

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

**Appeal No. 18 & IA Nos. 125 & 151 of 2009
And Appeal No. 30 & IA Nos. 49, 137 & 150 of 2009**

Dated: 28th April, 2009.

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

IN THE MATTER OF :

Appeal No. 18 & IA Nos. 125 & 151 of 2009

Ispat Industries Ltd.
Nirmal, 1st Floor, Nariman Point,
Mumbai-4-00021.

....Appellant

Versus

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

Appeal No. 30 & IA Nos. 49, 137 & 150 of 2009

Chamber of Marathwada Industries and
Agriculture Association, Bajaj Bvhanan,
P.2, MIDC Area, Mumbai-400 051.

....Appellant

Versus

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

Counsel for the Appellants : Mr. G. Umapathy
Mr. Vibhu Tiwari

Counsel for the Respondents : Mr. Vikas Singh, Sr. Advocate with
Mr. Ravi Parkash & Mr. A.K. Bansal
Mr. Varfun Aggarwal for Resp. No. 2
Mr. Buddy A. Ranganathan for Resp. No. 1.

JUDGMENT

Per Hon'ble Mr. A.A. Khan, Technical Member

Appeal Nos. 18 and 30 both of 2009 have been filed by the appellants M/s Ispat Industries Ltd. and Chamber of Marathwada Industries & Agriculture Association respectively, challenging the common Review Order of Maharashtra Electricity Regulatory Commission ('Commission') dated 10.12.2008 in case No. 42 of 2008 filed by Maharashtra State Electricity Distribution Company Ltd.(for short 'Distribution Company'/MSEDCL). The Distribution Company had filed the Review Petition for reviewing the tariff order passed by the Commission on 20.6.2008 for approval of Annual Performance Review (APR) for financial year 2007-08 and determination of ARR and tariff for financial year 2008-09. Through this impugned order dated 10.12.2008 the State Commission allowed the Review Petition of the Respondent No. 2, the Distribution Company on the ground of error apparent on the face of record.

2. Since both the appeals relate to the common impugned order, we have considered them together. We have heard the learned counsel for the parties and have considered their written submissions as well.

3. The main issue raised by the appellants is that the first Respondent, The Commission, partly allowed the review filed by Respondent No. 2, the Distribution Company and held that there has been a double accounting in the Additional Supply Charges, (herein after referred to as 'ASC') and accordingly reviewed the refund of ASC and imposed additional levy of 26 paise per unit of consumption in the bills to be paid by the Appellant consumers from December 2008 to March 2009. The Appellants have sought the relief of setting aside the impugned order dated 10.12.2008. The primary issue raised is relating to the Commission exceeding its jurisdiction of review while invoking the powers of review of Section 94 (1) (f) of Electricity Act, 2003 (for short 'Act') and allowing the review on the ground of 'error apparent on the face of the record'. We, therefore, decided first to consider the appropriateness of the application of power of review of the Commission before taking up the main matter of appeal on merits. In the interim, we stayed the execution of the impugned order.

4. The Additional Supply Charges (ASC) was introduced by the Commission in the tariff order for the financial year 2006-07 in order to meet the increasing requirement of short term additional costly power for mitigating load shedding to the consumers of certain categories who required reduction in load shedding. Consequently, the expenses on the procurement of costly power has to be recovered from those consumers through ASC. The costly power was procured for two periods i.e. for the financial year 2006-07 and 2007-08. The tariff order dated 20.6.2008 has done away with the Additional Supply Charges (ASC) and instead all the power procured are to be pooled and considered while computing the Annual Revenue Requirement (ARR) for fixing the tariff.

5. Section 94 (1) (f) of the Act empowers the Appropriate Commission to review its decisions, directions and orders and provides that they are vested with the same power which is given to civil court under CPC Order 47 Rule 1, which provides for review on the following points:

- (i) discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him, or
- (ii) on account of some mistake or error apparent on the face of the record or
- (iii) for any other sufficient reason.

6. The Appellants have challenged that the Commission has exceeded its jurisdiction by admitting the Review Petition on the ground of an error apparent on the face of the record when the present is not a case of an error apparent on the face of the record and as such the Respondent, Commission ought to have rejected the review petition instead of allowing the same and imposing additional tariff on the bulk consumers like the Appellants.

7. We notice that in the present case the Distribution Company had requested the Commission to review the double accounting of ASC revenue in its order on the ground of **‘error apparent on the face of the record’** and also **‘any other sufficient reasons’** and requested the Commission to revise the tariff accordingly.

