National Electricity Policy 2005 stipulates that there is an urgent need to correct imbalance in respect of cross subsidies without giving tariff shock to the consumers. The re-categorisation in the cases of the Appellants without notice to the Appellants has caused

tariff shock to the Appellants which is a clear violation of the National Electricity Policy 2005.

- (b) The National Electricity Policy 2005 provides that cross subsidy should decrease but the impugned tariff order would indicate that there is an exorbitant increase of the cross subsidy. In the instant case, the cross subsidy that is being paid by the Appellant amounts to 103.31%, which is not postulated in terms of the National Electricity Policy 2005.
- (c) The average tariff increase is to be 6.76% and the increase in tariff in the case of the Appellant is 106% which is absolutely not correct. The earlier rate of electricity in respect of the Appellant's meter was Rs. 3.40 before this tariff order was made effective. The revised rate after the tariff order was made effective was Rs. 7/- per unit.
- (d) The Distribution Company had proposed nearly 6.76% increase but the Hon'ble Commission has actually increased the tariff by 106%. By this the Hon'ble Commission has increased the cross subsidy by increasing the tariff substantially of some other category of consumers. Admittedly, no notice was given to the Appellants regarding the change in their tariff category.
- (e) The public notice issued in this case did not indicate that there is a proposal to introduce a new category. The only proposals contained in the public notice were to introduce two new categories, namely, power looms and flour mills. Admittedly, this new category has not been mentioned in the public notice.
- (f) Because of the huge increase in the tariff which is causing a lot of problem for the Appellant, which is a charitable organization, the burden on the Appellant will increase manifold and it will adversely affect the students of the college as the Appellant would be forced to increase the fees of the students which will cause grave prejudice to them.

5. On the points referred to above, the Appellants pray to set aside the impugned order and to remand the matter to the Hon'ble Commission.

6. The learned counsel for the Appellants have also filed a memo before this Tribunal to the effect that without prejudice to their rights and contentions, they undertake to pay their electricity bills at current rate till the matter is freshly decided by the Hon'ble Commission.

7. On these aspects we have heard the learned counsel for the Respondents 1 and 2.

8. In view of the said undertaking and also in order to give adequate opportunity to the Appellants to present their case before the Commission on the above points, we deem it appropriate to set aside the impugned order and remand the matter to the Commission for fresh consideration.

9. Accordingly, the impugned order is set aside. The State Commission is directed to allow these parties to place their materials to substantiate their plea and to give a fresh consideration to the issues and decide the same after taking into consideration the materials produced before the Commission in accordance with law. This exercise may be completed within 8 weeks from the date of the receipt of this Order. It is made clear that this Judgment would apply to the Appellants only. With these directions, all the 3 Appeals are allowed.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 23rd April, 2009

Reportable / Non-reportable