

Appellate Tribunal for Electricity

(Appellate Jurisdiction)

Appeal No. 225 of 2012

Dated: 19th December, 2012

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

**Nhava Sheva International Container Terminal
Pvt. Ltd.
Darabshaw House,Level 1,
N.M. Marg, Ballard Estate,
Mumbai-400 001**

... Appellant(s)

Versus

- 1. Maharashtra Electricity Regulatory Commission
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade,
Colaba, Mumbai-400 005**
- 2. Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Bandra East
Mumbai-400 051**
- 3. Jawaharlal Nehru Port Trust
1107, Raheja Centre,
214 FPJ Marg, Nariman Point,
Mumbai-400 021**

....Respondent(s)

**Counsel for the Appellant(s): Mr. Krishnan Venugopal, Sr. Adv.
Mr. Sakya Singha Chaudhuri
Mr. Avjeet K. Lala**

Ms. Mandakini Ghosh
Ms. Anusha Nagarajan
Mr. Kaushik

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan for R.1
Ms. Richa Bhardwaja for R-1
Ms. Sangeeta Bharti
Mr. Krishanu Adhikary
Ms. Shweta Mishra
Ms. Deeksha Shukla for R.3
Mr. Gaurav Pachnanda, Sr. Adv.
Mr. Abhishek Mitra
Ms. Renu Gupta for MSEDCL

Appeal No. 230 of 2012

**Gateway Terminals India Pvt. Ltd.
GTI House,
JNPT, Sheva, Navi Mumbai
Taluka-Uran, District Raigad
Maharashtra-400 707**

... Appellant(s)

Versus

- 1. Maharashtra Electricity Regulatory Commission
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade,
Colaba, Mumbai-400 005**
- 2. Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Bandra East
Mumbai-400 051**
- 3. Jawaharlal Nehru Port Trust
1107, Raheja Centre,
214 FPJ Marg, Nariman Point,
Mumbai-400 021**

Counsel for the Appellant(s): Mr. Krishnan Venugopal, Sr. Adv.
Mr. Sakya Singha Chaudhuri
Mr. Avjeet K. Lala
Ms. Mandakini Ghosh

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan
Mr. Arijit Mitra
Ms. Richa Bhardwaja for R.1
Ms. Sangeeta Bharti
Mr. Krishanu Adhikary
Ms. Deeksha Shukla
Ms. Shweta Mishra for R.3
Mr. Gaurav Pachnanda, Sr. Adv.
Mr. Abhishek Mitra
Ms. Renu Gupta for MSEDCL

Appeal No. 226 of 2012

**Indian Private Ports & Terminals Association
Darabshaw House, Level-1,
N.M. Marg, Ballard Estate,
Mumbai-400 991**

... Appellant(s)

Versus

- 1. Maharashtra Electricity Regulatory Commission
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade,
Colaba, Mumbai-400 005**
- 2. Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Bandra East
Mumbai-400 051**

Counsel for the Appellant(s): Mr. Rana Biswas
Mr. Mathrugupta Mishra
Mr. Sunil Sharma

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan
Mr. Arijit Mitra for R.1
Mr. Gaurav Pachnanda, Sr. Adv.
Mr. Abhishek Mitra
Ms. Renu Gupta for MSEDCL

APPEAL No. 264 of 2012

**Jawaharlal Nehru Port Trust (JNPT)
1107, Raheja Centre,
214, F.P.J. Marg,
Nariman Point,
Mumbai-400 021**

... Appellant(s)

Versus

**1. Maharashtra Electricity Regulatory Commission
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade,
Colaba, Mumbai-400 005**

**2. Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Bandra East
Mumbai-400 051**

Counsel for the Appellant(s): Mr. Ramji Srinivasan, Sr. Adv.
Ms. Sangeeta Bharti
Mr. Krishanu Adhikary
Mr. Vivek Paul
Ms. Deeksha Shukla

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan for R.1
Mr. Abhishek Mitra for R.2

JUDGMENT

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

1. These Four Appeals have been filed by four different Appellants as against the impugned tariff order dated 16.8.2012 passed by the Maharashtra State Commission.
2. Since, the impugned order is common, the common judgment is being rendered in all these Appeals.
3. Nhava Sheva International Container Terminal, Gateway Terminals India Pvt Ltd and Indian Private Ports & Terminals Association are the Appellants in Appeal No.225, 230 and 226 respectively. These Appellants are the Container Terminal Operators. They had signed a licensed agreement with Jawaharlal Nehru Port Trust to build and operate the Common User Container Terminal.
4. The Jawaharlal Nehru Port Trust, who is the Appellant in Appeal No.264 of 2012, is the consumer of the Maharashtra State Electricity Distribution Company Limited (MSEDCL), the Respondent.
5. Jawaharlal Nehru Port Trust, the Appellant in Appeal No.264 of 2012, receives the supply from MSEDCL at a single point

for further use by itself and its Terminal Operators including the Appellants in other Appeals.

