

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

Appeal No. 06 of 2007

Dated: June 07, 2007

Present:

**Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member
Hon'ble Mr. H.L. Bajaj, Technical Member**

Global Energy Limited
C-301, House of Lords,
Miramar, Panaji,
Goa-403 001

Also at:

Gesco Corporate Centre,
70, Nehru Place,
NEW DELHI-110 019

... Appellant

V/s.

Central Electricity Regulatory Commission,
Core-3, 6th Floor,
Scope Complex,
Lodi Road,
New Delhi-110 003

... Respondent

Counsel for the Appellant(s): Mr. Jayant Bhushan, Sr. Advocate
with Mr. Sitesh Mukherjee &
Mr. Rajiv Yadav

Counsel for the Respondent(s) : Mr. Raj Kumar Mehta with
Ms. Suman Kukrety

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

This appeal is directed against the Order of the Central
Electricity Regulatory Commission (for short 'CERC') dated

August 28, 2006, recorded in petition No. 31 of 2004, whereby the appellant was not found to be a fit and proper person for grant of licence for inter-state trading in electricity. The facts giving rise to the appeal are as follows:-

2. The appellant is a public limited company, incorporated under the provisions of the Companies Act. It has been in the business of trading of electricity before the Electricity Act, 2003 (for short 'the Act') came into force. Since Section 12 of the Act does not permit any person, unless exempt under Section 13, to undertake trading in electricity without a licence issued under Section 14 of the Act, the appellant filed an application, being Petition no. 31 of 2004, on March 23, 2004 before the CERC for grant of a licence for inter-state trading of 100 million units of electricity in a year in all the five electricity regions. Along with the petition, the appellant filed an inter-locutory application seeking permission to trade in electricity pending final disposal of its petition for grant of inter-state trading licence.

3. On March 30, 2004, the appellant published a notice of his application as required by section 15(2) of the Act read with clause (4) of Regulation 4 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading Licence and other related matters) Regulations, 2004 (for short Regulations) in all the editions of Indian Express, Financial Express and Jansatta.

4. On March 31, 2004, the CERC passed an interim order permitting the appellant to undertake inter-state sale and purchase of electricity upto May 15, 2004 or till the disposal of main petition whichever was to be earlier. The interim order however, was extended from time to time by the CERC.

5. The aforesaid notice issued on March 30, 2004 was found to be deficient and accordingly fresh notices of the filing of the application for grant of inter-state licence were published on June 28, 2004. It appears that pursuant to the aforesaid publication, one Mr. Manish D. Salkar sent his objections to the CERC in regard to the application of the

appellant for grant of inter-state trading licence. The objections were however, rejected by the CERC by its order dated June 30, 2004.

6. On September 6, 2004, the CERC on the basis of the net worth of the appellant, represented by its assets, found the appellant, *prima facie*, eligible and qualified for grant of inter-state trading licence for trading of electricity up to 100 million units per year and proposed to grant the licence to the appellant as category 'A' Trader. Consequently, in accordance with the requirement of sub-section (5) of Section 15 of the Act, the CERC directed that a notice be issued inviting suggestions or objections to the proposal. In response to the public notice published by the CERC under Section 15(5) of the Act, objections against the proposal were received from one Mr. C.M. Madhur. The basic objection of the objector was that the appellant, being a private entity, should not be granted a trading licence as it would exploit the industrial and agricultural sector. The objector, however, did not appear

before the CERC at the hearing fixed for September 28, 2004. During the hearing on September 28, 2004, the counsel for the appellant was apprised of the fact that the CERC had also received an anonymous e-mail, stating that Shri Harry Dhaul, Managing Director of the appellant was likely to be charge-sheeted and arrested by the CBI. The e-mail reads as under:-

*“From : ss<dcfc390@yahoo.com
To: Chairman@cercind.org
Date: Mon. September 13, 2004 7:29 pm
Subject: Objections – Granting of trading license to Global Energy*

Dear Sir,

This is reference to the petition no. 31 of 2004 – Global Energy Limited’s application for a inter-state trading license. I wish to bring to your notice that the said entity is going to be charge sheeted by the CBI for the fraud they committed with regard to Belgundi Cements ion Karnataka. The case is relating to siphoning of money i.e. bank’s money. The matter is pending before the Karnataka High Court and may Mr. Harry Dhaul is going to be arrested. Moreover the Balance Sheet they have provided is grossly inflated and fabricated.

