

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

Appeal No. 46 of 2007

Dated : 21st May, 2007

**Coram : Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member**

Maharashtra State Electricity Distribution Co. Ltd. ... Appellant

Versus

Maharashtra Electricity Regulatory Commission ... Respondents

For the Appellant : Mr. Vikas Singh, Sr. Advocate
Mr. Ravi Prakash, Advocate along with
Mr. Sanjeev Kumar, Adv.

For the Respondent: Mr. Jayant Bhushan, Sr. Adv.
Mr. Buddy A. Ranganadhan, Adv. along with
Mr. Arijit Maitra, Advocate

ORDER

The present appeal challenges the Orders of Maharashtra Electricity Regulatory Commission (MERC) dated 12.2.2007 and 27.02.07, whereby MERC granted permission to the appellant to proceed with the infrastructure plan for Ahmadnagar Rural Division, but made certain modifications in the proposal.

The appellant also known as Mahavitrans and is responsible for distribution of electricity in the State of Maharashtra except for areas which expressly fall within the responsibility of Utilities like BEST, Tata Power Co. & Reliance Energy Ltd. The appellant came up with 122 detailed project reports in anticipation of growth of electricity requirement in the next five years as well as to meet the requirement of up-gradation of the present infrastructure. The detailed project reports

were submitted to the MERC vide letters dated 27.7.06, 26.09.06, 29.09.06 and 04.10.2006.

MERC has framed regulations (Terms and Conditions of Tariff) Regulation 2005 referred to as “ Tariff Regulations”, which have statutory force. The MERC has also framed Guidelines For In-principle Clearance of Proposed Investment Scheme. The appellant also submitted Feasibility Reports (FR) for investment Schemes as required by the Guidelines.

MERC returned 121 projects with certain observations. MERC required the appellant to submit one project as a pilot project. The appellant submitted pilot report in respect of Ahmadnagar Rural Division. The submission was followed up with meetings and submission of more information. Vide Order dated 12.02.07, MERC accorded in-principle clearance with certain changes in the magnitude of the project. The MERC sent another letter dated 22.02.07 making further changes by slashing the contract supervision charges from 10% of material cost to 15% of labour component. The appellant prays for quashing of orders dated 12.02.07 and 27.02.07 and claims that the appellant is entitled to unconditional clearance for the project.

The respondent, MERC in its Counter Affidavit has alleged that Regulations 71.5 grants power to Commission to give in-principle approval to the investment plan of the distribution licensee with modifications or conditions as it may deem appropriate. The relevant provision is quoted below:

“ 71.5 The Commission shall review the investment plan submitted by the Distribution Licensee taking into consideration the prudence of the proposed expenditure and estimated impact on tariff and thereafter, shall either-

- (a) give an in-principle approval to the investment plan submitted by the Distribution Licensee, with such modifications or conditions as the Commission deems appropriate; or*
- (b) reject the investment plan submitted by the Distribution Licensee and require the Distribution Licensee to submit a fresh investment plan taking into consideration such factors as the Commission may deem necessary”.*

Mr. Jayant Bhushan, Sr. Advocate appearing for MERC submits that the KPTCL judgment is not applicable to this case in view of the distinction in facts. It is contended on behalf of the appellant that the Regulations 71.5 to the extent, it allows modifications and conditions to be imposed by the MERC has to be read down as the same is not in

consonance with the Electricity Act, 2003. Reliance is placed on the judgment of this Tribunal in the case of Karnataka Power Transmission Corporation Ltd. (KPTCL) Vs. Karnataka Electricity Regulatory Commission (KERC) & others in which this Tribunal has held that utilities have the freedom to plan with respect to their investment, standardization and upgrading of the system and that the KERC had not acted reasonably and fairly in interfering with the intended projects, which was only within the domain of the transmission utility. It is contended that the judgment in the case of KPTCL (supra) has laid down that the project reports of capital investment will have to be cleared by the Regulatory Commission and that Regulatory Commission can not impose any conditions or modifications of their own.

We have gone through the judgment and we find that the judgment was written on the peculiar facts of that case. This Tribunal specifically disapproved the procedure adopted by the KERC and laid down in what manner prudent check can be employed by a Regulatory Commission.

The basic difference between the cases of that of the KPTCL and the present one is that the Regulations specifically empowers the MERC to grant clearance with modifications and conditions as it may deem appropriate. In the case of KPTCL judgment, no such regulations have been cited or examined.

On behalf of the appellant Mr Vikas Singh, Sr. Advocate submits that the KPTCL judgment has laid down that the restrictions imposed by the Regulatory Commission, on capital investment of a utility, is against the spirit of The Electricity Act 2003. He contends that since this Tribunal has so held, the regulations should be read down to say that the conditions and modifications raised by MERC in approving the project are bad. He does not dispute that this Tribunal does not have the power to strike down the regulations, as violative of The Electricity Act 2003. Nonetheless, he says that to the extent, the regulation is against the spirit of the Act, it should be read down without actually declaring the regulations to be bad.

All the Arguments advanced by Mr. Vikas Singh for reading down the above regulations No. 71.5 appear to be directed towards striking down the said regulation, which, however, is beyond the jurisdiction of this Tribunal. None of his arguments allow us to accept the plea that the Commission has the right to impose conditions and modifications but not the specific modifications made by it in the impugned order. So long as the regulations 71.5 is in place, the appellant can expect no relief from this Tribunal. The appeal therefore, has no force.

The parties are amenable to the suggestion that the Commission will give a fresh opportunity to the appellant to explain the technical and commercial significance of the full scope of the project proposals with associated economic benefit and to justify the estimated cost as well as other factors involved in the same. Hence, we dispose of the appeal by directing the respondents to allow a fresh opportunity to the appellant to explain technical and commercial impact of the project proposal with economic advantage and justify the entire project in question and in case the respondent is satisfied, it may appropriately revise the impugned sanction orders.

(Justice Manju Goel)
Judicial Member

(A. A. Khan)
Technical Member