

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

ORDER IN APPEAL NO. 159 OF 2006 &
IA NOS. 1129, 1281 OF 2018 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: 28th November, 2018

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member

In the matter of :

Tata Steel Limited

Through Meena Lall,
Head Legal (Corporation matter),
Jamshedpur, Jharkhand

... **Appellant(s)**

Versus

1. Jharkhand State Electricity Regulatory Commission & Ors.
2nd floor, Rajendra Jawan-cum-Sainik Bazar,
Mian Road Ranchi, Jharkhand
2. The Chairman
Damodar Valley Corporation
Registered office at DVC Towers,
VIP Road, Kolkata
3. Chief Engineer (Commercial)
Valley Corporation, DVC Towers,
VIP Road, Kolkata
4. Chief Accounts Officer,
Valley Corporation, DVC Towers
VIP Road, Kolkata

... **Respondent(s)**

Counsel for the Appellant (s)

: Mr. Amar Dev
Ms. Natasha Sahrawat
Ms. Khushuboo Bari
Ms. Neha Khandelwal
Mr. Jasvir Singh Sabharwal

Counsel for the Respondent(s)

: Mr. Farrukh Rasheed for R-1
Mr. Rakesh Khanna, Sr. Adv.
Ms. Madhumita Bhattacharjee
Mr. Vidur Kamra (Rep.)
Ms. Drishti Rathore for R-2 to R-4

The Appellant has sought the following reliefs in Appeal No. 159 of 2006:

- (i) Admit this appeal, call for the records, issue Notice to the Respondents and after hearing the parties be further pleased to direct the respondent not to insist upon the delayed payment surcharge on Fuel Surcharge and further set aside the order dated 28.02.2006 passed in case No. 6/2005-06 by the Learned JSERC, and/or;
- (ii) Issue further direction to the respondents not to withdraw in adjustment of instalment payments of all the consequential Delayed Payment Surcharge bills; and
- (iii) Pass such other Order or Orders as this Hon'ble Tribunal may deem fit and proper in the fact & circumstances of the fact.

ORDER

PER HON'BLE JUSTICE N.K.PATIL, JUDICIAL MEMBER

1. Shri Amar Dev, learned appearing for the Appellant at the outset submitted that the Respondent No. 1, Jharkhand State Electricity Regulatory Commission, Ranchi has not at all considered the case made out by the Appellant and it is manifest on the countenance of the Impugned Order that the grievance of the Appellant has not at all been considered. Neither any discussions nor reasons are coming forth in the impugned Order. Therefore, he submitted that the Impugned Order passed by the Respondent No. 1, Jharkhand State Electricity Regulatory Commission cannot be sustainable and it is liable to be set aside. Further, he submitted that the matter may be remanded back for fresh consideration in accordance with the law with the direction to Respondent No. 1, Jharkhand State Electricity Regulatory Commission to decide the same after affording reasonable opportunity of hearing to the Appellant and the Respondent Nos. 2 to 4, reserving liberty to the Appellant and the Respondent Nos. 2 to 4 to

file their necessary amended application and also permitting them to adduce their additional evidence, oral and documentary, to substantiate their respective stand.

2. ***Per-contra***, the learned counsel appearing for Respondent Nos. 2 to 4, inter-alia contended and fairly submitted that the submissions made by the learned counsel appearing for the Appellant, as stated supra, may kindly be placed on record and the instant Appeal filed by the Appellant may be disposed of by reserving liberty to the Respondent Nos. 2 to 4 and the Appellant to file their necessary amended application and also permitting them to adduce their additional evidence, oral and documentary, to substantiate their respective stand. Therefore, he submitted that appropriate order may be passed in the light of the submissions made by the learned counsel appearing for the Appellant as stated above.

3. The submissions made by the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent Nos. 2 to 4, as stated above, are placed on record.

4. In the light of the submissions made by the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent Nos. 2 to 4 and after careful perusal of the Impugned Order passed by the Respondent No. 1- JSERC, it is manifest on the face of the order, that the prayer sought in the instant appeal, is neither considered nor appreciated nor assigned any reason are discussed and offered in the Impugned Order. Therefore, we are of the considered view that the Impugned Order passed by the Respondent No. 1- JSERC cannot be sustainable as rightly pointed out by the counsel appearing for the Appellant and the counsel appearing for the Respondent Nos. 2 to 4. Therefore, the impugned order passed by the Respondent No. 1, JSERC is hereby set aside so far it relates to the prayer sought in the instant Appeal.

5. The matter stands remitted back to the Respondent No. 1, JSERC for a fresh disposal and deciding the same in accordance with the law after affording reasonable opportunity of hearing to the Appellant and the Respondent Nos. 2 to 4 and dispose of the same as expeditiously as possible, at any rate, within a period of six months from the date of the appearance of the Parties.

6. For the foregoing reasons as stated above, the Appeal filed by the Appellant is allowed and the impugned order passed by the Respondent No. 1, JSERC dated 28.02.2016 passed in Case No. 6 of 2005-06 on the file of the JSERC, Respondent No. 1 is hereby set aside.

7. The Appellant and the Respondent Nos. 2 to 4 are hereby directed to appear before the Respondent No. 1, JSERC in person or through their counsel without notice on 21.01.2019, without fail, to collect next date of hearing.

With these observations, the instant appeal filed by the Appellant, stands disposed of.

IA NOS. 1129 & 1281 OF 2018
(Appl. for placing on record additional documents)

8. In view of the disposal of Appeal No. 159 of 2006, on the file of the Appellate Tribunal for Electricity, New Delhi, the prayer sought in these applications being IA Nos. 1129 & 1281 of 2018 does not survive for consideration and hence stands disposed of as having become infructuous.

The Parties to bear their own costs. Order accordingly.

(S.D. Dubey)
Technical Member
Bn/kt

(Justice N.K. Patil)
Judicial Member