Therefore, I hope you are granting the license after being aware of all the facts. Knowing GEL its difficult to belief that whatever they say is true.

*Regards,
Anonymous”*

7. On Sept. 28, 2004, the CERC taking note of the anonymous e-mail, directed the appellant to file its comments

to the allegations made therein with specific reference to the petition pending before the Karnataka High Court. The appellant was also directed to file detailed information in regard to the cases involving the appellant, its sister concern Belgundi Cement Ltd. and any person on the Board of Directors of the appellant or Belgundi Cement Ltd.

8. The appellant aggrieved by the aforesaid directions of the CERC dated September 28, 2004 filed a petition before the Delhi High Court under Article 227 of the Constitution of India, being CM (Misc.) No. 1337/2004, for quashing the order of the CERC dated September 28, 2004. While issuing notice in the Misc. Petition, Delhi High Court by its order dated October 5, 2004 passed the following interim order:

“It is made clear that in case any further extension is to be granted to the Petitioner, the e-mail dated September 13, 2004 and the information required from the Petitioner pursuant thereto, will not be taken into consideration”.

9. After having filed the petition before the High Court, the appellant did not furnish the requisite information sought by

the CERC. It was, therefore, given a further opportunity to file the information by October 31, 2004. The appellant was also directed to clarify through an affidavit the position in regard to the role of Mr. Harry Dhaul, Director of the Appellant in connection with the construction of transmission system for evacuating electricity from power plant of Belgundi Cement Ltd.

10. On January 17, 2006, the Delhi High Court transferred the matter to this Tribunal. Thereupon with a view to comply with the rules, the appellant also filed an appeal, being Appeal No. 22 of 2006, in this Tribunal on February 1, 2006. Thereafter, on February 1, 2006, learned counsel for the appellant made a statement before us that it shall furnish the requisite information sought by the CERC by its order dated September 28, 2004. In response to the statement of the learned counsel for the appellant, the learned counsel for the CERC stated that the CERC shall continue the interim order till the final decision is taken with regard to the question

whether or not trading licence should be granted to the appellant, subject to the condition that in case the appellant wishes to enter into a fresh contract for supply of power with any party, prior permission shall be taken by the appellant from the CERC. In view of the statement of the learned counsel for the respondent, the learned counsel for the appellant withdrew the matter and accordingly the same was allowed to be withdrawn by order of this Tribunal dated February 1, 2006.

11. After the withdrawal of the appeal, the appellant provided some information to the CERC but did not furnish its comments to the allegations levelled in the aforesaid e-mail.

12. In the meantime the Department of Power, Govt. of Tripura also filed an affidavit before the CERC, objecting to the grant of licence to the appellant mainly on the grounds that the appellant had failed to arrange evacuation of contracted power, that it had not made payment to the Govt. of Tripura

as per its contractual commitments and that it had filed a civil suit at Panchkula to resist the invocation of the letter of credit by the Government of Tripura.

13. In order to elicit response to the allegations made in the anonymous e-mail, the objection of the Government of Tripura to the grant of inter-state trading licence to the appellant and other matters, the CERC directed the appellant to file the following information:-

“(a)Duration of the present contract for trading;

(b)An affidavit to the effect that the applicant will not make any application before any of the Commissions for grant of transmission licence without surrendering the trading licence, if granted;

(c) Role of Shri Mikhail Dhaul in connection with the construction of the transmission system as called for vide order dated 14.10.2004;

(d)Copy of order of the Hon’ble Supreme Court allowing continuation of prosecution of Smt. Laxmi Dhaul;

(e)Details regarding stay of case by the Hon’ble High Court of Karnataka;

(f) A categorical averment regarding the pendency of cases;

(g) Response to the suggestion/objections received from Government of Tripura;

(h) Copy of the annual accounts of the appellant for the year 2004-05 duly audited;

(i) Complete details and particulars of cases pending before BFIR/AFIR involving Belgundi Cements Ltd”.

