

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRCITY**  
**(APPELLATE JURISDICTION)**

**IA No. 83 of 2011 in APPEAL NO. 121 OF 2010**

**Dated : 27<sup>th</sup> May, 2011.**

**Coram: Hon'ble Mr. Rakesh Nath, Technical Member**  
**Hon'ble Mr. Justice P.S. Datta, Judicial member**

**In the matter:**

1. Shri Rama Shankar Awasthi  
S/o late Shri G.P. Awasthi  
301, Surabhi Deluxe Apartment,  
6/7 Dali Bagh, Lucknow, UP-226 001.
2. M/s.Ganpati Industries Limited,  
11, A/400, Ashok Nagar, Kanpur, U .P-208012.  
Though its Managing Director Shri Ganesh Chand Diwari
3. M/s. Trimurti Concast Private Limited,  
eerut Road, Muzzafar Nagar, U.P 251003.  
Through its Director, Shri Narendra Singh Pawar
4. M/s. Kamla Cold Storage and Ice Factory,  
(A proprietorship concern)  
Ahaswan Badaun, U.P. 243 638.  
Its proprietor Shri Vijay Kumar Agrawal ...**Appellant (s)**

Versus

1. Uttar Pradesh Electricity Regulatory Commission,  
Through its Chairman,  
Vibhuti Khand, Kisan Mandi Bhawan,  
Gomti Nagar, Lucknow 226 010.  
Uttar Pradesh
2. Uttar Pradesh Power Corporation Limited,  
Through its Chairman,  
Shakti Bhawan, Extension,  
14, Ashok Marg, Lucknow 226 001.  
Uttar Pradesh.

3. Paschimanchal Vidyut Vitran Nigam Limited,  
Through its Managing Director,  
Urja Bhawan, Victoria park, Meerut 250 001.
4. Dakshinanchal Vidyut Vitran Nigam Ltd.,  
Through its managing Director,  
Urja Bhawan, 220 KV sub-station,  
Agra-Mathura Bye Pass Road,  
Agra 282 007
5. Purvanchal Vidyut Vitran Nigam Ltd.,  
Through its Managing Director  
Purvanchal Vidyut Bhawan, Vidyut Nagar,  
DLW Varanasi 221 004.
6. Madhyanchal Vidyut Vitran Nigam Ltd.,  
Through its Managing Director,  
4-A, Gokhle market, Lucknow 226 001.
7. Kanpur Electricity Supply Co.Ltd.,  
Through its managing Director,  
8/4-6, Baangaliya Arya Nagar, Kanpur – 228 001.
8. Uttar Pradesh Power Transmission Corporation Ltd.,  
Through its Chairman  
Shakti Bhawan Estension,  
14, Ashok Marg, Lucknow 226 001.  
Uttar Pradesh

**Respondent(s)**

Counsel for the Appellant : Mr. M.G. Ramachandran  
Ms. Sneha Vnkataramani  
Mr. Anand K Ganesan

Counsel for the Respondent: Mr. Kunal Verma  
Mr. Ashok Kumar Singh  
Mr. Manoj Kumar Sharma  
Mr. Pradeep Mishra  
Mr. Prag Tripathi  
Mr. Daleep Dhayani  
Mr. Shashank Pandit &  
Mr. Sanjay Singh

## **ORDER IN IA 83 OF 2011 IN APPEAL NO. 121 OF 2010**

This disposes of the application being IA No. 83 of 2011 filed in connection with appeal No. 121 of 2010 by the appellants praying for interim direction as follows:-

- a) To pass an order of stay of any proceedings for amending the order dated 31.3.2010 which order is subject matter of appeal before the Tribunal.
- b) To restrain the State Commission from entertaining or proceeding with any proceedings for amendment of the existing tariff order dated 31.3.2010 and the tariff determined thereunder;
- c) To pass such further order or orders as this Tribunal may deem just and proper in the circumstances of the case.

2. The appeal in connection with which the instant IA No. 83 of 2011 has been moved was filed by four appellants who are consumers in the State of Uttar Pradesh, challenging the tariff order dated 31.3.2010 passed by the Uttar Pradesh Electricity Regulatory Commission relating to respondent No. 2 to 8, six of which are the distribution utilities and the eighth is transmission utility in the State.
3. The main focus of the appeal centres round the following points:
  - a) The State Commission has issued the impugned tariff order in violation of the procedures set out in the Electricity Act, 2003 and the Regulations framed thereunder, and has erred in not considering the objections of the appellant No. 1, contrary to the directions of the Hon'ble Allahabad High Court.

b) The State Commission has continued to determine the tariff applicable to consumers of respondent No. 2 to 8 in the absence of statutorily required information, including audited accounts of the transmission and distribution licensees.

c) The State Commission has wrongly considered the commitment made by the State Government for providing subsidy in order to determine the tariff. This is clearly in violation of the provisions of the concerned legislations which requires the subsidy to be paid in advance.

d) The State Commission has determined the tariff after the year was over without considering any of the actual data for the year and without even ascertaining the actual subsidy received by the Government.

