

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 144 of 2009

Dated: 18th July, 2011

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

IN THE MATTER OF

Mumbai International Airport Pvt.Ltd,
Chhatrapati Shivaji International Airport,
Chennai-600 002
1st Floor, Terminal IB,
Santa Cruz (East)
Mumbai-400 099

... Appellant

Versus

1. Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No.1,
World Trade Centre,
Cuffee Parade,
Mumbai-400 005

2. Reliance Infrastructure Limited,
Reliance Energy Centre,
Santa Cruz (East),
Mumbai-400 055

....Respondent(s)

**Counsel for Appellant(s):Mr.P.S. Narsimha, Sr.Adv.
Mr. Sitesh Mukherjee,
Mr. Vishal Anand,
Mr. Sakya Singha Chaudhuri,**

**Counsel for Respondent(s):Mr.J.J. Bhatt,Sr.Advocate,
Mr. Buddy A. Ranganadhan,
(For R-1)
Ms. Smieeta Inna for R-2,
Ms. Anjali Chandurkar,
Ms. Shilpy Chaturvedi for R-2
Mr. Hasan Murtaza for R-2
Ms. J. Rehman,**

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Mumbai International Airport Pvt. Ltd. is the Appellant herein. The Maharashtra Electricity Regulatory Commission (State Commission) is the first Respondent. Reliance Infrastructure Limited (RIL) is the second Respondent.

2. The Appellant has filed this Appeal challenging the tariff order dated 15.6.2009 passed by the State

Commission for the distribution business of the second Respondent i.e. RIL for the Financial Year 2009-10. The short facts are as follows.

3. The Appellant was awarded contract for the Operation, Maintenance and Management etc. of the Mumbai Airport by Agreement dated 4.4.2006. The Reliance Infrastructure Limited (R-2) filed an application before the State Commission to determine its Distribution Tariff for the financial year 2008-09. The State Commission passed the tariff order dated 4.6.2008. By the said order, the State Commission created a new category HT-II Commercial and put the Appellant into the new category after removing it from the category of HT-II (Industrial) category. The tariff prescribed for the new category HT-II Commercial was significantly higher than the HT-II industrial category.

4. On being aggrieved, the Appellant filed the Appeal before this Tribunal in Appeal No.106 of 2008 challenging the said order. The main grounds raised in that Appeal is that the Appellant was providing essential services and therefore, it could not be treated at par with consumers falling under HT-II Commercial Category carrying on commercial activities.

5. This Tribunal by its order dated 26.2.2009, set aside the said order to the extent that it placed the Appellant in the newly created category of HT-II Commercial and remanded the matter to the State Commission holding that the Appellant should not have been put into the category of HT-II Commercial and directing the State Commission to re-determine the tariff of the Appellant taking note of the nature of the essential services which requires special consideration. Pursuant to this order, the Appellant filed an application before the State Commission for re-determination of tariff on 17.3.2009.

No action was taken by the State Commission. Therefore, the Appellant approached this Tribunal, which in turn, gave a direction dated 19.5.2009 to the State Commission to carry out the said directions given earlier as soon as possible. Even then, there was no action.

6. In the meantime, the Respondent-2 filed an ARR Petition for determination of tariff for the financial year 2009-10. In the said ARR, the R-2 proposed to place the Appellant into consumer category i.e. HT – Public and Government. The Appellant filed its objections and drew the attention of the Commission to the order of remand passed by this Tribunal on 26.2.2009; in respect of the year 2008-09. However, the State Commission without re-determining the tariff in terms of the judgement dated 26.2.2009, passed the impugned tariff order for the Financial Year 2009-10 on 15.6.2009 again putting the Appellant under the HT-II Commercial category at par with other commercial establishments.

7. Being aggrieved by the impugned order dated 15.6.2009; the Appellant has filed the present Appeal No.144 of 2009 challenging its categorization under HT-II Commercial Category.

8. According to the Appellant, the said order is the complete violation of the judgement dated 26.2.2009 directing the State Commission not to put the Appellant under HT-II Commercial Category.

9. In this context, it shall be stated that after the impugned order that was passed on 15.6.2009, the State Commission proceeded to re-determine the tariff of the Appellant for the Financial Year 2008-09 in pursuance of the remand order passed by this Tribunal dated 26.2.2009. Ultimately, it passed the final order on 24.11.2009 again putting the Appellant in the very same category namely HT-II Commercial Category without

taking note of the direction and findings of the Tribunal in the judgement dated 26.2.2009. Against this order dated 24.11.2009, the Appellant filed another Appeal in Appeal No.195 of 2009.

10. Both the Appeals i.e. 144 of 2009 (Present Appeal) and the Appeal No.195 of 2009 were taken-up together by this Tribunal. However, the judgement was given in Appeal No.195 of 2009 by this Tribunal separately on 31.5.2011 in view of the fact that the said Appeal was filed challenging the Commission's order dated 24.11.2009 on the ground that the said order was in violation of the remand order even though the very same issue has been raised in the other Appeal also.

11. The question which relates to putting the Appellant into HT-II Commercial Category had been elaborately dealt with in that judgement. Finally, this Tribunal in that judgement held that Appellant should not be put in

the Commercial Category; and on the other hand, the Appellant must be put in a separate category and different tariff shall be determined. The observations with the findings and directions given by this Tribunal in the said judgement dated 31.5.2011 in Appeal No.195 of 2009 are as follows:

“As mentioned above, once the categorization of the Appellant under the HT-II commercial category is set aside by this Tribunal, it is not proper for the State Commission to put the Appellant in the same category by charging the commercial tariff from the Appellant. The scope for differential tariff was made in the Remand Order dated 26.2.2009 to allow the distribution licensee to charge commercial rate from establishments in the airport carrying out purely commercial activities. As discussed above, the absence of metering cannot be the reason to equate the airport services with the purely commercial activities and not re-determining the tariff of the Appellant.

Our Findings are summarized below:

(a) The Judgement dated 26.2.2009 of the Tribunal specifically directing the State Commission not to put the Appellant in Commercial Category but to put it in a different special category, was a limited Remand and not an Open Remand.

(b) The State Commission is bound to act within the scope of the Remand. It is not open to the State Commission to do anything but to carry out the terms of the Remand in letter and spirit.

(c) The State Commission should re-determine the tariff for the Appellant strictly in view of the findings and observations made by the Tribunal.

(d) The State Commission could have differential tariff for the aviation as well as for the purely commercial activities, such as shops, restaurant, etc, at the airport. However, if it is not feasible to have separate metering arrangements for the aviation activities and purely commercial activities, then the State Commission could re-categorize the Appellant in a separate category other than HT Commercial II and determine the composite tariff for aviation and the commercial activities of the Appellant.

12. These findings would apply to the present Appeal also.

13. Thus, this issue has already been decided in the above judgment, giving specific findings.

14. In view of the above, we deem it appropriate to set aside the impugned order and allow the Appeal in terms of the above judgement with the direction to the State Commission to pass appropriate consequent orders and implement the same as expeditiously as possible after hearing the parties.

15. Accordingly, the impugned order is set aside. Appeal is allowed. However, there is no order as to costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 18th July, 2011

REPORTABLE/NON-REPORTABLE