

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 135 of 2009

Dated: 14th December, 2009

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H. L. Bajaj, Technical Member

IN THE MATTER OF:

M/s. Ispat Industries Ltd,
Park Plaza,
71, Park Street, Kolkata-16.

.....

Appellant

Versus

1. Maharashtra State Electricity Dist. Co. Ltd.,
Prakashgad, Bandra (E),
Mumbai-51.
2. Maharashtra Electricity Regulatory Commission
World Trade Centre No. 1,
13th Floor, Cuffee Parade,
Mumbai-400 005.

... Respondents

Counsel for the Appellant(s) :Mr.C.S. Vaidyanathan, Sr. Advocate
Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshadri,
Mr. G. Umpathy,
Ms. Amrita Narain

Counsel for the Respondent(s) :Mr. Vikas Singh, Sr. Advocate,
Mr. Abhishek Mitra,
Mr. S.S. Chauhan
Mr. Ravi Parkash,
Mr. Varun Agarwal
Mr. Raunak Jain

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

JUDGMENT

1. M/s Ispat Industries Ltd., Kolkata is the Appellant herein. Against the order dated **15.06.2009*** passed by the Maharashtra State Commission imposing Reliability charges on the consumers including the Appellant, this Appeal has been filed.

2. The facts as stated in the Appeal are as follows:

The Appellant is the steel major in industry. It is one of the largest consumers of the electricity supplied by the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) the 1st Respondent. The Appellant exports sizeable quantity of its end product and earns huge foreign exchange for the country.

3. In the petition filed by the 1st Respondent the Distribution Company the State Commission passed the tariff order on 20.10.2006 imposing Additional Supply Charges for

*Note: *The correction in the date in the 2nd line of para 1 above is shown in italics and bold as per the orders of the Hon'ble Tribunal dated 18.12.2009.*

uninterrupted power supply to the bulk consumers like the Appellant. However, in the next tariff order dated 20.06.2008 the State Commission discontinued the Additional supply charges with immediate effect and directed the Distribution Company to refund the Additional supply charges collected from the bulk consumers during the financial year 2006-07 and 2007-08.

4. For the continuous process industries like the Appellant who are bulk consumers and who are not subjected to the load-shedding including staggering day, the tariff was specifically fixed slightly higher than of HT non-continuous process industries.

5. The Distribution Company, the 1st Respondent submitted a petition before the State Commission for implementing the zero load shedding model for the area covered under the Pen circle and for approval of the Reliability charges to be recovered thereof.

6. The State Commission conducted the technical validation session. Then the Distribution Company filed its revised petition computing the Reliability charges based on certain assumption. Though the objections were raised by some associations and participants with reference to the imposition of Reliability charges, the State Commission ultimately passed the impugned order dated 15.06.2009 allowing the petition filed by the Distribution Company and imposing Reliability charges payable by all the consumers in Pen circle area including the Appellant Company except agricultural consumers and residential consumers

7. Mr. C.S. Vaidyanathan, Sr. Advocate for the Appellant challenging the impugned order would make the following contentions:-

i) The Appellant Company which is a continuous industry has already been subjected to higher tariff and the HT-I consumers connected through express feeders like the Appellant company have already been imposed 7% higher tariff than those consumers

of non-express feeders. Hence imposition of reliability charges over and above the existing tariff is totally unjustified.

ii) The State Commission earlier imposed the Additional supply charges (ASC) for the year 2006. However, the said order was withdrawn through the tariff order dated 20.6.2008 and the Distribution Company was directed to refund the Additional supply charges collected from those including the Appellant. Now the State Commission has imposed the charges as Reliability charges for ensuring the un-interrupted supply of power which is in the nature of again introducing the imposition of Additional Supply Charges once again which was earlier withdrawn.

iii) The concept of Reliability charges is not found either in the Electricity Act, 2003 or in the electricity rules or in the State Commission's tariff regulations. The Distribution Company instead of relying upon the relevant sections of the Act and the clauses of the regulations has involved Humanist Consumer Council to support this concept of Reliability charges. Humanist Consumer Council can not enter into any Power Purchase

Agreement (PPA) with any generating company or any licensee. Thus the imposition of Reliability charges which is not provided under the Act is not bonafide as this is an attempt to bring back the regime of Additional Supply Charges which had already been discontinued.

8. On these grounds it is argued that the order is liable to set aside and the Reliability charges effected by the distribution company has to be refunded.