8. The impugned order on account of double accounting of ASC revenue allowed the recovery of Rs. 427 crores over a four-month period ending on 31.3.2009. Further, because of delay in finalizing the tariff for the financial year 2009-10, the Commission vide its order dated 1.4.2009 has granted the permission to the Respondent No. 2, the Distribution Company for continuation of the existing tariff as per the tariff order dated 20.6.2008 read with Review Order dated 10.12.2008 till the new tariff order for the financial year 2009-10 is passed. The Appellants are also aggrieved on this account that beyond 31.3.2009 till the notification of the new tariff order they will have to continue to pay Additional Supply Charges on pro rata basis for every month which is around Rs. 35.6 crores per month. It is estimated that the revised tariff will be notified within a period of two months. As per the tariff order dated 20.6.2008 the Commission has admittedly accepted that while truing up the expenses and revenue for the financial year 2006-07 and for the financial year 2007-08 it has estimated additional amounts available to be Rs. 427 crores and Rs. 768 crores respectively and decided to consider the aforesaid amounts to compute the revenue gap for the respective years. It has further decided that the same amounts will be adjusted once the actual amounts are known at the time of Annual Performance Review of 2008-09.

9. Admittedly, the Commission in its Annual Performance Review (APR) order has estimated that the additional amount on account of ASC available to the Distribution Company for setting- off against the base ARR of the financial year 2006-07 and 2007-08 as Rs. 427 crores and Rs. 768 crores respectively. As recorded in the impugned order the Respondent No. 2, the Distribution Company has pointed out that the Commission

has set-off a part of ASC over- recovery against known costly power considering it as a surplus amount although it has already been included in the revenue from existing tariff considered by the Commission as Rs. 18863 crores in the financial year 2006-07 and Rs. 17822 crores in the financial year 2007-08. The aforesaid revenue in FY 2006-07 includes the total ASC revenue of Rs. 2220 crores recovered during the period. This has resulted in the part over-recovery of ASC being considered twice viz., in the revenue as well as in over-recovery to set-off the revenue requirements while computing the ARR and revenue gap. Respondent No. 2, the Distribution Company requested the Commission to review the impugned order for the reasons of double accounting of ASC revenue on the ground of '**error apparent on the face of the record**' and for '**any other sufficient reasons**' and requested the Commission to revise the tariff for the financial year 2008-09 to make up the shortfall of Rs. 1195 crores [Rs. 427 crores for FY 2006-07 + Rs. 768 crores for FY 2007-08].

10. The Commission in its impugned order has treated the revenue of 2006-07 and 2007-08 separately and has considered truing up of 2006-07 on the basis of annual audited annual accounts. After going through the records considered during the regulatory process the Commission has found that the total revenue of Rs. 18863.78 crores in the year 2006-07 includes revenue from ASC of Rs. 1339.60 crores and has concluded that the revenue from levy of ASC has been double counted for the year 2006-07. It, however, decided that there is no double counting of ASC revenue for the year 2007-08 as contended by Respondent No. 2, the Distribution Company. The

Commission in its impugned order has finally concluded in respect of ASC revenue for 2006-07 as under:

“However, the fact remains that the ASC revenue has been apparently double-counted, which has resulted in MSEDCL’s revenue requirement for FY 2008-09 being under-stated by Rs. 427 crore. Accordingly, the Commission accepts MSEDCL’s contention of double-counting of ASC revenue for FY 2006-07, under the grounds of ‘error apparent’.”

11. Mr. G. Umapathy, the learned counsel for the appellants, relied upon the following judgments:

(a) AIR 1966 Supreme Court 1047 (V 53 C 204) judgment, Master Construction Co. (P) Ltd., Vs State of Orissa and another.

(b) (1995) 1 Supreme Court Case 170. Meera Bhanja (Smt) Vs Nirmala Kumari Choudhary (Smt.).

12. We find that the judgment referred to in para 11 (a) above relates to scope of power of Sales Tax Commissioner to correct arithmetical and clerical mistake arising from accidental slip or omission and does not relate to error apparent on the face of the record.

13. The judgment cited in para 11 (b) above, highlights that the review proceedings have to be strictly confined to the scope and ambit of Order 47, Rule 1 of CPC. It holds that the review petition has to be entertained on the ground of

error apparent on the face of the record and not on any other ground and it should be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. In the instant case, we feel that the Commission may have detected the error readily on going through the record without any long drawn process of reasoning and there are no two opinions about the error involved.

The above-referred judgments, therefore, do not support the submission made by the learned counsel for Appellants.

14. In view of the above, we do not find any reasons to interfere with the impugned order dated 10.12.2008 as we endorse the view of the Commission that the error was apparent and was readily discernable. The Appellants' challenge regarding the Commission exceeding its jurisdiction is, therefore, rejected. Consequently, the Appeal Nos. 18 and 30 of 2009 and all associated Interlocutory Applications are dismissed with no costs.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 28th April, 2009.

Reportable/Non-reportable.