

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 197 of 2009

Dated: 11th March, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member,

In the matter of

Maharashtra State Electricity
Distribution Company Ltd.
Prakashgad, 5th Floor,
Station Road, Bandra (E),
Mumbai-400 051

... Appellant

Versus

- 1. Maharashtra State Electricity**
Regulatory Commission,
Mumbai Centre-1, 13th Floor,
World Trade Centre, Cuffe Parade,
Mumbai-400 005

- 2. Vinod Sadashiv Bhagwat,**
Maitreya Bungalow,
Satguru Nagar, Nandham Society,
Davkhar Wadi, Jai Bhawani Marg,
AT & Post Nashik Road

3. **Prayas (Energy Group),
Amrita Clinic, Athawale Corner,
Lakdipool-Karve Road Junction,
Deccan Gymkhana, Karve Road,
Pune-411 004**

4. **Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyaaneshwar Marg,
Behind Hooper Hospital,
Vile Parle (West),
Mumbai-400 056**

5. **The General Secretary,
Thane belapur Industries Association,
Plot No.P-14, M.I.D.C,
Rebale Village, PO Ghansoli,
Navi Mumbai-400 701**

6. **Vidarbh Industries Association,
1st Floor, Udyog Bhavan, Civil Lines
Mumbai Centre-1, 13th Floor,
Nagpur-440 001**

7. **The Office of the Supdt. Engineer
(Urban Circle)
Maharashtra State Electricity
Distribution Co. Ltd.
2nd Floor, Prosper park,
Near Shingada Talav,
Nashik-422 001**

8. **The Principal Secretary (Energy)**
Industries Energy & Labour Department
Govt of Maharashtra,
Mumbai-400 032

9. **The Secretary**
Central Electricity Authority
Seva Bhawan, R. K Puram
New Delhi-110 066 Respondents

Counsel for Appellant(s): Mr. Abhishek Mitra
Mr. Varun Pathak
Mr. Devadatt Kamat
Mr. Priyanka Telang

Counsel for Respondent(s): Mr. Buddy A. Ranganadhan,
Mr. Anand K. Ganesan
Ms.. Swapna Seshadri

JUDGMENT

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

The Maharashtra State Electricity Distribution Company Limited is the Appellant herein. In this Appeal, the Appellant has challenged the impugned order dated 17.8.2009 passed by the Maharashtra State Commission 1st Respondent directing the Appellant to refund the service line charges which were collected during the period between 22.10.1999 and 5.5.2000 from consumers. The short facts are as follows:

(a) Maharashtra State Electricity Board is a predecessor of the Appellant. On 8.8.1991, the State Electricity Board issued a Circular No.486 stipulating the service line charges to be recovered from the consumers. This Circular authorized the State Electricity Board to determine such charges and recover the same from consumers. The service line charges were collected towards the expenses

to be incurred by the licensee for the issue of new connections to the consumers who have applied for such connections.

(b) On 25.4.1998, the Electricity Regulatory Commissions Act, 1998 came into force. Pursuant to above, the Maharashtra State Commission was constituted on 5.8.1999.

(c) On 22.10.1999, the Appellant's predecessor namely State Electricity Board issued a circular No.631 revising the service line charges and substantially increasing the said charges from Rs.5,000/- to Rs. 20,000/-, to be collected from the consumers who applied for the new connections.

(d) Respondent No.2 Vinod SadaShiv Bhagwat, the Consumer, on 30.3.2000 applied for a new electricity connection from the Appellant. The Appellant issued a quotation of service line charges in terms of Circular of 631

as Rs.20,000/-. Accordingly, the same was paid by the Consumer (R2).

(e) On 5.5.2000, the State Commission while issuing tariff orders for the tariff year for the Appellant took cognizance of order No.631 and held that the revised service line charges as per circular No.631 were illegal since the same could not be issued by the Appellant without the approval of the State Commission.