9. In reply to these above submissions Mr. Vikas Singh, Sr. Advocate for the Respondent would make the following submissions:-

i) The Reliability charges is applicable only to the specific area and collected with the quantum of Additional Supply Charges and the majority of the consumers participated in the public hearing have supported the proposal of Reliability charges and the Appellant did not raise any objection in the public hearing with reference to the Reliability charges. Therefore, it is not now open to the Appellant to challenge the

order passed by the State Commission imposing the Reliability charges through this Appeal.

ii) The imposition of the Reliability charge is strictly not a adjudicatory function of the State Commission but is merely a form of mediation between the consumers and the distribution company to arrive at some consensus in such mediation. If the Appellant had appeared before the State Commission and objected to the payment of Reliability charge the State Commission might not have imposed the Reliability charges, in the per unit cost. The Reliability charge on the other consumers would have been to the tune of Rs. 1.04/kWh as against 19 P/kWh. The absence of the Appellant in the public hearing process would show that there was no objection to the imposition of Reliability charge and the State Commission proceeded only on that basis to approve the proposal of the Humanist Consumer Council.

iii) Even assuming the Appellant is not liable to pay the Reliability charge on the ground that they have been already paying higher charges being under Zero load shedding, the Appellant can not be permitted to raise this point now since

the other consumers in the Pen circle can not be asked to pay higher Reliability charge retrospectively especially when all the consumers have agreed to pay the Reliability charge @ 19 Paise/kwh.

10. On these grounds the learned senior counsel for the Respondent submitted that the impugned order is justified.

11. We have heard the learned senior counsel for both the parties and carefully considered their rival contentions.

12. The question that arises for consideration is whether the Appellant is liable to pay Reliability charge in the facts and the circumstances of the case?

13. According to the Appellant, the concept of Reliability charge is not found either in the Act or in the regulations and as such the Reliability charge can not be imposed on the Appellant especially when the Appellant has already been subjected to higher energy

charges as it is a continuous industry which is not subjected to load shedding.

14. According to the Respondent this objection was never raised by the Appellant before the State Commission in the public hearing and as such the Appellant can not now be allowed to raise this point in this Appeal particularly when all the consumers present before the public hearing including the Humanist Consumer Council have supported the imposition of the Reliability charges.

15. The learned Senior counsel for the Appellant has strenuously contended that this objection was raised before the State Commission by the Vidharba Association of which the Appellant is a member. According to him specific objection was made by the said Association by way of an affidavit to the following effect:-

“The ABR should be computed only for those feeders on which the load shedding is being observed. Actual ABR would be much less compared to ABR calculated in the Petition. MSEDCL should submit the details of units billed and amount billed to the Urban areas where the load shedding is done on daily basis for 7 days a week and for 1 day staggered feeders.” (Page No. 28 item (d) of Paper book).

16. In the light of this affidavit referred to above in which Vidharba Association raised the objection, the maintainability of this Appeal filed by the Appellant who is a Member of the said association can not be questioned by the Respondent.

17. The main issue which has to be dealt with in this case is with reference to the liability which has been fastened upon the Appellant to pay the Reliability charge.

18. There is no dispute in the fact that the Appellant is a continuous process industry and is getting supply on a continuous basis and it is not subjected to load shedding including an express feeder. Similarly, it could not be disputed that the tariff of HT-continuous industry like the Appellant has been specifically fixed higher than that of the tariff applicable for HT non-continuous industries. The same is clear from the following table:-

Summary of HT Tariff Prior to and Post 1.8.2009

<i>Consumer Category</i>	<i>Energy Charges</i>	
	<i>Effective</i>	
	<i>1.6.2008</i>	<i>1.8.2009</i>
	<i>(Paise/kWh)</i>	
<i>HT-I Industry</i>		
<i>Continuous Industry (on express feeder)</i>	<i>4.30</i>	<i>5.05</i>
<i>Non-continuous Industry (not on express feeder)</i>	<i>3.95</i>	<i>4.60</i>

19. Thus, Appellant which is a continuous process industry is liable to pay tariff which has already covered the premium for Zero load shedding which is clearly evident from the charges fixed for such industries. In other words, the Appellant is a continuous industry which has already been subjected to higher tariff and the HT-I consumers connected through express feeder like the Appellant company have already been imposed higher tariff than that of the consumers on non-express feeder, thereby compensating the distribution company for providing continuous supply. When that is the fact situation, the Appellant can not be levied with Reliability charge which is meant only for the consumers who have load shedding as it would result in double charges on the consumers like the Appellant which amounts to

demanding Additional Supply Charges under the garb of Reliability charges.

