

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

Appeal No. 98 of 2006

Dated the September 12th, 2006.

Present: - Hon'ble Mr. Justice E. Padmanabhan, Judicial Member
Hon'ble Mr. H.L. Bajaj – Technical Member

Chhattisgarh State Electricity Board
Danganiya, Raipur

...Appellant

Versus

1. Chhattisgarh State Electricity Regulatory Commission
Civil Lines, Raipur

2. M/s Hira Ferro Alloys Ltd.
Urla Industrial Area, Urla, Raipur

....Respondents

For the Appellants : Mr K.Gopal Choudhary, Advocate
Ms Suparna Srivastava, Advocate

For the Respondents : Mr. M.G.Ramachandran, Advocate
Ms Taruna Singh Baghel and Mr. Anand
Kumar Ganeshan, Advocates
Mr. Manoj Sharma and Mr.V.K.Munshi
Advocate for Res.No.2

Judgment

The Present appeal has been preferred by the appellant Chhattisgarh State Electricity Board seeking for the following reliefs:-

- (a) to set aside the order dated April 5,2006 passed by the first Respondent Regulatory Commission in Petition No. 36/2005 (M) as one without power or jurisdiction and/or

- (b) to set aside the order dated April 5, 2006 passed in Petition No. 36/2005 (M) in so far as it relates to the interpretation of the provisions and requirements for a Captive Generating Plant and captive user under or pursuant to Section 2(8) of The Electricity Act, 2003 and Rule 3 of The Electricity Rules 2005, and the application of the same to the facts of the case.

(2) Heard Mr. K. Gopal Choudhary, Advocate appearing for the appellant who challenged the findings of the Commission with respect to both reliefs by elaborate and detailed arguments, which we will refer to presently. Per contra Mr. Manoj Sharma, Advocate appearing for the second respondent pointed out that the Regulatory Commission discussed the relief prayed for viz. declaration of six sister concerns as captive consumers but ultimately negated the said relief and on mere findings and discussions recorded the appeal is not competent. As regards the second relief viz reduction in C.D. from 5 MVA to 1.5 MVA it was pointed out the appellant had no objection provided if the second respondent-consumer deposits the entire arrears and even here also the appellant is not an aggrieved party in the light of the stand taken by it before the Commission as well as in the appeal Memorandum.

(3) In this appeal, the following points arise for consideration:

(A) Whether an appeal under Section 111 of The Electricity Act, 2003 is maintainable with respect to mere discussions when the Appropriate Commission had ultimately negated the relief prayed for?

(B) Whether conclusions of the first respondent Regulatory Commission as recorded by it on the two issues call for interference?

(C) To what relief, if any?

(4) Both points (A) & (B) could be considered together. At the outset, it is pointed out by the learned counsel for the second respondent that the appeal is incompetent and not maintainable in the case on hand. It is rightly pointed out

that with respect to reduction of C.D. the appellant had no objection and therefore no appeal is maintainable with respect to declaration sought for, it is pointed out that the Commission had ultimately rejected the request and therefore no appeal is maintainable. The learned counsel for second respondent is well founded in his contention. The counsel for the first respondent Commission represented that the stands by the order passed by the Commission.

(5) Section 111(1) of The Electricity Act, 2003 under which the present appeal has been preferred reads thus:

Section 111(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:

Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty”

On a reading of the above statutory provision ,only as against an order of the Appropriate Commission or adjudicating officer, an appeal is maintainable at the instance of an aggrieved party. It is true that the expression “order” has not been defined in the Act. As seen from Advanced Leave Extension by Mr. Ramanath Iyer the term “Order” would indicate some expression of opinion which is to be carried out or enforced. It is the conclusion of a body (Courts, Authority or Tribunal) upon any notion State of A.P. V/s Bellam Konda Venkata Subbiah AIR 1957 AP 462) a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise, or causes him some prejudice in some