14. Again by order of the CERC dated April 25, 2006, the appellant was directed to file fresh duly re-conciled audited balance sheet for the year 2004-2005. The appellant was also required to file complete paper books of suit for damages, which was filed by one Shri S.R. Narayanan against Belgundi Cements Ltd., Shri Harry Dhaul, Smt. Laxmi Dhaul and Smt. Indu Tendulkar. It was also required to file complete paper books filed by Belgundi Cements Ltd., a sister concern of the appellant, before Board for Industrial and Financial Reconstruction (BIFR) in a petition under the Sick Industrial Companies (Special Provisions) Act, 1986 for re-habilitation and resuscitation of Belgundi Cements Ltd. and the appeal paper book filed before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

15. On June 6, 2006 when the matter came up before the CERC, it was found on scrutiny of the affidavit filed by the appellant pursuant to the order of the CERC dated April 25, 2006, that certain annexures to the application preferred by the Belgundi Cements Ltd., before the BIFR were not placed on record. Consequently, the appellant was directed to file copies of the annexures.

16. While the matter was pending before the CERC, on April 13, 2006 the Central Electricity Regulatory Commission (Procedure, Terms and Conditions For Grant Of Trading Licence And Other Related Matters) Amendment Regulations, 2006 were notified. This *inter-alia*, resulted in insertion of Regulation 6A in the Regulations. In the context of Regulation 6A of the Regulations, the following information was sought from the appellant:-

“(a) Whether the applicant or any of his partners, or promoters, or Directors or Associates is declared insolvent and has not been discharged; and

(b) Whether the applicant, or any of his partners, or promoters, or Directors or Associates is involved in any legal proceedings; and

(c) Whether the applicant, or any of his partners, or promoters, or Directors or Associates at any time in the past has been convicted of an offence involving moral turpitude or any economic offence”.

17. In response to the direction of the CERC, the appellant furnished the information on July 16, 2006. Thereupon, the CERC, after according hearing to the appellant, rejected his application for the grant of inter-state trading licence by its order dated August 28, 2006 on the ground that in terms of Regulation 6A the appellant was not a “fit and proper person” for the grant of licence.

18. Aggrieved by the order passed by the CERC, the appellant has filed the instant appeal.

19. It was submitted by the learned senior counsel for the appellant that Regulation 6A was inserted in the Regulations much after the filing of the application of the appellant for the grant of inter-state trading licence. This being so, application

of the appellant for grant of inter-state trading licence filed on March 23, 2004 should have been considered by the CERC in the context of the Regulations existing on that date and not on the basis of Regulation 6A of the Regulations by giving it a retroactive effect. Therefore, the CERC was not right in applying Regulation 6A of the Regulations in holding that the applicant was not a “fit and a proper person” for being granted an inter-state trading licence. He further contended that before the insertion of Regulation 6A in the Regulations, 2004, capital adequacy and credit worthiness were required to be considered for grant of inter-state trading licence as per Regulation 6 of the Regulations, 2004. According to him, the appellant fulfills the criteria laid down by Section 6 of the Regulations, 2004. This, according to the learned counsel is evident from the fact that the CERC in its order dated September 6, 2004, found the appellant *prima-facie*, eligible and qualified as Category ‘A’ Trader on the basis of the net worth of the appellant, represented by its assets. The learned senior counsel canvassed that the credit worthiness is to be

judged on the basis of financial credit which in turn depends on the basis of the earning ability, previous promptness in paying the debts etc. The learned senior counsel contended that the CERC was required only to see the appellant's ability to meet the debt obligations and the CERC was not right in rejecting the application of the appellant on the basis of Regulation 6A, which came into effect almost two years after the filing of the application for grant of inter-state trading licence.

