Before the Appellate Tribunal for Electricity
Appellate Jurisdiction, New Delhi

Appeal No. 123 of 2008

Dated : 08th September, 2009

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

IN THE MATTER OF

Emmar MGF Construction Pvt. Ltd.
ECE House,
28 Kasturba Gandhi Marg,
New Delhi- 110001. ... Appellant(s)

Vesus

1. **Delhi Electricity Regulatory Commission**
Vinyamak Bhawan, C-Block
Shivalik, Malviya Nagar,
New Delhi 110 017.

2. **BSES Yamuna Power Ltd.**
Shakti Kiran Building,
Karkardooma,
Delhi 110 092.

3. **Delhi Development Authority**
Seed Bed Road School Block,
Delhi- 110 92. ... Respondent(s)

Counsel for the Appellant(s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganeshan &
Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. Meet Malhotra,
Mr. Ravi S. Chauhan
Mr. Swagat Sharma for Resp. No. 1, DERC

Mr. M. S. Gupta, DD(Law), DERC

Mr. Pawan Mathur, Advocate for DDA
Mr. A. Nanda, Executive Engineer, CWG-DII

Mr. Amit Kapur,
Mr. Anupam Varma and
Ms. Poonam Varma for Resp. No. 2, BYPL

J U D G M E N T

Justice Manju Goel, Judicial Member

1) The appeal relates to sharing of cost of electrification of the Commonwealth Games Village Complex near Akshardham Temple which is being constructed by the appellant as a contractor engaged by the Delhi Development Authority, respondent No.3 and electrification whereof has been assigned to be done by the respondent No. 2, the distribution licensee of the area. The respondent No. 1 (hereinafter referred to as Commission) has issued

direction to the respondent No.2 vide a letter No. (12)/Engg/DERC/ 200/08/733 dated 16.05.2008 in respect of establishment of 66/11 kV I/D GIS grid station at the Commonwealth Games Village complex and electrification of Commonwealth Games Village complex in which the Commission inter-alia mentioned that the estimated cost for the establishment of the aforesaid grid station including two independent 66 kV infeeds for which in-principle approval had been granted was Rs.49.12 Crores and for electrification of Commonwealth Games Village complex for supply of power to 1186 flats was Rs.10 Crores. The DDA, the respondent No. 3, is the developer of the project. In respect of sharing of the cost of electrification the Commission ruled as under:

> *" The Commission is of the view cost of such 66/11 kV Grid Station along with associated electrification work should be funded by the concerned developing agency which is DDA in this case … The Commission envisages execution of the captioned / Capital Scheme by BYPL as 100% deposit work on behalf of DDA so that other consumers of Delhi are not unduly burdened with these high development costs".*

2) This is the impugned order.

3) The respondent No. 2 vide its letter dated 26.06.08 called upon the appellant to pay Rs.10 Crores being the estimated cost of the external electrification at project site. The appellant responded to the demand vide letter dated 05.07.08 contending that as per the Electricity Supply Code only 50% of the cost was needed to be borne by the developing agency. This position was reiterated by the appellant vide letter dated 04.09.08 which was written in response to another letter demanding a sum of Rs.37,69,80,091/-. However, the DDA later agreed to pay cost of setting up of grid substation. The demand on the appellant is restricted to Rs.10 Crores. The appellant has challenged the decision of the Commission as expressed in the letter dated 16.05.08, mentioned in paragraph 1 above.

4) The appellant has placed reliance on Regulation 30 (i) of the Delhi Electricity Supply Code & Performance Standards Regulations, hereinafter referred to as Supply Code/Regulations which runs as under:

> ***"30. Service line cum Development (SLD) Charges***
>
> *(i) For area developed and sponsored by development agencies, like Delhi Development Authority, Municipal Corporation of Delhi, Public Works Department or private developers, the electrification shall be carried out by*

Licensee after charging 50% of cost towards HT feeders, sub-station including civil works, LT feeders and 100% cost towards service line and street lights."

5) The appellant prays for setting aside the direction in the letter of the Commission dated 16.05.08 and to hold that the Development Agencies are required to pay only 50% of the project cost.

6) The Commission contests the appeal by filing a reply. The Commission contends that the Regulation 30 is applicable only for the areas where the 11 kV HT supply can be extended from the existing network and not for massive electrification work involving Extra High Tension (EHT) system – 33 kV and 66 kV. The Commission further contends that it has adopted this stand for other such massive electrification work in Savda Chewra Squatter redevelopment / resettlement scheme and in the case of electrification work for development of Village Kanjnawala. The Commission has also challenged the appellant's locus standi to file the appeal contending that the appellant is not a person aggrieved within the meaning of Section 111 of the Electricity Act 2003, hereinafter referred to as the Act.

