

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi**

Appeal 86 of 2008

Dated: 24.04.2009

**Coram: Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Mr. H. L. Bajaj, Technical Member**

IN THE MATTER OF:

Indian Acrylics Ltd.

SCO 49-50, Sector 26,
Madhya Marg,
Chandigarh – 160 019

... Appellant

Versus

1. Punjab State Electricity Regulatory Commission

SCO 220-221, Sector 34-A,
Chandigarh – 160 034.

2. State of Punjab through its Secretary Power,

Punjab Mini Secretariat,
Sector 9,
Chandigarh – 160 009

3. Punjab State Electricity Board

The Mall,
Patiala, through its Secretary,
Pin – 147 001

... Respondents

Counsel for the appellant : Mr. Deepak Sabharwal

Counsel for respondents : Mr. Sakesh Kumar, Advocate
Ms. Jayshree Anand, Advocate,
PSEB
Mr. J. C. Shukla, Registrar, PSERC
Mr. Raghvinder Singh, AD, PSERC
Mr. J. P. Singh, Dy. CE/TR-II, PSEB

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

We have dismissed the appeal by an order passed on 21.04.09. The following is to provide the reasons for the same.

2) This appeal is directed against the order dated 18.02.08 whereby the Punjab State Electricity Regulatory Commission (the Commission for short) dismissed an application for review of the tariff order dated 17.09.07.

3) By the order dated 17.09.07, the Commission determined the Annual Revenue Requirement and tariff for the FY 2007-08. One of the charges which the respondent No.2, Punjab State Electricity Board, could recover was parallel operation charges from the captive generating plants. Admittedly, such charge was being recovered from the year 2002. The same has been discontinued w.e.f. 2008. It is also the admitted position that the appellant never challenged the validity of the commercial circular / order of the Commission imposing parallel operation charges in all these years.

The appellant also did not challenge the tariff order dated 17.09.07 in any appeal. The appellant instead filed a review petition challenging imposition of parallel operation charges.

4) The Commission in the impugned order noticed that review could be available only in the circumstances provided in the Punjab State Electricity Regulations (Conduct of Business) 2006 (hereinafter referred to as the Regulations) and that the appellant who is seeking to challenge the parallel operation charges has not made out any of those grounds. The Regulations provided that a review is permissible only when there is a discovery of new and important matter which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the order was passed or on account of mistake or error apparent on the face of the record or for any other sufficient reason. The Commission proceeded to say that the petitioner (the appellant before us) had raised the issue of withdrawing these charges in petition No. 18 of 2002 but the petitioner withdrew that petition. The parallel operation charges that were in force at the time of petition No. 18 of 2002 was filed continued till 2007. The Commission said that no error apparent was pointed out and therefore the petition was liable to be dismissed.

5) Before us it is submitted by Mr. Deepak Sabharwal that the respondent No.2 had requested the Commission to withdraw the

parallel operation charges on the ground, inter alia, that levy of these charges is against the provisions of the Electricity Act, 2003. It is contended by Mr. Sabharwal that if the respondent No.2 itself says that the levy of these charges is against law then the same must have been against law from the very beginning and therefore the review petition should have been allowed. Having carefully considered the submissions we find that there is no merit in the same. Mr. Sabharwal could not explain to us how the parallel operation charges are against the provisions of the Electricity Act 2003. It may be that the Board submitted a proposal to the Commission to discontinue the levy of parallel operation charges. It is also correct that the Board in its representation submitted inter alia, that levy of these charges were against provisions of the Electricity Act, 2003 (as can be seen from Chapter 6 of the public notice issued by the Commission for determination of ARR and tariff for the year 2006-07 in respect of Punjab State Electricity Board). This, however, does not mean that the Commission or the respondent No.2 become bound by such a statement in respect of the legal position. Neither the Commission nor the Board is estopped from charging parallel operation charges simply because the Board expressed such an opinion about the legal position of parallel operation charges. The appellant had failed to make out any ground for review. Nor is there any ground to interfere with the impugned order. Accordingly, we have dismissed the appeal.

Pronounced in open court on this day of **24th April, 2009**.

(H. L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member