20. He further submitted that even on the basis of the criteria laid down by Regulation 6A of the Regulations, the appellant could not be denied inter-state trading licence. Elaborating his submission, he referred to the fact that the appellant was denied the inter-state trading licence on the mere ground that the appellant is involved in civil and criminal litigation. This, according to the learned senior counsel was hardly a ground to hold that the appellant was not a "fit and proper person" for the grant of licence. He

pointed out that GEA Energy System (India) Ltd., Chennai was granted inter-state trading licence inspite of the fact that it was involved in several matters, which were pending in the various forums. He also referred to the fact that the Joint Commissioner of Central Excise, pursuant to the scrutiny of the record of the GEA Energy System (India) Ltd. levelled charges against the company for clearing goods without payment of duty. GEA Energy System (India) Ltd. had filed a writ petition against the State of Tamil Nadu and Commercial Tax Officer, Ponneri challenging the levy of entry tax on the goods under the provisions of Sections 2(c), 2(g) and 3 of the Tamilnadu Tax on Entry of Goods Into Local Areas Act, 2001. In the proceedings, it had also moved an application for seeking interim order for restraining the Govt. of Tamilnadu from levying or recovering entry tax on goods under the aforesaid provisions. The learned senior counsel also highlighted the fact that Labour Enforcement Officer (Central) had even filed a complaint under Section 22A of the Minimum Wages Act, 1948 against the GEA Energy System (India) Ltd.

for violation of the provisions of the Minimum Wages (Central) Rules, 1950. The upshot of his argument is that the appellant has been subjected to discriminatory treatment in as much as it has been denied inter-state trading licence for its alleged involvement in litigation, while GEA Energy System (India) Ltd. was granted inter-state trading licence. The learned senior counsel urged that the hostile treatment meted out to the appellant cannot be countenanced in law.

21. It was also contended by him that mere filing of a charge-sheet by the CBI in the alleged bank fraud case against the Managing Director of the appellant and his wife cannot be a ground for coming to the conclusion that the appellant is not a “fit and proper person” for grant of inter-state trading licence. He asserted that only when a person is convicted of an offence, it may be possible to disqualify him from receiving an inter-state trading licence. He referred to number of statutes where disqualification comes into play only when a person is convicted of an offence.

22. Besides, the learned senior counsel also raised other contentions, which will be noticed and dealt with later in this Judgment.

23. On the other hand, the learned counsel in response to the arguments of the learned senior counsel for the appellant contended as follows:-

24. No one has a vested right to claim grant or renewal of a licence. The question whether or not a person is eligible or qualified for being granted an inter-state trading licence, is governed by the Act and Regulations existing on the day the application is considered and decided by the Commission. This is supported by the decision of the Supreme Court in the State of Tamilnadu vs. Hind Stones & Ors. (1981) 2 SCC 205. The CERC rightly considered the application of the appellant for grant of licence with reference to Regulation 6A of the Regulations, which was notified on April 13, 2006. As per Clause (b) of Regulation 6A, an applicant is not qualified for

grant of licence for inter-state trading in case the applicant, or any of his partners, or promoters, or Directors or Associates are involved in any legal proceedings and in the opinion of the Commission grant of licence in the circumstances, may adversely affect the interest of the electricity sector or the consumers. Clause (c) of Regulation 6A deals with the case of an applicant, who has at any time in the past been convicted of an offence involving moral turpitude or any economic offence. Sub-clauses (b) and (c) are independent of each other and are capable of standing alone. The criminal proceedings launched against the appellant are of a very grave nature. The CBI has filed a charge-sheet against Shri Harry Dhaul, Managing Director and Smt. Laxmi Dhaul, Director of the appellant company for defrauding and cheating the Central Bank of India for securing loans for the consumption and power projects of Belgundi Cements Ltd., a sister concern of the appellant. The CERC on being satisfied on the basis of material on record was right in coming to the conclusion that the appellant is not a “fit and proper person” to be granted

licence. This finding has been arrived at by CERC on objective appraisal of the material on record. The appellant is not right in drawing any similarity between the instant case and the case of the GEA Energy System (India) Ltd. The facts situation of both the cases is different.

