

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

Appeal No. 60 of 2011 & IA No. 102 of 2011

Dated: 6th May, 2011

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

Rosa Power Supply Company Ltd. Appellant (s)

Versus

U.P. Power Corporation Ltd. & Anr. ... Respondent (s)

**Counsel for the Appellant (s) : Mr. Ramji Srinivasan, Sr. Adv.
Ms. Shally Bhasin
Ms. Shikha Sarin**

**Counsel for the Respondent(s): Ms. Payal Chawla
Mr. Mohit
Mr. Vikas Singh, Sr. Adv. for R-1
Ms. Meenakshi Arora for R-1.
Mr. Kunal Verma for R-2.**

ORDER

The Appeal has already been admitted. Notice has been issued in both the Appeal as well as in IA No. 102/2011 seeking for stay.

Mr. Ramji Srinivasan, the Learned Senior Counsel for the applicant/Appellant vehemently insists for stay of the impugned order dated 26.04.2011 staying the operation of its own Tariff order in view of the fact that no reasons at all have been given by the State Commission in the impugned order for granting such stay.

On the other hand, Mr. Vikas Singh, Learned Senior Counsel appearing for the Respondent No.1 with equal vehemence is opposing the grant of stay on the ground that valid reasons have been mentioned in the petition filed by them for review before the State Commission on the basis of which the stay order of the tariff order had been passed.

We have heard the Learned Senior Counsel for the parties who argued at length. We have considered their respective submissions.

Admittedly, the grounds urged by the Learned Senior Counsel for the Respondent No.1 in justification of the impugned order are not reflected in the impugned order.

The final tariff order had been passed on 28.03.2011. The Respondent No.1 filed a petition under Section 94(1) (f) of the Act before the State Commission on 18.04.2011 seeking review of the tariff order dated 28.03.2011 as well as for stay of the said order.

On 19.04.2011, the applicant/Appellant filed reply requesting the State Commission not to grant stay without hearing them. On 19.04.2011, the State Commission granted one month's time to the applicant/Appellant for filing reply.

In the meantime, the State Commission passed order dated 26.04.2011 granting stay of its own tariff order dated 28.03.2011. Though we do not want to make any opinion on the merits of the main review, prima facie, we feel that the impugned stay order pending review passed

on 26.04.2011 is without valid reasons. Therefore, we feel that we could grant stay of the order dated 26.04.2011 pending disposal of the main Appeal.

At this stage, i.e. while we dictate this order, Mr. Vikas Singh, learned Senior Counsel for the Respondent No.1 intervened and suggested that the main Appeal itself may be disposed of by directing the State Commission to proceed with the enquiry of review petition and dispose of the same within the time frame. In view of this statement, which is agreed by the Learned Senior Counsel for the Appellant also, we deem it fit to set aside the impugned order and give suitable direction by disposing of the main Appeal itself.

Accordingly, the State Commission is directed to proceed with the review petition and allow the parties to file their respective statements and documents, if any, and hear them and decide the matter in accordance with law preferably within a period of one month from the date of receipt of this order.

Thus, the impugned order dated 26.04.2011 is set aside and the main Appeal No. 60 of 2011 is allowed. No costs.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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