

Before the Appellate Tribunal for Electricity
Appellate Jurisdiction
New Delhi

Appeal No. 191 of 2005

Dated this 5th day of April 2006

Present : **Hon'ble Mr. Justice E Padmanabhan, Judicial Member**
Hon'ble Mr. H. L. Bajaj, Technical Member

Maharashtra State Electricity Distribution Company Limited

.....Appellant

Versus

1. Lloyds Steel Industries Limited
2. Maharashtra Electricity Regulatory Commission

.....Respondents

Counsel for the Appellant M/s Gaurav Joshi, Kiran Gandhi and Nishant
Gupta, Advocates

Counsel for the Respondents Mr. R O Agarwal, Advocate for Resp. No.1
Mr. Prashant Puri, Assistant General Manager
(Projects) representing Resp. No.1

JUDGMENT

The above appeal has been preferred by the Maharashtra State Electricity Distribution Company challenging the order dated 18th October 2005 passed by the second Respondent Maharashtra Electricity Regulatory Commission in case No. 23 of 2004, directing the appellant to refund Rs.227.9 lakhs with interest to the first Respondent.

2. Heard Mr. Gaurav Joshi and Mr. Nishant Gupta learned counsel appearing for the appellant, Mr. R O Agarwal Advocate and Mr. Prashant Puri, Assistant

General Manager (Projects) appearing for the first Respondent. None appears for second Respondent despite service of notice.

3. The first Respondent moved the second Respondent Regulatory Commission seeking for the following reliefs:

- “(a) The Demand Notice dated 26.8.2002 issued by Respondent’s Wardha office be declared as illegal and may please be set aside and quashed.*
- (b) The Applicant may be permitted to avail power supply to the limit of 90 MVA without recovery of any additional charge either on account of Service Connection Charges or the Service Line Charges.*
- (c) Direct the Respondent to refund the amount of Rs.227.9 lakhs so collected for re-instatement of the contract demand to the original level of 90 MVA along with interest @ 12% from the date of payment till the date of refund.”*

4. According to the first Respondent, it has two units manufacturing steel at Bhugaon, District Wardha and in Murbad, Thane District, that the first Respondent, a consumer within appellant’s distribution area was receiving power at 220 KV, that in the year 1994 the contract demand was 90 MVA, that during April 1996 the contract demand was increased to 100 MVA, that for the purpose of said increase, sum of Rs.9.05 lakhs and Rs.415 lakhs towards Service Connection Charges (SCC) and Service Line Charges (SLC) were remitted in addition to security deposit, that the first Responded handed over a developed plot of 62500 sq. mt. for setting up a 220 KV sub-station meant exclusively for supply to the first Respondent, that power supply was reduced to 90 MVA during March 1999, to 88 MVA in August 2000 and 56 MVA in August 2001 as per the agreement entered and in accordance with the contract concluded between the appellant and the first Respondent, that at the end of 2002, the first Respondent sought an increase in contract demand to the level of 90 MVA for which the first Respondent has already remitted the required SLC / SCC and provided land for the sub-station, that

apart from Rs.440 lakhs already remitted, the appellant demanded the first Respondent to remit Rs.220 lakhs and Rs.6.9 lakhs towards SLC /SCC respectively for restoration of contract demand of 90 MVA, that the first Respondent raised objections as such demand is not called for, that the first Respondent having no option but to accept the terms of the appellant for supply of power and to meet the urgent requirements had to comply with the demand and that the first Respondent approached the second Respondent Regulatory Commission to intervene and direct the appellant to refund the money collected illegally.

5. The appellant resisted the said application challenging the jurisdiction of the second Respondent Regulatory Commission, that demand was made and enforced as per the conditions of supply and circular issued by the appellant from time to time, that in any event the first Respondent had unconditionally agreed and remitted the amount in installments and therefore, the petition is liable to be rejected. A rejoinder was filled by the first Respondent. The second Respondent Regulatory Commission while overruling the objections raised by the appellant concluded that the recovery of Rs.221 towards SLC and Rs. 6.9 lakhs towards SCC by the appellant is not in accordance with the conditions of supply as well as the commercial circulars issued in the matter. The Regulatory Commission also overruled the jurisdictional objections raised by the appellant. Ultimately by the order dated 18th October 2005, the second Respondent Regulatory Commission directed the appellant to refund Rs.227.9 lakhs collected by the appellant towards SLC / SCC to the first Respondent with interest @ 12% for the period commencing from the date of receipt to date of refund by adjustment in the energy bill or other means.

6. Challenging the said order directing refund of Rs.227.9 lakhs with interest the present appeal has been preferred.

7. The only point that arises for consideration whether the order of the Regulatory Commission in case No.23 of 2004 dated 18th October 2005 is liable to be interfered? To what relief, if any?

8. The learned counsel appearing for the appellant while fairly admitting that the sum of Rs.227.9 lakhs has been collected by the appellant in excess, even amount though the first Respondent had already remitted the SLC and SCC on earlier occasion for the entire contract demand of 90 MVA. There is no dispute that the appellant has collected the amount in excess of what it is entitled towards SLC / SCC when the first Respondent sought for increase in or restoration of earlier contracted load. Concedingly, on the earlier occasion itself, the first Respondent had remitted the prescribed charges for the contracted load of 100 MVA. It is true that the first Respondent sought for a reduction of the contracted load by two stages when its industry was not fairing well. Subsequently, the first Respondent moved for an increase in the contracted load and sought for restoration of the load. It is not in dispute that the earlier remittances towards 100 MVA contract load remained with the appellant. When the first Respondent sought for an increase in contracted load admittedly the infrastructure already existed and no additional expenditure has been incurred by the appellant. However, taking advantage of the position of the first Respondent, namely, pressing requirement of power, the appellant managed to collect once over towards SLC / SCC. There is no dispute that the second time collection of SLC and SCC is illegal, as it is not supported by statutory Terms and Conditions of Supply or by the Board' circular.