7) The respondent No.2 also contests the appeal assailing the locus standi of the appellant and disputing the applicability of Regulation 30 of the supply code to the project in question. In addition the respondent No.2 contends that the appellant in fact is trying to assail the statutory advice issued to the Govt. of National Capital Territory of Delhi and that the appeal is not maintainable without impleading the GNCTD. During hearing of arguments it was additionally submitted by Mr. Amit Kapur, Advocate, that the Commission could have passed the impugned order by using its power to relax the Regulations under Regulation 70.

8) The respondent No.3, DDA has filed a brief reply merely stating a term in the agreement between it and the appellant, referred to as the project developer, and mentioning share of the appellant in the cost of electrification of the project.

9) The relevant term the contract between the DDA and the appellant is as under:

> *"The external electrification for the residential facility shall be got done by the project developer from the BYPL and charges if any shall be borne by the project developer. Alternatively the project developer may execute the work*

through its own or any agency approved by it and get the connection done from BYPL".

10) Keeping in view the urgency and importance of the project we advised the parties to resolve the dispute amicably. Accordingly, the parties met in the Commission's court room on 19.02.2009 and attempted to resolve the dispute. Although no final resolution could be worked out, the parties did work out a protem arrangement and we are assured that the respondent No.2 would carry out the work of grid substation and electrification pending the appeal. The appellant has already deposited Rs.5 Crores i.e. 50% of the bill raised on it.

11) We have heard the counsel appearing for all the sides at length and proceed to decide the appeal as under:

Decision with reasons:

12) From the above, it can be seen that there are five questions that call for resolution in the case:-

i) Is the appellant a 'person aggrieved' within the meaning of Section 111 of the Electricity Act 2003 and does he have locus standi to challenge the impugned order?

ii) Does the appeal challenge a statutory advice issued by the Commission to the GNCTD and a policy direction of GNCTD to Commission?

iii) Is the GNCTD a necessary party?

iv) Is the Regulation 30 of the Supply Code not applicable in the facts of the case?

v) Can the impugned order be saved by application of Regulation 70 of the Supply Code?

Questions (ii) & (iii): We shall take up the questions (ii) & (iii) first:

13) The plea of the respondent No.2 in this regard is based on the letter dated 08.02.08 of the Commission addressed to GNCTD and a letter dated 03.03.08 issued by the GNCTD to the three distribution companies in Delhi including the respondent No.2 and to the respondent No.3. A copy of the letter is placed on the record.

14) The letter dated 08.02.08 is on the subject "clarification on sharing of cost for establishment of 66 kV Grid Stations at DC-1 Rohini and Sector-28, Rohini". The Commission refers to Regulation 30 and continues to say:

> *"... However, the said funding arrangement for electrification works is evidently for areas wherein the 11 kV HT supply can be extended from the existing network.*

In the instant case, the electrification of area proposed to be developed by DDA would necessitate establishment of the captioned 66/11 kV Grid Stations with associated transmission & distribution network. It is envisaged that for such massive electrification work involving EHV/EHT system. 100% expenditure should be borne by the concerned development/sponsoring agency so that other consumers of Delhi are not burdened with these high development costs. Accordingly, the cost of such 66/11 Grid Stations as the one under reference should be funded by the concerned developing agency which is DDA in this case. The Commission had taken the same position in the case of electrification of Savda Ghewra Squatter redevelopment/resettlement scheme being sponsored by the Slum & J.J. Department of MCD as also in the case of electrification work for development of Village Kanjhawala. …"

15) The letter dated 03.03.08 of the GNCTD refers to this clarification and says as under:

"… The matter regarding sharing of cost for establishment of grids was referred to the Delhi Electricity Regulatory Commission for clarification. The Commission has

considered the same and has clarified that Clause 30(i) of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 notified on 18.4.2007, stipulates that for area developed and sponsored by development agencies, like DDA, MCD, PWD or private developers, the electrification shall be carried out by licensee after charging 50% of cost towards HT feeders, sub stations including civil works, LT feeders and 100% cost towards service line and street lights. However, the said funding arrangement for electrification works is evidently for areas wherein the 11 KV HT supply can be extended from the existing network. In the instant case, the electrification of areas proposed to be developed by DDA would necessitate establishment of the captioned 66/11 KV grid stations with associated transmission and distribution network. It is envisaged that for such massive electrification work involving EHV/EHT system, 100% expenditure should be borne by the concerned development/sponsoring agency so that other consumers of Delhi are not burdened with these high development costs.

Accordingly, the cost of such 66/11 KV grid station as one under reference should be funded by the concerned

developing agency which is DDA in this case. The Commission had taken the same position in the case of electrification of Savda Ghewra squatter redevelopment/resettlement scheme being sponsored by the S&JJ Deptt. of MCD, as also in the case of electrification work for development of village Khanjawala.