(f) Having accepted the above order of the State Commission, the Appellant on 27.6.2000, issued a fresh circular No.647 withdrawing the earlier circular No.631 stating that the service line charges would be charged from the consumers at the old rates i.e prior to 22.2.1999 which was Rs.5,000/-. Pursuant to this order, the Respondent No.2, the Consumer, approached the Appellant for refund of the excess service line charges paid based on the Circular of 631. However, the Appellant did not respond to

the said claim. Hence, the Respondent No. 2 (Consumer) approached the District Consumer Redressal Forum. Accordingly, on 1.6.2003, District Consumer Dispute Redressal Forum passed an order directing the Appellant to refund the said amount to the Respondent No.2 along with interest. However, in the Appeal filed by the Appellant before the State Consumer Dispute Redressal Commission, the said order was set aside on the ground that there was no question of deficiency in service. Thereafter, the Respondent No.2 approached Consumer Grievance Redressal Forum which also rejected the claim. There upon, the R-2 approached the Ombudsman who in turn dismissed the same. Ultimately, the, R-2, the Consumer approached the State Commission complaining against the refusal to refund the amount which was collected, under Circular No.631, which was held to be without jurisdiction.

2. In the aforesaid Petition, the State Commission passed the impugned order dated 17.8.2009 directing the Appellant to refund the excess service line charges collected from R-2 as the Circular of 631 had no legal sanctity and granting liberty to the other individual consumers who had paid excess service line charges amount, to approach the Appellant for refund of the said charges.

3. Having aggrieved over the said order dated 17.8.2009, the Appellant has filed this Appeal.

4. The Appellant has urged the following contentions:-

(a) The claim of the consumer Respondent No.2 was barred by Limitation.

(b) The impugned order dated 17.8.2009 is in nature of Review of the earlier tariff order dated 5.5.2000, which is not permissible.

(c) The State Commission did not have jurisdiction to entertain the Petition of the Respondent No.2 since it was a dispute between the individual consumer and the licensee which the State Commission did not have jurisdiction to adjudicate upon.

5. In order to support his contention, the Learned Counsel for the Appellant cited the following decisions rendered by this Tribunal as well as by the Hon'ble Supreme Court. They are as follows:

(i) 2008 ELR (SC) 0001 Gujarat Urja Vikash Nigam v/s Essar Power Limited

(ii) Appeal No.55 of 2009 dated 6.5.2010 rendered by this Tribunal in r/o New Bombay Ispat Udyog Limited v/s MSEDCL and Others

(iii) (1987) 2 SCC 107 Collector, Land Acquisition v/s Mst Katiji & Others

(iv) (2001) 5 SCC 519 Somaiya Organics v/s State of Uttar Pradesh and Another

(v) (2008) 6 ALD 541 Divisional Forest Officer v/s Forest Settlement Officer and Others

(vi) (2006) 2 SCC 369 Municipal Corporation Jaipur v/s Shankarlal

(vii) (2007) 8 SCC 381 Maharashtra State Regulatory Commission v/s Reliance Energy Limited and Others

6. On these issues, the Learned Counsel for the State Commission as well the consumer complainant have submitted their arguments in justification of the impugned order and contended that the grounds urged by the Appellant are not legally sustainable to substantiate. The Learned Counsel for the State Commission and the Consumer have cited the following authorities:

- (i) (1979) 4 SCC 176 Madras Port Trust v/s Himanshu International
- (ii) (1990) 1 SCC 190 Sushil Kumar Mehta v/s Govind Ram Bahra
- (iii) (2006) 2 SCC 369 Municipal Corporation Jaipur v/s Shankarlal

7. In the light of the above rival contentions, the following questions may arise for consideration:

- (a) Whether the proceedings initiated by R-2, the Consumer were barred by the Limitation ?
- (b) Whether the impugned order dated 17.8.2009 is a consequential order arising out of non implementation of tariff order dated 5.5.2000 ?
- (c) Whether the State Commission has got jurisdiction to adjudicate upon the Consumer dispute and issue substantial directions that too in a clarification petition?

8. Let us now deal with the above questions referred to above one by one.

9. The first issue relating to the question as to whether the claim was barred by Limitation ? According to the Appellant, in the form of clarification petition, the Consumer R-2 approached the State Commission belatedly after a gap of nine years to seek directions on the basis of the tariff order passed on 5.5.2000 and as such the Petition was barred by limitation.