6. Under the licensed agreement, the Terminal Operators, the Appellants are provided power by the Jawaharlal Nehru Port Trust, the other Appellant to meet their operational and other power requirements.
7. The Maharashtra State Commission by the tariff orders for the period 2007-08 and 2008-09 on the Petition filed by the MSEDCL categorized the HT-I consumers like ports, the Appellants under the newly created HT-II commercial category. Even in the tariff orders for the subsequent period 2009-10 and 2010-11, the State Commission continued to categorize the ports under HT-II commercial category.
8. Since such a category of ports under the commercial category led to steep increase in the tariff, one of the Appellants filed an Appeal before this Tribunal as against the said tariff order. However, the said Appellant withdrew the said Appeal in order to approach the State Commission for seeking re-categorization of ports in the impending tariff proceedings initiated by MSEDCL for the year 2012-13. Accordingly, liberty was given by this Tribunal by the order dated 30.4.2012 to approach the State Commission.

9. In the meantime, MSEDCL, the Respondent filed a Petition before the State Commission for tariff determination for the Financial Year 2012-13. Pursuant to the public notice, some of the Appellants submitted their objections to the tariff applicability proposed by the State Commission. The Appellants specifically pleaded before the State Commission that the tariff re-categorization should be made having regard to the purpose of supply for which the entity requires supply of power on the basis of the judgment rendered by this Tribunal in batch of Appeals like Appeal No.195 of 2009 (Mumbai International Airport Case) and Appeal No.110 of 2009 etc. (Association of Hospitals Case).
10. However, the State Commission passed the impugned tariff order on 16.8.2012 putting the Appellants in the same commercial category and determining the tariff.
11. Aggrieved over the same, the Appellants have filed these Appeals. These Appeals have been admitted and notice ordered.
12. Though the Appellants have sought interim stay of the operation of the impugned tariff order pending disposal of these Appeals, after hearing the parties in the interim applications, we thought it fit to take-up the main Appeals for disposal as we find that the matter could be remanded to the State Commission for consideration of the issue in question

on a short ground. Accordingly, we have heard the learned Senior Counsel for the Appellants and the Respondents.

13. There is no dispute in the fact that on behalf of the Appellant objectors, elaborate submissions were made before the State Commission supporting their case for a separate tariff clarification. As a matter of fact, the State Commission also has reproduced arguments of the Appellants objectors. However, the State Commission without going into the merits of the said objections or claims and without recording any reasons for rejecting those objections raised by the Appellants simply put the ports in the same HT-II commercial category.
14. The fact that the objections were raised by the Appellants and their plea requesting for putting them in a separate category for reclassification have not been dealt by the State Commission in the impugned order, is not disputed by the learned Counsel for the State Commission.
15. It is noticed from the copy of the written objections filed in case No.19 of 2012 filed before the State Commission that the Appellant had specifically pleaded for reclassification of tariff category applicable to the ports. The relevant plea made in their objection on behalf of the Appellants are given below:

“30. Thus the Objector in pursuance of the judgments passed by the Hon’ble Tribunal and Section 62 (3) of the Act is seeking re-determination of tariff category from this Hon’ble Commission on the basis of the following facts and submissions:

.....

.....

(vii) It is submitted that one of the factors contained in the Act to be considered while determining the tariff is the purpose for which the supply is required. The purpose of supply is the object for which supply is taken, which may be for domestic use, agriculture, industry, education, research, public transportation, medical treatment, public water supply, public lighting etc. Consumers’ categories could be classified on the basis of purpose of supply. For example, airports and ports could be classified together as similarity of public utility service and on the basis of common purpose of supply related to transportation and development of trade;

31. Having regard to the submissions made herein above, the Objector submits it ought to be classified as an industry as distinguished from entities performing purely commercial activity which consists largely of sale/resale of goods and commodities. Therefore, the Objector should be treated as an HT industrial consumer. In the event, this Hon’ble Commission is of the opinion that the Objector should not be placed in the HT-I industrial category in light of the opinion of this Hon’ble Commission that only entities involved in manufacture would be considered industry, then the Objector should be placed in a separate category and offered competitive tariff having regard to its purpose of supply. This dispensation has been previously granted to MIAL, wherein they have

been placed in a separate category in view of the essential nature of services being offered by them. Accordingly, the Objector calls for appropriate re-classification of tariff category applicable to the Objector”.