In view of above clarifications given by the Commission, it is requested that further necessary action may kindly be taken on pending electrification projects which were held up due to different views. A copy of Commission's clarification dated 08.02.2008 is enclosed for information."

16) A plain reading of the two letters reveal that neither the letter dated 08.02.08 can be treated to be a statutory advice to the GoNCTD stipulated under section 86(2) of the Act nor can the letter dated 03.03.08 can be seen as an order issued by the GNCTD. Mr.Amit Kapur, Advocate appearing for the respondent No.2 made no effort to equate the two letters with a statutory advice or policy direction. We do not see how the interest of the GNCTD is in any way adversely affected by the appeal. The question Nos. (ii) & (iii) are accordingly decided against the respondent No.2.

17) Question No.(iv): The Regulation No. 30 (i) quoted above has no 'proviso'. There is no regulation that provides an exception to Regulation No.30. The entire supply code does not indicate any way by which one could escape Regulation No.30. Yet the Commission in its clarificatory letter dated 08.02.08 quoted above says : "However, the said funding arrangement for electrification work is *evidently* for areas wherein the 11 kV HT supply can be extended from the existing network." (emphasis supplied) The same expression has been used in the impugned order. Neither Mr.Amit Kapur, advocate appearing for the respondent No.2 nor the Mr. Meet Malhotra appearing for the Commission could explain how the Regulation No. 30 evidently applied only where 11 kV HT supply can be extended from the existing network.

18) It may be mentioned here that the fear that other consumers of Delhi would be unduly burdened with the cost of electrification of the project can be allayed by appropriate use of the provisions of sections 45 & 46 of the Act.

19) It is pointed out that Regulation 30 mentions only HT & LT lines and does not mention EHT/EHV system/lines. It is also noticed by us that HT & EHT have been separately described and defined by the Regulations. 66/11 kV substation is EHT installation. However, the project of the appellant admittedly

requires only HT & LT work and not EHT work. The Commission, however, has ruled that for the entire work of electrification 100% deposit is required to be made by the developing agency.

20) The Regulation 30 (i) is certainly attracted so the electrification work of HT & LT supply which is required by the appellant. The impugned order is thus violative of Regulation 30 (i) and cannot be upheld. The appellant is liable to bear 100% cost of the service lines but only 50% of cost towards HT feeders substation including civil work & LT feeders. The question number (iv) is accordingly decided against the respondents.

21) Question No.(v): Article 70 gives power to the Commission to relax the rules. The same is extracted below:

> ***"70. Power of relaxation and power to remove difficulties***
>
> *i The Commission may, in public interest and for reasons to be recorded in writing, relax any of the provision of these Regulations.*
>
> *ii If any difficulty arises in giving effect to the provisions of these regulations, the Commission may, by any general or special order, make such provisions, not inconsistent with the provisions of the*

Act, which appears to be necessary or expedient for the purpose of removing the difficulties"

22) The impugned order does not itself say that the impugned order is passed by the use of power to relax under Regulation 70. Nor does the Commission plead so before us. The Commission says that Regulation 30 is not applicable at all. Thus the Commission instead of relaxing the provision of Regulation 30 has ignored or by passed it. This cannot be called relaxation of the Regulation.

23) Mr. Ramachandran appearing for the appellant contends that the Regulation 30 imposes a burden on the developing agency and so if the Commission was to relax the regulation it could at best reduce the burden. We find much force in the submission of Mr.Ramachandran. Without Regulation 30, the distribution licensee might have had to build the entire electricity infrastructure at its own cost. Thus the Regulation 30 can be seen as benefit being given to the distribution licensee and imposing burden on the developing agency. The Commission has raised the burden of 50% imposed by the Regulation to 100%.

24) Relaxation does not mean such massive alteration in the Regulation. The impugned order cannot be saved by application of Regulation 70.

25) Question No.(i): Finally we come to question No.(i) - whether the appellant has locus standi to challenge the impugned order. Section 111 of the Act gives any person aggrieved by an order of an appropriate Commission to prefer an appeal. The relevant part of section 111 is as under:

> ***"111. Appeal to Appellate Tribunal.-*** *(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:"*

26) The words "person aggrieved" in the Act are in contrast with the concept of appeal as stipulated in the Code of Civil Procedure 1908 wherein right of appeal is with the party aggrieved and not to any person aggrieved. For filing an appeal under section 111 of the Act, it is not necessary that the appellant be a party in the proceedings before the Commission.

27) The Commission has passed an order which prejudicially affects the DDA, the respondent No.3. It is submitted on behalf of the respondents that the order gives no direction against the

appellant who is the project developer and a contractor under the DDA. The DDA has accepted an order and has taken upon itself the responsibility of bearing 100% cost of the electrification. The appellant can claim, it is submitted, only through the DDA and the DDA having not challenged the order the appellant has no locus standi to do so. It is further submitted that the appellant having conceded to the DDA to bear the liability under the contract cannot come up here to challenge the impugned order.

