

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

**Appeal No.88 of 2011**

Dated: 27th Sept, 2011

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

PTC India Limited,  
2<sup>nd</sup> Floor, NBCC Tower,  
15, Bhikaji Cama Place,  
New Delhi

... Appellant(s)

Versus

1. Gujarat Electricity Regulatory Commission  
1<sup>st</sup> Floor, Neptune Tower,  
Opp Nehru Bridge,  
Ashram Road,  
Ahmedabad, Gujarat  
PIN-380009
2. Gujarat Urja Vikas Nigam Limited,  
Corporate Office,  
Sardar Patel Vidhyut Bhawan,  
Race Course, Vadora-390 007  
Gujarat

.....Respondents

Counsel for Appellant(s): Mr. Parag Tripathi, ASG  
Mr. Varun Pathak,  
Mr. Shadan Farasat,  
Mr. Abhishek Mitra,  
Mr. Aashish Bernard,  
Ms. Punja Priyadarshni,

,

Counsel for Respondent(s): Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan for GUVNL,  
Ms. Surbhi Sharma,  
Ms. Shikha Ohri,  
Mr. Sunil Sharma,  
Mr. Sanjay Sen,  
Ms. Swapna Seshadri for R-2,  
Mr. N.A Patel, for GUVNL

**JUDGMENT**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON**

PTC India Limited has filed this Appeal challenging the order of the Gujarat Electricity Regulatory Commission(State Commission) dated 2.6.2011 rejecting the preliminary objection raised by the Appellant with regard to the jurisdiction of the State Commission mainly on the ground that the Appellant was not given a reasonable opportunity of being heard.

2. The short facts are as follows:-

- i) Gujarat Urja Vikas Nigam Limited (Respondent-2) filed a petition dated 17.2.2011 before the State Commission seeking adjudication of certain disputes with PTC India Limited, the Appellant.

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ii) On receipt of notice issued by the State Commission, the Appellant filed a reply on 3.4.2011 objecting to the jurisdiction of the State Commission to adjudicate the dispute in question reserving its right to file a separate reply in regard to the merits of the matter. On 18.4.2011, the State Commission heard both the parties in regard to jurisdiction issue alone and adjourned matter to 23.5.2011 for further submission to be made by the Appellant and the Respondent.

iii) In the meantime i.e. on 21.5.2011 the State Commission sent a letter through Secretary to the Appellant and Respondent-2 informing about the postponement in the hearing schedule of 23.5.2011. Through this letter both the parties were informed that the next date of hearing would be intimated in due course. But to the surprise of the Appellant, the Secretary of the Commission sent a letter to the Appellant on 4.6.2011 informing that the State Commission has already passed the impugned order dated 2.6.2011 deciding the issue of jurisdiction as against the Appellant and next date of hearing of the matter to be argued on merits would be on 16.7.2011.

iv) The Appellant being aggrieved over the failure on the part of the State Commission to give reasonable opportunity to the Appellant of being heard on the jurisdiction issue the Appellant has filed this Appeal.

3. Though several grounds have been urged in the Appeal memorandum relating to the lack of jurisdiction of the State Commission, we do not want to go into those grounds at this stage. However, we find force in the point urged by the Learned Senior Counsel for the Appellant that the State Commission, without fully hearing the parties with regard to the issue of jurisdiction, hurriedly passed the impugned order dated 2.6.2011 holding that it has got jurisdiction.

4. As we wanted to verify this fact, we have decided to call for records from the State Commission in order to go through the notings on file record in the daily proceedings. Accordingly, we ordered for the same.

5. In pursuance of the said order, the State Commission has produced the records. To our surprise, we noticed that the

notings on file have not been maintained by the State Commission relating to the happenings on every date of hearing.

6. In Annexure-9 which is the letter sent by Secretary of the Gujarat State Commission to the Appellant dated 21.5.2011, it is clearly stated as follows:-

*“The matter kept for hearing on 23.5.2011 at 11.30 hrs is postponed. The next date of hearing would be intimated to you in due course of time.”*

7. Surprisingly, even this decision taken by the State Commission to send a letter of intimation to the parties for the postponement of the matter from 23.5.2011 to future date has not been recorded in the notings on file.