25. We have considered the submissions of the learned counsel for the parties.

26. At the outset we may point out that the appellant had filed a writ petition before the Delhi High Court, being writ petition (Civil) no. 13822 of 2006, challenging the order passed by the CERC on various counts. In the writ petition, the appellant had also questioned the vires of clauses (b) and (f) of Regulation 6A. The Delhi High Court by its order dated December 12, 2006 upheld the vires of these provisions and disposed of the writ petition. In so far as the merits of the case are concerned, the High Court relegated the appellant to the remedy under Section 111 of the Electricity Act, 2003. This being the position, the learned senior counsel for the

appellant did not mount attack directed at the vires of Regulation 6A but submitted that it was not open to the Commission to deny the licence by invoking Regulation 6A of the Regulations as the application for grant of inter-state trading licence was made before the amendment of the Regulations. In other words, the submission is that the application of the appellant ought to have been considered and decided on the touchstone of the un-amended Regulations, which were in existence on the date of the filing of the application.

27. We have given our anxious consideration to the submission but regret our inability to accept the same.

28. It is no doubt true that the appellant filed the application for grant of licence before the amendment of the Regulations but the appellant cannot be said to have acquired a vested right in having the application decided under the un-amended provisions of the Regulations. It cannot be stated that on the date of the filing of the application, the appellant was having a

legitimate expectation that he would be able to secure the licence on the basis of the requirements of the statute as existing on that date. Even if he entertained such an expectation it seems to us that it did not create any vested right in the appellant to claim consideration of its application on the basis of the provisions of the Regulations existing on the date of the filing of the application. A claim based on alleged expectation or vested right cannot be set up against an Act or a Regulation framed thereunder. The application was required to be dealt with in accordance with the Regulations in force on the date of the decision of the application. It is not right to contend that Regulation 6A was applied retrospectively for rejecting the application of the appellant. Regulation 6A being part of the Regulations and very much in existence, on the date of the disposal of the application by the CERC, could not be ignored. The CERC was bound to decide the application of the appellant in accordance with the existing law, which includes Regulation 6A as well. Therefore, the CERC by invoking Regulation 6A for deciding the application

of the appellant for grant of inter-state trading licence cannot be said to have given a retrospective effect to it. In *Howrah Municipal Corporation & Ors. Vs. Ganges Rope Co. Ltd. & Ors.* (2004) 1 SCC 663, the Supreme Court on the basis of the Building Rules held that the Building Rules prevailing at the time of sanction of construction of a building would govern the subject of sanction and not the Rules existing on the date of application for sanction. It was also held that the application filed before the amendment of the Building Rules and decided on the basis of the amended Building Rules, which created restrictions on the heights of the buildings, did not nullify any vested right or settled expectations of the respondent company. In this regard, the Supreme Court observed as under:

“The question again came up for consideration in Howrah Municipal Corporation and Others v. Ganges Rope Co. Ltd. & Ors. (2004) 1 SCC 663) wherein this Court categorically held:

The context in which the respondent company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in

relation to “ownership or possession of any property” for which the expression “vest” is generally used. What we can understand from the claim of a “vested right” set up by the respondent company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a “legitimate” or settled expectation” to obtain the sanction. In our considered opinion, such “settled expectation”, if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of building on G.T. Road and other wards, such “settled expectation” has been rendered impossible for fulfillment due to change in law. The claim based on the alleged “vested right” or “settled expectation” cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such “vested right” or “settled expectation” is being sought to be enforced. The “vested right” or “settled expectation” has been nullified not only by the Corporation but also by the State by emending the Building Rules. Besides this, such a “settled expectation” or the so-called “vested right” cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon”.

29. In *Union of India & Ors. vs. Indian Charge Chrome & Anr.* (1999) 7 SCC 314, it was held by the Supreme Court that

an application seeking registration of a contract under the Project Imports (Registration of Contracts) Regulations, 1965 has to be decided in accordance with law applicable on the date on which the authority granting the registration applied its mind to the prayer for registration.

30. In *State of Tamil Nadu vs. M/s. Hind Stone & Ors.* (1981) 2 SCC 205, it was held by the Supreme Court that no one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease be dealt with in a particular way, by applying a particular provision. The Supreme Court categorically laid down that in the absence of any vested right in anyone; an application for a lease has necessarily to be dealt with according to the Rules in force on the date of the disposal of the application.