10. It can not be debated that the Electricity Act is a complete Code. Any legal bar or remedy under the Act must exist in the Act. If no such bar to the remedy is prescribed under the Code, it would be improper to infer such a bar under the Limitations Act. Admittedly, there is no provision in this Act, prescribing the bar relating to limitation. That apart, this question has already been decided by the Hon'ble Supreme Court that the Limitation Act would not apply to the quasi-judicial authorities like State Commission. This has been laid down in AIR 1976 SCC 177, AIR 1985 SCC 1279, AIR 2000 SCC 2023, 2004 (VOL 2) SCC, 456 and 1985(VOL 2) SCC 590. Further, it has been held by the Hon'ble Supreme Court in Madras Port Trust V/S Himunshu International reported in (1979) 4 SCC 176 that public authorities ought not to take technical plea of limitation to defeat the legitimate claims of the citizens. The relevant portion of the said judgement is as follows:

"2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port trust Act (II of 1905).

11. The matter in issue is not of adjudication of disputes between two parties to which limitation may have any application. There is no question of limitation in the matters of tariff determination and regulation of the revenue requirements

of the licensee. As mentioned above, there is no such limitation prescribed under the Electricity Act, 2003. Tariff fixation is a continuous process and is to be adjusted from time to time. Consequently, the application and enforcement of tariff also constitute a part of the Regulatory exercise to which the limitation can not be applied. Hence, the contention that the proceedings initiated by the R2 Consumer were barred by Limitation would fail.

12. The next question is as to whether the impugned order dated 17.08.2009 is in the nature of the review of the earlier tariff order dated 5.5.2000? According to the Appellant, the State Commission has already passed an order dated 5.5.2000 determining the tariff and the same can not be reviewed under the garb of clarification. To discuss over this issue, it is necessary to refer to the relevant facts. It is not disputed that on 22.10.1999, the Appellants predecessor i.e State Electricity Board issued a circular in No.631 revising the certain service line charges from Rs.5,000/- to Rs.20,000/-. Respondent No.2,

the Consumer applied for the Electricity connection on 30.3.2000 and the Appellant collected the service line charges of Rs.20,000/- on the basis of the said circular. On 5.5.2000, the State Commission passed a tariff order for the Appellant. One of the findings in the said tariff order was that the revised service line charges through the circular No.631 dated 22.10.99 increasing the service line charges from Rs.5,000/- to Rs.20,000/- was without jurisdiction as the said circular ought not to have been issued by the Appellant. The relevant portion of the State Commission order dated 5.5.2000 are extracted as under:-

“The Commission is of the view that the terms and conditions of supply issued by the MSEB in their order impinges on the payment of charges by the consumers and are subject to review by the Commission in view of Section 29 (1) and 29 (4) of the ERC Act, 1998. In particular, Section 29 (4) of the Electricity Regulatory Commissions Act, 1998 states that the Board shall observe the methodologies and procedures specified by the Commission from time to time in calculating the expected revenue from charges it is permitted to recover and in determining the tariff to collect those revenue. Further, Section 52 of the Electricity Regulatory Commissions Act, 1998 states that save as otherwise provided in Section 49,

the provisions of this Act shall have effect notwithstanding anything inconsistent there with contained in any enactment other than this Act. Therefore, charges such as service line charges, distribution charges, meter rent, etc., charged by the MSEB will have to be approved by the Commission. The Commission, therefore, upholds the objection that the MSEB should desist from issuing such circulars. The Commission further observes that the Circulars issued on this subject after the setting up of the Commission and without its approval may be kept in abeyance and the approval of the Commission be obtained before they are put into effect”.

13. Thus, through this order, the State Commission held that the said Circular was not valid in law in as much as the increase of the service line charges was without the approval of the State Commission and therefore, the said circular should be kept in abeyance. Admittedly, the said order was not challenged by the Appellant.