16. As mentioned above, the State Commission has also specifically referred to the arguments of the Appellants regarding their objections in unequivocal terms. The relevant portion of the reference about the arguments of the Appellants in the impugned order is as follows:

“M/s. Trilegal, Solicitors, submitted on behalf of GTIL and NSICT, two private container terminals licensed by JNPT through the competitive bidding route. It stated that JNPT handles 60% of container traffic in India and avails of HT supply from MSEDCL. JNPT in turn supplied power to the objectors. It stated that in 2008 the power supply to ports were made under HT Industrial Category, but due to re-categorization by the Commission in June 2008, the JNPT was converted to Commercial category. The impact of this on GTIL has been Rs.28 crore and on NSICT Rs.44 crore in the last three years. JNPT filed an Appeal against this order dated 20 June, 2008 before the Hon’ble ATE, which was dismissed on ground of delay. GTIL and NSICT filed separate Appeals before the Hon’ble ATE. The Hon’ble Tribunal has been allowed the ports to make representation before the Commission vide its order dated 27 April, 2012. M/s. Trilegal submitted that the services of the objectors are covered under Essential Services Maintenance Act, which is handling containers. The use of electricity is primarily for functioning of cranes and power supply to refrigerated containers and supply is required on a 24 x 7 basis. Stating the ports cannot be treated as commercial

establishments as the activities performed are of essential industrial nature, the objector requested that the ports may be excluded from the Commercial category and a separate category may be created for them. In this regard, the objector also quoted an extract from the judgment of the Hon'ble ATE in Appeal No.195 of 2009 regarding categorization on the basis of purpose of supply”.

17. So, these objections raised by the Appellants in their written submission as well as the reference about their objections in the impugned order by the State Commission would clearly establish that the Appellants had made specific request to the State Commission that the ports may be excluded from the commercial category and separate category may be created for them on the basis of the ratio decided by this Tribunal in Appeal No.195 of 2009 on the basis of the purpose of supply.
18. The State Commission in the impugned order not only referred to this objection raised on behalf of the Appellants but also referred to the replies made by the MSEDCL. Admittedly, the MSEDCL, the Respondent did not object to the prayer made by the Appellants in their reply as quoted in the impugned order.
19. Strangely, the State Commission has not dealt with this specific objection raised and the prayer sought for by the Appellants even though the details of the objections and the

plea urged by the Appellants have been referred to in detail by the State Commission in the impugned order.

20. As correctly pointed out by the learned Senior Counsel appearing for the Appellants, the State Commission has not given any reasons or findings in this regard as to why the Appellant's objections cannot be countenanced.
21. In other words, the State Commission has not provided any reasons in the impugned order for rejecting the plea of the Appellants for tariff re-categorization of the ports and for not accepting the arguments made on behalf of the Appellants.
22. It is a settled position of law that the recording of reasons by the judicial authority is the essential requisite of exercising judicial power. It is the right of the losing party to know as to why their arguments were not accepted by the said judicial authority.
23. The learned Counsel for the State Commission fairly submitted that the matter could be remanded so that the State Commission after hearing the parties again, pass an order on this issue on a proper appreciation.
24. Under those circumstances, the tariff order dated 16.8.2012 is set aside to the extent that it has categorized ports under HT-II commercial category and applied the tariff applicable under HT-II commercial category to the ports.

25. Consequently, the matter is remanded to the State Commission which in turn will consider the issue in question after giving full opportunity to the Appellants and the parties concerned to place the materials in order to substantiate their plea.
26. Accordingly ordered. The final order may be passed by the State Commission within two months from the date of the communication of this judgment.
27. On behalf of the Appellants, it has been prayed that during the pendency of the proceedings before the State Commission to decide the issue in question in pursuance of the remand ordered by this Tribunal, the Appellants may be permitted to pay the tariff which was prevailing prior to the passing of the impugned order dated 16.8.2012 on the strength of the dictum laid down by the Hon'ble Supreme Court in the case of Shree Chamundi Mopeds Ltd Vs Church of South India Trust Association (1992) 3 SCC 1 to the effect that ***“Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed”***.
28. In view of the above, the Appellants are permitted to pay the tariff as per the tariff fixed by the State Commission which was prevailing prior to the date of the impugned order on the condition that in the event of the State Commission coming

to the conclusion that the Appellants are liable to pay the tariff by putting in a separate category, the Appellants shall pay the difference between the tariff paid in terms of this judgment and the tariff to be fixed in the proceedings conducted by the State Commission as directed in this judgment.

29. In the light of the above observations, the impugned order as far as the Appellants are concerned, is set aside and the matter is remanded to the State Commission for consideration of this issue within the time frame as stipulated above.

30. The Appeals are allowed. However, there is no order as to costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:19th Dec, 2012

√REPORTABLE/~~NON-REPORTABLE~~