20. Earlier in the tariff order passed by the State Commission dated 20.10.2006, the Additional Supply Charge was imposed on the continuous industries for the un-interrupted supply of power to the bulk consumers like the Appellant. As a matter of fact, the State Commission in that order directed the Distribution Company to include the said Additional supply charges in the consumers bills and recovered amount was to be adjusted against the same category of consumers. However, the State Commission in the subsequent tariff order dated 20.6.2008 discontinued the Additional supply charge with immediate effect and directed the distribution company to refund the said amount collected during the financial year 2006-07 and 2007-08 to the bulk consumers who have contributed to the same.

21. Having adopted the said course, the State Commission, has now hastened to pass the order in the application filed by the distribution company on 24.02.2009 for approval of the Reliability

charge, imposing the Reliability charge as claimed by the distribution company which is in the nature of the Additional supply charges.

22. In fact, this concept as indicated above was objected to by an Association as referred to earlier. Without considering the said objections, the Reliability charge has now been imposed which according to the learned senior counsel for the Appellant is nothing but an imposition of Additional supply charge under the label of Reliability charge.

23. As rightly pointed out on behalf of the Appellant that none of the factors mentioned under Section 62 (3) of the Act supports the levy of Reliability charge. Similarly, neither rules nor regulations framed by the State Commission would provide for the imposition of such Reliability charge on the continuous industries. Similarly, we find force in the contentions urged by the learned Senior Counsel for the Appellant that the Humanist Consumer Council can not enter into any power purchase agreement with the

Distribution Company with reference to the imposition of Reliability charge as it is not provided under the law.

24. As a matter of fact, as pointed out by the Appellant that the State Commission itself has passed the tariff order on 20.6.2008 in which it has observed that **“since the continuous process industries are getting supply on a continuous basis and are not subjected to load shedding, the tariff for HT-industries has been specifically fixed slightly higher tariff”**. In the light of the above observation, the continuous industries can not be asked to pay the Reliability charge which would definitely levy an additional liability which could cost a grave loss and hardship to them, including the Appellant.

25. During the course of final hearing of the Appeal it is pointed out by the learned Senior Counsel for the Appellant that the Distribution company itself has filed the Review Petition before the State Commission on 27.7.2009 for determination of Additional supply charge instead of charging Reliability charge for the withdrawal of the load shedding in the area. In the computation of

the determination of Additional supply charge, the Distribution Company has proposed in the Review Petition to exempt HT industries (express feeders) in the revenue division served by the Distribution Company. When such being the proposal in the Review Petition filed by the Distribution Company, the imposition of the Reliability charge in the Pen circle, as claimed by the Respondent cannot be sustained.

26. The learned senior counsel for the Appellant has also brought to the notice of this Tribunal one other factor which is quite relevant. It is contended by the learned senior counsel for the Appellant that during pendency of the Appeal the State Commission passed the tariff order for the year 2009-10 and has recorded certain finding which would support the contentions of the Appellant. The findings are as follows:-

“The Commission finds merit in MSEDCL’s rationale that consumers who are getting preference in supply of electricity, i.e 24 x 7 supply, when other consumers are being subjected either to daily load shedding or one-day staggered load shedding, should be charged a higher rate as compared to the other consumers. However, consumers connected through express feeders have incurred additional capital expenditure to avail this facility and the

extent of premium charged for this preferential supply has to keep this aspect in mind.

“Keeping all these factors in mind, the Commission has determined the tariffs of HT Industrial category in such a manner that HT 1 consumers connected on express feeders will be required to pay around 7% higher than HT 1 consumers connected on non-express feeders”.

27. In the light of the above finding, energy charges for HT 1 industries have been further revised. The comparative chart of the tariff prior to 1.8.2009 and thereafter, which is given in para 18 above, would show that in addition to the above revision in the tariff rates, the Appellant has now been directed to pay an additional amount of 19 paise/kWh as Reliability charge which in our opinion is not justified.

28. In view of the above discussions, we are of the view that the order impugned passed by the State Commission dated 15.6.2009 is not valid in law and therefore, the same is liable to be set aside. Accordingly, the same is set aside.

29. At this stage we have to mention one more thing. While we disposed the stay application during the pendency of the appeal, we were not inclined to grant stay, however, we have observed in the same order dated 24/09/09 that any payment as Reliability charge made by the Appellant to the Distribution Company during the pendency of this Appeal, in pursuance of the order impugned, the same is subject to the final result of this Appeal. In the light of the said observation, it is appropriate to pass the consequential order directing the Distribution Company to refund the Reliability charges collected by it from the Appellant in pursuance of the impugned order within one month from the date of passing of this order. Accordingly, it is directed.

30. The Appeal is allowed. No orders to the cost.

(H.L.Bajaj)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 14th December, 2009

REPORTABLE.