8. As pointed out by the learned Counsel for the Appellant on 18.4.2011 when the matter was heard on the issue of jurisdiction for some time, State Commission adjourned the matter to 23.5.2011 only to give opportunity to the Appellant to make further submission on the said issue. As referred to in the letter dated 21.5.2011, prior intimation was given to the parties that the matter was further adjourned for further hearing to some other future date which would be intimated to the parties later.

9. Thus, the State Commission created an impression both on 18.4.2011 i.e when the issue was partly heard as well as on 21.5.2011 through the letter that the Appellant will be given opportunity to make further submission on the question of jurisdiction. When such being the case there is no reason as to why State Commission had to pass the impugned order on the question of jurisdiction on 2.6.2011 itself which was intimated to the parties only on 4.6.2011 without hearing further.

10. Thus, it is noticed that the submission made by the learned Senior Counsel for the Appellant that the Appellant has not been given reasonable opportunity of being heard over the question of jurisdiction is factually correct. Therefore, we deem it fit to set aside the impugned order and direct the State Commission to hear the parties again on the question of jurisdiction by giving full opportunity to both the parties and pass an order in regard to the jurisdiction on the basis of the arguments to be advanced by the parties uninfluenced by any of findings given by the State Commission in the impugned order dated 2.6.2011. Accordingly ordered.

11. Gujarat State Commission is directed to dispose the matter with regard to the issue of jurisdiction as expeditiously as possible.

12. Before parting with this case we are required to refer to one more aspect which has been pointed out by both the learned Senior Counsel for the parties.

13. We have been informed that various State Commissions have not been issuing daily orders in regard to proceedings held by them specifying clearly the nature of hearing held, next course of action to be adopted etc. In the result, the parties to the proceedings would certainly have difficulties in knowing the status of the proceedings and also in deciding the things to be done before the next date of hearing.

14. We are informed that Central Commission has been issuing such record of proceedings giving the gist of hearing and the steps to be taken by the parties to the next date of hearing. So in order to ensure consistency in maintaining, the daily orders and issuing the record of proceedings, we deem it appropriate to issue the following directions to all the Commissions by invoking the powers under section 121 of the Electricity Act,2003:-

**i) All the Appropriate Commissions which are required to discharge their functions with regard to nature of administrative, quasi-judicial, licensing, tariff setting, adjudicatory, etc., should ensure, in terms of Section 79(3) and 88(3) of Act,2003, the transparency while exercising their powers.**

**ii) All the Appropriate Commissions should issue daily orders in regard to nature of hearing held, the persons who had attended the hearing, namely the Counsel, representatives of the parties and others who participated in the proceedings, the status of the case and the purpose for which proceedings is adjourned to the next date. If the order is reserved, the same has to be recorded in the daily orders. If the case is being adjourned for further proceedings, as far as possible the next date of hearing to be fixed then and there in the presence of the parties instead of date of further hearing being fixed separately and intimate the parties.**

**iii) The daily orders may be uploaded in the website of the appropriate Commission soon after the hearing and in any case not later than 3 days from the date of the hearing.**

**iv) The orders sheet should record the purpose for which hearing be adjourned for future date and every order passed by the appropriate Commission should be signed as soon as possible by the members of the Bench hearing the matter.**

**v) The drawn up order sheet should be kept in separate file.**

**vi) The hearing schedule also should be uploaded on the website of the Commission in advance.**

**vii) The parties to the proceedings before the State Commission should be suitably intimated by way of e-mail, fax, etc in addition any other mode being practiced by the Commissions, regarding the next date of hearing. This intimation of notice relating to next date of hearing to the parties should be sent sufficiently in advance in order to have their effective participation.**

**viii) As far as the tariff proceedings are concerned, the State Commission can continue to adopt the same procedure or the mode which is being practised by the Commission as of now.**

15 With the above directions, the Appeal is allowed. The impugned order is set aside. There is no order as to cost.

*(V J Talwar)*  
*Technical Member*

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

Dated: 27th Sept, 2011  
REPORTABLE/NON-REPORTABLE

**Note to Registry**

The Registry, APTEL is directed to send a copy of this judgement to all the Commissions for compliance of directions.