14. Thus the finding with regard to the validity of Circular by the State Commission in the absence of the challenge the same in Appeal has attained finality. That apart the said order was accepted and acted upon by the Appellant immediately thereafter by issuing another circular cancelling the earlier

circular intimating that the service line charges would henceforth would be collected from the consumers at the old rate i.e Rs.5,000/-, the rates prevailing prior to 22.10.1999. However, the amount collected from the 2nd Respondent during the relevant period from the consumer, (2nd Respondent) was not refunded despite the demand for refund made by the R-2 on the basis of the tariff order issued by the State Commission dated 5.5.2000. Under those circumstances, the Respondent-2 approached the State Commission and prayed for implementation of the said order. Accordingly, the State Commission by the order dated 17.8.2009, passed the impugned order by way of earlier order dated 5.5.2000. The relevant portion of the said order are extracted here as under:-

"11. The Commission is of the view that after the enactment of ERC Act 1998, for any revision in the tariff including charges for SLC etc., MSEB should have approached the Commission for determination of charges to be recovered as per provisions under Section 29 (1) & 29 (4) of ERC Act 1998. In the subject case, MSEB has unilaterally issued circular dated 22.10.1999 revising service line charges from Rs.5,000/- to Rs.20,000/- without seeking permission from the Commission as required under

statute. In the tariff Order issued by the Commission dated 5.5.2000 in Case No.1 of 1999, the Commission has observed and directed that the Circulars issued on the subject after the setting up of the Commission and without its approval may be kept in abeyance and the approval of the Commission be obtained before they are put into effect.

12. MSEDCL in its reply stated that the first tariff Order was passed on 5.5.2000, the Commission did not set aside the Circular No.631 dated 22.10.1999 but kept it in abeyance. After issue of tariff Order, MSEDCL has not charged the SLC charges as per the Circular No.631 dated 22.10.1999. As MSEB has stopped collecting charges SLC as per their Circular dated 22.10.1999, the Commission is of the view that there is no issue of non-compliance of the tariff Order and contempt as alleged by the Petitioner. However, the issue involved in this case is whether the Circular issued dated 22.10.1999 by MSEB for revision of SLC has the legal sanctity. The Commission has amply made it clear in the tariff Order dated 5.5.2000 that the said Circular was issued without approval of the statute as required under prevalent law.

13. In the circumstances, the affected consumers may approach MSEB/MSEBDCL individually to seek refund of the extra SLC amount (over and above the amount as per earlier departmental circular (Commercial) No.486 dated 08.09.1991) collected as per Circular dated 22.10.1999. In case they have further grievance in the matter, they may approach the concerned Consumer Grievance Redressal Forums to seek remedy.

14. The Commission further directs to MSEDCL that they should widely publish that the extra SLC charges recovered as per Circular issued dated 22.10.1999 shall be refunded and hence affected consumers may approach the MSEDCL for the same”

15. Thus, the impugned directions is a consequential order which seeks to implement the earlier finding, rendered by the State Commission in the order dated 5.5.2000. Therefore, it can not be contended that the impugned direction is a review of the earlier order by giving fresh directions. Therefore, this contention is also without any merit.

16. The next question relates to the jurisdiction of the State Commission to entertain the Petition of R-2 with regard to a dispute, stated to be a dispute between the consumer and the licensee. The Learned Counsel for the Appellant has relied upon the judgement of the Hon'ble Supreme Court, (Maharashtra Electricity Commission vs Reliance Energy Limited & Others), reported in (2007) 8 SCC 381 to contend that the Consumer dispute can not be adjudicated upon by the State Commission and it can not give the general directions. On perusal of this judgement, it is evident that the said judgement would not support the contention of the Appellant. On the other

hand it supports the case of the Respondents. The said judgement laid down that the State Commission has got full jurisdiction to pass suitable orders for giving suitable directions to the authorities for benefit of the public in general. The relevant portions are extracted as under:-

“16. A Comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting license and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under sub-section (6) of Section 128....”

18. When the Commission received a spate of complaints from consumers against its licensees/distribution companies that they are arbitrarily issuing supplementary/amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees/distribution companies and in that connection issued notice dated 3.8.2004. There can be no manner of doubt that the Commission has full power to pull up any of its licensee or distribution company to see that the rules and regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45 95), 55 (2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed....”

“20. Thus while we hold that the Commission has power to issue a general direction to licensees that they should abide by conditions of the licensee issued to them and

charge only as per the tariff fixed under the Act so that the public at large should not be harassed.