28) So far as the contract between the appellant and the DDA is concerned the appellant has agreed to pay "charges, if any", for the external electrification which may be payable to BYPL. This does not mean that the appellant is liable to pay 100% cost of electrification. The appellant has agreed to pay whatever is legally payable by him. It is not disputed that Regulation 30 was in place when the contract was entered into. Accordingly, the legal liability of the contractor/appellant on the date he entered into the contract was only 50% of the cost of construction of HT and LT system.

29) Now by the circumstances, mentioned earlier, the DDA has pushed the liability of paying the 100% cost of electrification including HT & LT on to the appellant. BYPL has sent a bill to the appellant and insists on the appellant to pay the same. Both the respondents 2 & 3 are working under the shelter of the impugned

order. The appellant in a way is aggrieved by the action of both the respondents who are themselves working under the impugned order. In this situation is the appellant not a person aggrieved by the impugned order made by the Commission? In our opinion in the facts of this case the appellant is a person aggrieved.

30) Certain judgments have been cited before us in order to give us how the expression 'person aggrieved' has been understood by the Hon'ble Supreme Court in certain previous litigations. These words came to be analysed in the case of *Bar Council of Maharashtra Vs. Dabholkar & Others 1975 2 SCC 702* in which the Supreme Court entered into the dispute as to whether the State Bar Council should be a person aggrieved when it is set aside by the High Court. For various reasons the Bar Council was found to be aggrieved by the impugned order which had set aside a disciplinary order of the Bar Council.

31) The test for finding the meaning of the words 'aggrieved person' has been given in paragraph 28 of the judgment which says "T*he test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests".* The judgment says that one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a

person aggrieved". Again a person can be aggrieved if a legal burden is imposed on him. Following the decision of the Supreme Court in the case of Bar Council of Maharashtra (supra), the appellant on whom a burden has been imposed by the impugned order is an aggrieved person. Although the appellant's name does not find mention in the impugned order the incidence of the order falls directly on him.

32) In the case of *J. M. Desai V. Roshan Kumar AIR 1976 SC 578* the Supreme Court said *"Its (aggrieved persons) scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."*

33) The same words came to be interpreted in the case of *Municipal Corporation For Greater Bombay v. Lala Pancham of Bombay & Others 1965 1 SCR.* In this judgment the Supreme Court advised that the expression not being defined in a particular statute should be given its widest meaning. We can quote the following part from the judgment.

"The expression "person aggrieved" has not been defined in the Act and, therefore, we are entitled to give it its natural meaning. The natural meaning would certainly include a person whose interest is in any manner affected by the order. We are supported in this by the observations of James L. J., pointed out in Ex parte Sidebotham, In re Sidebotham *A similar expression occurring in s. 24(1) of the Administration of Evacuee Property Act, 1950 was the subject of construction in Sharifuddin v. R. P. Singh. The learned Judges there held that these words are of the widest amplitude and are wide enough to include an Assistant Custodian of Evacuee Properties."*

34) Following these judgments we are of the opinion that the meaning to the expression "person aggrieved" has to be given in the widest term possible and the appellant who as a contractor of DDA is made to comply with this order is a person aggrieved of the order although order directly mentions DDA as a person who has to bear the extra burden. The appellant is therefore eligible to file an appeal under section 111 of the Act.

35) The latest judgment of the Supreme Court on the locus standi under section 111 in the case of *Grid Corporation of*

Orissa Ltd. Versus Gajendera Haldea and others (2008) 13 SCC 414 has been referred to us. On going through the judgment we are of the opinion that the appellant therein was seeking its locus standi from section 121 and 142 of the Act and not under section 111 of the Act. Nor does this judgment give us any guidance for defining the expression "person aggrieved".

36) In view of legal position explained above, the appellant is a person aggrieved by the impugned order and therefore has the locus standi to prefer an appeal under section 111 of the Act.

37) In view of our above findings the appellant is entitled to the relief prayed for. We therefore allow the appeal and set aside the impugned order as contained in the letter dated 16.05.08 to the extent it prejudicially affects the appellant namely deposit of 100% of the cost of HT & LT electrification work in the Commonwealth Games Village and direct that the liability of the appellant shall be determined under Regulation 30(i) of the Supply Code.

38) While parting with the judgment we do impress upon the Commission to continue with its effort to keep the consumers in the rest of the city free of the burden of the additional

capitalisation in question by all possible means including the use of the provisions of section 45 & 46 of the Act.

39) Pronounced in open court on this ***08th day of September, 2009***.

(H. L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member