

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 109 of 2011

Dated: 26th Aug, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. V.J. Talwar, Technical Member,**

In The Matter Of

**Maharashtra State Electricity Distribution Co. Ltd.
5th floor, Prakashgad
Bandra (east), Mumbai 400051 ... Appellant(s)**

Versus

**1. Maharashtra Electricity Regulatory Commission
13th Floor, World Trade Centre No.1
Cuffe Parade, Colaba
Mumbai, 400001**

**2. M/s R L Steels Ltd
Gat No. 78-81, Pangra Shivar
Chitegaon-Palthan Road
Aurangabad 431107**

....Respondent(s)

**Counsel for Appellant(s): Mr. A S Chandiok, ASG, Sr. Adv.
Mr. Ravi Prakash**

JUDGMENT

PER HON'BLE MR. V J TALWAR, TECHNICAL MEMBER

1. Maharashtra State Electricity Distribution Co. Ltd. (Distribution Licensee) is the Appellant.
2. The Maharashtra Electricity Regulatory Commission (State Commission) is the 1st Respondent. M/s R. L. Steel Ltd (Company) is the 2nd Respondent.
3. Aggrieved by the State Commission's Order dated 2.6.2011 the Appellant Distribution Company has filed this Appeal.
4. Brief facts of the case are as under:
5. 2nd Respondent Company is a HT Consumer of the Appellant having contracted demand of 24,900 kVA. The contract demand of the 2nd Respondent was being met at 33 kV, instead of 132 kV as per provisions of State Commission's Standards of Performance Regulations.
6. On 13.11.2009, the Appellant submitted a petition being Case No. 71 of 2009 before State Commission praying for allowing the Appellant to levy of low voltage surcharge to

consumers connected on non-express feeders (more than one connection on the said feeder) at voltages lower than that specified in Standard of Performance Regulations. The Appellant also prayed that in case of dedicated feeders (where only one consumer is connected), the Appellant may be allowed to charge on the basis of consumption recorded by meters installed at sending end and receiving end whichever is higher

7. The State Commission vide its order dated 5.3.2010 in Case No. 71 of 2009 permitted the Appellant to levy low voltage surcharge of 2% additional units billed for supply at voltages lower than that specified in Standards of Performance Regulations. This order was made applicable from the date of issue till such times as the State Commission issues further orders.
8. Accordingly, the Appellant started levying 2% low voltage surcharge on all consumers who were being supplied at voltage lower than that specified in Standards of

Performance Regulations irrespective of whether the consumer is connected on a dedicated feeder or not.

- 9.** On 12.09.2010, the State Commission issued Tariff Order for the year 2010-11 for the Appellant in Case No. 111 of 2009. In this Tariff Order, the State Commission modified the provisions relating to low voltage surcharge contained in its order dated 5.3.2010 restricting the levy of 2% surcharge to consumers who were connected to the Appellant's system on non-express feeders.
- 10.** On 15.09.2010, the 2nd Respondent HT Consumer filed a petition being Case No. 52 of 2010 before the State Commission seeking clarification about the State Commission's order dated 5.3.2010 in Case No. 71 of 2009 regarding levy of 2% surcharge and its interpretation and implementation by the Appellant Distribution Licensee.
- 11.** The State Commission disposed off this petition in Case No. 52 of 2010 through a Clarificatory order dated 9.11.2010. In this order, the State Commission clarified that under its Order dated 5.3.2010 the levy of 2% extra units

cannot be made if the power supplied was connected on dedicated feeder (only one connection on the said feeder). Levy of 2% extra units was applicable only if consumer is connected on non-dedicated feeder (more than one connection on the said feeder).