17. The above observation of the Hon'ble Supreme Court would make it clear that the State Commission has got full powers to pull up the distribution licensees to ensure that the rules and regulations laid down by the State Commission as well as the orders passed by it are properly complied with by giving the appropriate directions.

18. As observed by the Hon'ble Supreme Court, there can not be any dispute with regard to the fact that the billing dispute between the licensee and the consumers can not be gone into by the State Commission but the State Commission certainly has the jurisdiction to issue directions to the licensee/Distribution Company to secure compliance of its orders in charging the tariff from the consumers as per the tariff determined by the State Commission.

19. In the present case, the State Commission has not dealt with the mere consumer dispute between R-2 and the Appellant.

The impugned order passed by State Commission is only to hold that the Appellant is not entitled to retain any excess service line charges recovered under Circular No.631 issued in the year 1999 as the said Circular was held to be without jurisdiction. In the light of the above legal position, the State Commission has directed the Appellant to refund the excess amount to the Respondent No.2 and gave the general directions to the individual consumers to approach the Appellant for the refund of any excess service charges paid by them under Circular No.631.

20. It is a well settled principle of law, that any action taken without jurisdiction is ab-initio void as it has no sanctity in the eyes of law. It cannot be debated that it is illegal on the part of Appellant to have charged, collected and retained any part of the charges recovered under Circular No.631 as held by the State Commission in the earlier order. The State Commission has in the impugned order only recognised the above principle and directed that the consumers be allowed to seek refund of

the amount. Therefore, this contention urged by the Appellant is without any basis.

21. Summary of Findings

(i) Electricity Act is a complete code. Any legal bar or remedy under the Act shall manifestly exist in the Act itself. There is no such bar with regard to limitation in the Electricity Act. The Hon'ble Supreme Court has held in a number of decisions that the Limitation Act will not apply to the quasi-judicial authorities like the State Regulatory Commissions. It has been further held by the Hon'ble Supreme Court that the State authorities ought not to take such technical plea to defeat the legitimate rights of the Consumers. The tariff fixation is a continuous process and is to be adjusted from time to time. Therefore, the Limitation Act cannot be applied to the enforcement of tariff which constitutes a part of the regulatory exercise. Therefore, the contention that the proceedings initiated in

this case before the State Commission was barred by the Limitation can not be accepted.

(ii) The impugned order dated 17.8.2009 can not be said to be in nature of the review of the earlier tariff order dated 5.5.2000. By the order dated 5.5.2000, the State Commission specifically held that the circular which increased the service line charges from Rs.5,000/- to Rs.20,000/- was ab-initio void. However, this order was not given effect to by the Appellant even though the said order had not been challenged. On the other hand, the said order was accepted by the Appellant by issuing another circular cancelling the earlier circular by intimating to the public that the service line charges would be collected only at the old rate i.e. Rs.5,000/-. Despite this circular and despite the demand made by the Consumer for the refund, the amount collected from the consumers during the relevant period which was held to be illegal was not refunded. Therefore, the consumer Respondent No.2 rightly approached the

State Commission for necessary directions for implementation of the said order. Accordingly, the impugned order was passed by the Appellant to refund the amount collected illegally. Therefore, the impugned order is only passed by way of implementation of earlier order dated 5.5.2000 and it can not be said that the same is a review of earlier order.

(iii) The State Commission has got full powers to pull-up the licensees to ensure that the rules and regulations laid down by the State Commission as well as the orders passed by it are properly complied with. In the present case, it has not merely dealt with the consumer dispute between the Respondent No.2 and the Appellant, Distribution licensee. But, the State Commission dealt with the question as to whether, the Appellant is entitled to retain any extra amount of service line charges recovered under Circular of 631 in view of the fact that the said circular was held to be illegal earlier. As held by the State

Commission, any action taken by the licensee without jurisdiction is ab-initio void. Thus State Commission in the impugned order recognised the above principle and directed the Appellant to refund the amount which was illegally collected. Therefore, the impugned order is perfectly legal and justified.

22. In view of our findings referred to above, the impugned order has to be held as valid one which does not call for any interference. Therefore, there is no merit in the Appeal. Consequently, the Appeal is dismissed. However, there is no order to costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 11th March, 2011

REPORTABLE/~~NON-REPORTABLE~~