4. The appeal is being contested by the respondents, and while the hearing was in progress, the

appellants came out with this interlocutory application with the information that the State Commission has initiated a proceeding for amendment of the impugned tariff order dated 31.3.2010 and for re-categorizing the consumers and substantially increasing the tariff. Respondent No. 2 has on 11.3.2011 issued a public notice stating that respondent No. 3 to 7 had filed a petition before the Commission for creation of a new category namely HV-5 for Arc/induction furnace, rolling mills and mini steel plants. The notice also proposes a steep hike in the demand charges applicable to the consumers in the HV-5 category. According to the appellants, the impugned tariff order which was passed on 31.3.2010 has taken effect from 15.4.2010, and no tariff petition has been filed with the licensees and no proceeding for determination of tariff for the subsequent year is pending before the

Commission. The notice published necessarily relates to the amendment of the tariff order dated 31.3.2010 which is the subject matter of the present appeal before this Tribunal. Instead of filing any tariff petition for the subsequent year or otherwise complying with the statutory provisions, the licensees are only attempting to have amendment of the existing tariff which cannot be done in view of the order determining such tariff is under appeal before this Tribunal. It is further contended by the appellants that the amendment of the tariff would frustrate the appellate proceedings before this Tribunal where legality, propriety and correctness of the impugned order dated 31.3.2010 is in issue. Such an action is impermissible considering judicial propriety, apart from being contrary to the provisions of the Electricity Act, 2003.

5. We have on record no written objection to the interlocutory application of the appellants. Learned Sr. Counsel assisted by Mr. Pradeep Mishra, learned Advocate on behalf of the respondents No. 2 to 8 submits that opposition to amendment of the tariff order dated 31.3.2010 passed by the Commission is not maintainable in view of the fact that amendment of tariff is permissible under section 62 (4) of the Act and the said provision is independent of the provision of section 61 or 62(1) and other related provisions of the Act. According to the learned Sr. Counsel, Section 62 (4) is an independent provision enabling a Regulator to amend a tariff or a part of a tariff and the Tribunal must not stand in the way, notwithstanding the fact that the impugned tariff order is under challenge before this Tribunal at the instance of the four appellants. Mr. Pradeep Mishra makes an addition that the proposed amendment will only be



applicable with effect from the year 2011-2012 and this is a separate tariff proceeding. Further it is submitted on behalf of the respondents that the appellants have right of representation in connection with the proceedings in relation to the amendment of the tariff order. Mr. Anand K Ganesan, learned Advocate for the appellants contradicts the submissions of Mr. Mishra to say that proceedings initiated is not at all the proceedings intended for the next financial years but a proceeding in connection with the amendment of the tariff which is in force and the public notice was issued as far back as 11.3.2011. Annexure 'A' to the interlocutory application is the copy of the public notice issued by the respondent No. 2 in connection with prayer made before the Commission to create a new tariff category namely HV-5 for industrial connections with process-Arc/induction furnace, rolling mills and mini steel

plants which are now part of HV-2 category of present tariff order. By this public notice all consumers, institutions, licensees etc. have been invited to send their representations to the Commission. Prima facie, it appears that this public notice does not relate to any proceeding for determination of tariff for the next financial year. Within HV-2 category a separate category for the entities as aforesaid under the name and style of HV-5 with the proposed tariff is sought to be created. No doubt, regulator has power to amend the tariff or any part of the tariff but not frequently more than once except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified in the regulations. It is only when fuel surcharge formula is applied for, the whole exercise of the provision of section 64 and other related provisions falling under part VII of the Act may not be repeated. But

when tariff or part of tariff is to be amended, to our understanding, the provisions in relation to determination of tariff have to be complied with.

6. We are not comfortable to hear that the order under challenge before us and in relation to which hearing has commenced is proposed to be amended by the Commission at the behest of the respondent No. 2 when it is known to the Commission that their order dated 31.3.2010 has been appealed against and the matter is sub judice. It is against the principle of judicial ethics that a statutory authority that passed an order under the law ventures to interfere with their order by amendment thereof when the appeal is pending before this Tribunal. Therefore, we cannot be agreeable to a situation that to the prejudice of the appellants the respondents can be permitted to proceed with the proceedings for amendment of tariff order under challenge before us.

7. While saying so, it is not clear to us as to whether the present appellants are likely to be affected by the proposed amendment of the tariff order. If the proposed amendment of the tariff order is totally unconcerned with the appellants then we are to say we may not stand in the way. But, law is very clear that the carriers of the appeal must not be inconvenienced and prejudiced to suffer an amendment of tariff order which itself has been challenged by the appellants and that too during the pendency of the appeal.

8. We, therefore, dispose of the application being 83 of 2011 with the words that it is only if the proposed amendment proceedings do not affect the present appellants and are totally unconcerned with them that the respondents may proceed with

the intended proceedings for the amendment of  
the tariff order.

**(Justice P.S.Datta)**  
**Judicial Member**

**(Mr. Rakesh Nath)**  
**Technical member**

**Dated 27<sup>th</sup> May, 2011**

**Index: Reportable/Non-Reportable**

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