- 12.** On 3.3.2011 the 2nd Respondent Company filed another petition being Case No. 31 of 2011 before the State Commission invoking provisions of Sections 142, 146, 149 etc. of Electricity Act 2003 complaining the non-compliance of the State Commission's directions regarding levy of voltage surcharge in Order dated 9.11.2010.
- 13.** The State Commission disposed of the said petition in Case No. 31 of 2011 in the impugned Order date 2.6.2011 directing the Appellant Distribution Licensee in compliance of the Order dated 9.11.2010 to refund amount collected from the 2nd Respondent against voltage surcharge from April 2010 to October 2010 within 30 days from issue of the said Order dated 2.6.2011.

14. Aggrieved by this Order of the State Commission, the Appellant has filed this Appeal before the Tribunal.
15. Ld. Senior Counsel for the Appellant submitted that the State Commission's order dated 9.11.2010 was bad in law since the same was passed in contradiction to the settled principles of law and raised the following contentions:
 - I. Jurisdiction of the State Commission entertaining an application seeking clarification of an order is extremely limited. No court or authority under clarificatory order can modify or alter the substantial relief accrued to a party retrospectively.
 - II. A Clarificatory order cannot rewrite or substitute original order more so when the original order had obtained finality.
 - III. A Clarificatory order cannot be passed if application seeking clarification is unduly delayed or has been preferred in abuse of the process of law to bypass appropriate remedies available under the law.

16. We have heard the Ld Senior Counsel of the Appellant. Short question before us as to whether this Appeal is maintainable under the law.

17. The careful scrutiny of the records available reveals the following:

- i.** The State Commission had issued an Order dated 5.3.2010 in petition no. 71 of 2009 allowing the Appellant to levy low voltage surcharge on consumers who are supplied power at voltage lower than the voltage specified in the Standards of Performance. This order had not been challenged and thus it attained finality.
- ii.** The State Commission issued Tariff Order for the year 2010 – 11 in respect of the Appellant's ARR. In this order the State Commission had allowed the Appellant to levy low voltage surcharge from the consumers who are supplied power at voltage lower than the voltage specified in the Standards of Performance and were connected on non-dedicated feeders. This order had

also not been challenged and therefore it also attained finality.

iii. On 9.11.2010 the State Commission issued a clarificatory order in respect of its order dated 5.3.2010 clarifying that low voltage surcharge shall be restricted to the consumers who are connected to non-express feeders and shall not be levied on consumers who are connected through a dedicated feeder. This order of the State Commission has also not been challenged and hence it has become final.

18. From the above, it is clear that none of the three orders referred to above had been challenged either by the Appellant or by the 2nd Respondent and, therefore they have become final.

19. On the petition of the 2nd Respondent in case no.31 of 2011, the State Commission conducted hearings on 15.4.2011 and 9.5.2011. It is noticed that during the said proceedings before the State Commission the Appellant had never raised any objections against the State

Commission's Order dated 9.11.2010. In fact, during one of the hearings i.e. on 15.4.2011, the Appellant had submitted before the State Commission that it is in the process of implementing the State Commission's order dated 9.11.2010 to the best of its ability. It further submitted that in case there was any unimplemented portion of the said order, the Appellant is ready to iron out the same through discussions with the 2nd Respondent. From the Appellant's above submissions before the State Commission, it is clear that the Appellant had accepted the State Commission's Order dated 9.11.2010.

- 20.** Thus it is evident that the State Commission's order dated 9.11.2010, which had not been challenged, had become final. The State Commission in its impugned order dated 2.6.2011 has merely directed the Appellant to implement the earlier order. The Appellant, on the pretext of challenging the impugned order dated 2.6.2011 has in fact challenged the validity of the State Commission's Order dated 9.11.2010. So long as the Order dated 9.11.2010 is

in tact and not disturbed, the direction issued on 2.6.2011 to implement the Order dated 9.11.2010 cannot be challenged.

21. In the light of above, the present appeal challenging the State Commission's Order dated 2.6.2011 is not maintainable in law.
22. The Appeal is dismissed at the Admission stage itself. There is no order as to costs.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 26th Aug, 2011

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REPORTABLE/~~NON-REPORTABLE~~