form or other. The appellant herein cannot claim that it is an aggrieved person and consequently no appeal is maintainable at the instance of the appellant herein. The expression 'Any Person Aggrieved' appearing in Section 111 will have to be interpreted in the context in which it appears, having due regard to the provisions of 2003 Act and its Scheme. Any person aggrieved is a person whose legal rights have been affected injured or damaged in a legal sense or who has suffered a legal grievance for appeal under Section 111 is maintainable at the instance of a party to the proceeding who is adversely affected by the order and not when the order in no way affects the party concerned. No appeal however, can be against a mere finding for the simple reason that Section 111 of the Act does not provide for such appeal. Further in any event it cannot be said that such adverse finding constitute resjudicata in later proceedings or rule of resjudicata could be worked against the appellant. Hence we hold that an appeal is maintainable at the instance of an aggrieved party and that too when the order is against it and not on mere discussions or findings.

(6) As regards the reduction CD, the appellant having failed to raise objection as to maintainability of such request and had merely advanced a claim for payment of outstandings only, it cannot be said that the appellant is aggrieved by the direction. There is force in this objection raised by the learned counsel appearing for the second respondent. Mr. K. Gopal Choudhary, learned counsel appearing for the appellant contended that second respondent ought to have approached competent authority for reduction of CD and the Commission ought not to have entertained such a relief directly and it is for the competent authority under the Act and Rules to decide the said request. There is substance and merit in this submission advanced on behalf of the appellant. However, no such objection has been raised by the appellant before the Commission.

(7) It is settled that when statutory provision or Regulation provides for the procedure and prescribes the authority it is the authority which has to exercise

the power. In this the Commission would have directed the second respondent to approach the prescribed authority had an objection been raised instead the appellant had plainly represented it has no objection if the arrears are remitted.

(8) It is true that the point involves question of jurisdiction, but this is not a fit case where we will be justified in interfering with the order on this ground.

It is sufficient to emphasise that the Commission being statutorily obliged to act within the four corners of the Act should have raised the questions to itself as to who is the competent authority? What is the statutory provision? And whether such relief prayed for is maintainable before it? or within the authority of any other functionary? If these questions had been raised by the Commission to itself at the threshold, the functions of the Commission would be easy and it need not unnecessarily burden itself and it could have easily referred the petitioner to go before the competent forum or authority. We administer a word of caution that no authority shall usurp the jurisdiction of another, be it subordinate or otherwise.

(9) Taking up the first relief of declaration prayed for the second respondent, the relief had been negatived and therefore as rightly contended no appeal is maintainable. However, Mr. K. Gopal Choudhary contended that the interpretation placed by Commission on Section 2(8) of The Electricity Act, 2003 and Rule 3 of The Electricity Rules, 2005 and the Regulatory Commission has acted illegally and in excess of jurisdiction. The learned counsel referred to grounds 5.3, 5.4, 5.5, 5.7, 5.9 and 5.10 set out in the appeal Memorandum and argued the matter elaborately. But in our view we may have to reserve our decision to appropriate case when occasion warrants and not in the present case, where the Commission has rejected the relief prayed for by the second respondent. In fact the second respondent has not preferred an appeal and had such an appeal been preferred, we would be justified in examining the legal

contentions advanced by Mr. K. Gopal Choudhary, the learned counsel appearing for the appellant.

(10) The contentions advanced by Mr. K. Gopal Choudhary merits consideration in an appropriate case, We also hasten to caution that the appellant is bound to raise objections and assist the Commission in such issues. The appellant should have drawn the attention of the Commission to Section 175 of The Electricity Act, 2003 and also the legal position that the share holder of a Company is a mere share holder and the share holder can neither claim title or possession or rights or privileges in the assets or business or licenses whatsoever held or operated or set up by the corporate body. Many more points alike could be pointed out to the Commission. This we are constrained to point out these aspects as a guidance for future. It is desirable for the Commission to have a legal wing of its own for appraisal of legal position. On merits we hold that no interference is called for in this appeal and it is dismissed but with the above observations.

(11) In the result the appeal is dismissed and the parties shall bear their respective costs through out.

Pronounced in open court on this 12th day of September, 2006.

(Mr. H.L. Bajaj)
Technical Member

(Mr. Justice E. Padmanabhan)
Judicial Member

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