

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

**Appeal No. 26 of 2010 &  
I.A. Nos. 32, 33 & 34 of 2010**

**Dated: 8<sup>th</sup> February, 2010**

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. H.L. Bajaj, Technical Member**

GRIDCO Limited ... Appellant (s)

Versus

M/s Global Energy Limited & Anr. ... Respondent (s)

Counsel for the Appellant(s): Mr. R.K. Mehta & Mr. Antaryani Upadhyay

**JUDGMENT**

This Appeal has been filed by the Appellant-GRIDCO Limited challenging the Order dated 06.05.08 passed by the Orissa Electricity Regulatory Commission directing to issue notice to the public inviting opinions and suggestions with reference to grant of licence in favour of Respondent No.1.

2. It is noticed from the facts that Respondent No.1 filed an Application before the State Commission for issuance of Intra-State Trading Licence and the same was objected

to by the Appellant by raising various grounds. The State Commission, after considering the materials placed before it, came to the conclusion that *prima facie*, Respondent No.1 is competent to claim for the licence, and therefore, it had become necessary for the State Commission to issue notice to the public inviting opinions and suggestions with reference to grant of licence and accordingly, the notice was issued. This Order had been passed on 06.05.2008.

3. Thereafter, the Appellant for the best reasons known to him, had not chosen to file an Appeal, straightaway before this Tribunal, but thought it fit to file a Review before the State Commission pointing out that there are some apparent errors in the order dated 06.05.2008, on the face of the record. However, the State Commission dismissed the Review Petition by its Order, dated 01.10.2009, holding that there is no error apparent on the face of the record.

4. Now, the learned counsel for the Appellant has chosen to file this Appeal challenging the main Order that has been passed on 06.05.2008 along with an Application to condone the delay showing the reason for the delay that Review Petition was pending before the State Commission.

5. Mr. R.K. Mehta, the learned counsel for the Appellant, refers to the impugned Order, dated 06.05.2008, and submits that the State Commission has pre-judged and decided the issue in favour of Respondent No.1, and as such, there is an irregularity committed by the State Commission in issuing notice under Section 15 (5) (b) of the Electricity Act, 2003 inviting public opinion in the matter of issuance of licence in favour of the Respondent 1 and therefore, the same is liable to be set aside.

6. In our view, the Appeal itself is not maintainable for the following two reasons, which are as follows:

1. The Order challenged in this Appeal is only an interim Order, which was passed on 06.05.2008 directing issuance of notice inviting the public opinion and suggestions, and therefore the Appellant could not claim as an aggrieved party.
2. In both the Orders dated 06.05.2008 and 01.10.2009, the State Commission observed specifically that there is a *prima facie* case to show that Respondent No.1 is competent enough to claim for licence, but the final decision with reference to grant of licence in favour of Respondent No.1 would be considered only after considering all the objections raised by the Appellant as well as the Objections to be raised by the public. Therefore, it is clear that the State Commission, admittedly, has not come to any final conclusion and it has simply issued notice to the public.

7. The learned counsel for the Appellant would point out that the observations made by the Commission in some of the paragraphs of the Order dated 06.05.2008, would indicate that already a final decision had been arrived at.

8. This submission is not correct. We are of the view that those observations made in the Order, dated 06.05.2008, by the Commission are confined to the question of issuance of notice under Section 15 (5) (b) of the Act only, and not for the final decision regarding the issuance of licence. Further, the State Commission in Para 24 of the Review Order dated 01.10.2009, has clearly stated that all the suggestions/objections including the objections raised by the Appellant and the recommendations, if any, of the Central Transmission Utility or the State Transmission Utility, as the case may be, would be considered and the final decision would be

taken after giving the opportunity of being heard to all the parties concerned.

9. In the light of the above facts, we also further direct that uninfluenced by any of the observations that were made by the State Commission in the impugned Order, dated 06.05.2008, the State Commission may consider all the objections raised by the Appellant earlier in the form of reply and also the objections to be urged by the Appellant afresh before it taking into consideration of the suggestions and the opinions of the public as well as other utilities and arrive at a final decision in accordance with law.

10. With these observations the Appeal is dismissed at the Admission stage itself.

**(H.L. Bajaj)**  
**Technical Member**

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

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