9. After hearing the counsel on either side elaborately, this Appellate Tribunal after eliciting answers from either side suggested that the excess amount collected may be returned to the consumer (first Respondent) without interest and the first Respondent may waive the interest which interest has been awarded by the

Regulatory Commission. The counsel for the appellant in fairness realizing the situation took time to get instructions from the appellant. However, the counsel for the appellant could not challenge the findings that the collection of Rs.227.9 lakhs is illegal, unauthorized and contrary to the Regulations.

10. The counsel for the first Respondent readily accepted the suggestion but this Appellate Tribunal insisted for filing a necessary memo or petition in this respect to waive interest. Both sides were granted time and the appeal was adjourned for this purpose.

11. As already represented the first Respondent filed a memo giving up its claim of interest after serving the same on the counsel for the appellant.

12. On the next date of hearing, the counsel for the appellant represented that the appellant is not willing to file any memo or petition as there are number of cases identical to the present case and that in any event the Regulatory Commission has no jurisdiction as it is a dispute between the consumer and the distribution licensee. The learned counsel for the appellant placed reliance upon the judgment of this Appellate Tribunal in Appeal Nos. 30 of 2005, 164 of 2005 and 25 of 2006 Reliance Energy Limited, The Brihan Mumbai Electric Supply and Transport Undertaking and Maharashtra State Electricity Distribution Company Vs Maharashtra Electricity Regulatory Commission dated 29th March 2006 in support of his contention on the jurisdictional issue.

13. Mr. Prashant Puri, Assistant General Manager (Projects) appearing for the first Respondent represented that the first Respondent is giving up its claim of interest and that order of the Regulatory Commission in other respects may be confirmed.

14. We have given our anxious consideration. It is true that in respect of a dispute between the consumer and the Discom and, in particular a consumer

dispute, the Regulatory Commission has no jurisdiction as has been held by this Appellate Tribunal in Appeal Nos. 30 of 2005, 164 of 2005 and 25 of 2006.

15. But in the case on hand, concedingly the sum of Rs.227.9 lakhs had been collected illegally and the appellant being a wholly owned State Discom is totally unjustified in raising a hyper technical objection. The claim of the first Respondent, a consumer, has been substantiated factually as to illegal collection of SLC / SCC, which the appellant ought not to have collected. Having done so, it is rather extraordinary on the part of the State Undertaking like the appellant to raise hyper technical objections. Though the appellant has raised jurisdictional issue, this Appellate Tribunal while exercising powers under Section 111 of The Electricity Act, 2003 declines to interfere with the order appealed against as justice has been rendered. It is an illegal collection and it is not fair on the part of the appellant, State Discom, to raise such hyper technical objection, when once it is clear that the appellant has illegally collected the sum of Rs.227.9 lakhs. The appellant should have acted fairly and refunded the amount collected illegally. The learned counsel appearing for the appellant could not assail the finding that SLC and SCC have been collected twice illegally. Being an illegal collection of SLC / SCC once again from the same consumer for the same contracted load, it is rather not expected from the appellant to take such a hyper technical stand.

16. We reiterate our judgment in Appeal Nos. 30 of 2005, 164 of 2005 and 25 of 2006 in respect of consumer disputes. In the said appeals, there were actual disputes between the parties as in this case there is no such dispute. In this case, there is no controversy with respect of the sum which has been collected once again, an illegal and unauthorized collection towards SLC / SCC for the same connected load. Public authorities, like the appellant are bound to act reasonably and fairly and each action of their must pass the test of reasonableness as held in

Hansraj H Jain Vs State of Maharashtra (1993) 3.SCC 634. The retention of SLC / SCC collected on the second occasion is not fair nor it is reasonable on the part of appellant.

17. In the circumstances, we are not justified in interfering with the order or direction issued by the Regulatory Commission in directing refund of the amount collected illegally. In fairness the first Respondent has given up its claim towards interest and the same is recorded. Under Section 111 of The Electricity Act, 2003, this Appellate Tribunal has the jurisdiction to pass such orders on the appeal after hearing the parties as it thinks fit, confirming, modifying or set aside the order appealed against. While exercising the jurisdiction under Section 111 of The Electricity Act 2003 as justice has been rendered we decline to interfere with the order in favour of the appellant who has collected the amount contrary to the Regulations and which sum it is not entitled to collect or retain with it.

18. The point is answered against appellant and in favour of first Respondent.

19. In the circumstances, we dismiss the appeal while modifying the order passed by the second Respondent Regulatory Commission and direct the refund of Rs.227.9 lakhs without interest to the first Respondent and the same be adjusted towards future consumption charges as has already been directed by the second Respondent Regulatory Commission.

Pronounced in open court on this 5th of April 2006.

(Mr. H. L. Bajaj)
Technical Member

(Mr. Justice E Padmanabhan)
Judicial Member

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