31. In view of the aforesaid discussion, we hold that merely preferring an application for grant of inter-state trading licence does not confer any vested right on the applicant. The

application must be considered and decided in accordance with the provisions applicable on the date, the application is decided by the Central Electricity Regulatory Commission. Therefore, we find no force in the submission of the learned senior counsel for the appellant that the application of the appellant for grant of inter-state trading licence was to be considered on the basis of the Regulations which were in force on the date of the application.

32. The next question which falls for our determination is whether criminal proceedings pending against the applicant can be considered for denying inter-state trading licence to the applicant or is it only a conviction for an offence involving moral turpitude or any economic offence that disqualifies an applicant from receiving an inter-state trading licence. In order to determine the question, it may be necessary to refer to Regulation 6A. Regulation 6A reads as follows:-

“ 6A. Disqualifications: The applicant shall not be qualified for grant of licence for inter-state trading if:

(a) The applicant, or any of his partners, or promoters, or Directors or Associates is declared insolvent and has not been discharged; or

(b) The applicant, or any of his partners, or promoters, or Directors or Associates is involved in any legal proceedings, and in the opinion of the Commission grant of licence in the circumstances, may adversely affect the interest of the electricity sector or the consumers; or

(c) The applicant, or any of his partners, or promoters, or Directors or Associates has at any time in the past been convicted or an offence involving moral turpitude or any economic offence; or

(d) An order canceling the licence of the applicant, or any of his partners, or promoters, or Directors or Associates, has been passed by the Commission on the ground of his indulging in fraudulent and unfair trade practices or market manipulation or activities involving moral turpitude; or

(e) The applicant, has in the past been –

(i) refused a licence on the grounds which continue to remain valid; or

(ii) subjected to any proceedings for contravention of any of the provisions of the Act or the rules or the regulations made thereunder; or

(f) The applicant is not considered a fit and proper person for the grant of licence for any other reason to be recorded in writing;

Explanation: *For the purpose of determining as to whether the applicant is a 'fit and proper person', the Commission may take account of any consideration, as it*

deems fit, including but not limited to the following, namely:-

- (i) financial integrity of the applicant;*
- (ii) his competence;*
- (iii) his reputation and character; and*
- (iv) his efficiency and honesty”.*

33. Clause (b) of Regulation 6A clearly provides that an applicant shall not be qualified for grant of licence for inter-state trading in case he is involved in any legal proceedings, and in the opinion of the Commission grant of licence in the circumstances, may adversely affect the interests of the electricity sector or the consumers. The words ‘legal proceedings’ occurring in Regulation 6A are not confined to a particular type of proceedings. The words ‘legal proceedings’ cover civil and criminal proceedings. Mere involvement of an applicant in civil and criminal proceedings does not attract the provisions of clause (b) of Regulation 6A unless the Commission is also of the opinion that the grant of licence in the circumstances may adversely affect the interests of the electricity sector or the consumers. The question which must

be addressed by the Commission before granting an application for inter-state trading licence is whether the grant of inter-state trading licence to an applicant, involved in any legal proceedings, may adversely affect the interests of the electricity sector or the consumers. In case the interests of the electricity sector or the consumers is not likely to be adversely affected by the involvement of the applicant in the legal proceedings, he will not be disqualified under clause (b) of Regulation 6A for grant of licence for inter-state trading. But where grant of licence to a person involved in legal proceedings is likely to have an adverse impact on the interests of the electricity sector or the consumers, disqualification is attracted. In such a case it is not necessary to show that the applicant or his partners or promoters or Directors or Associates have been convicted of an offence involving moral turpitude or any economic offence for attracting the disqualification prescribed in clause (c) of Regulation 6A. Both clauses (b) and (c) are independent of each other. It is interesting to note that under clause (c) of Regulation 6A,

conviction of an applicant for an offence involving moral turpitude or any economic offence is required for attracting disqualification.

34. But under clause (b) of Regulation 6A conviction for an offence is not required for attracting the disqualification. In a case covered by clause (b), involvement of an applicant in legal proceedings and the opinion of the Commission that such involvement may adversely affect the interests of the electricity sector and consumers is the *sine qua non* for attracting disqualification.

35. The learned counsel for the appellant submitted that clause (b) of Regulation 6A is of a general nature, while clause (c) of Regulation 6A is a special provision dealing with legal proceedings of criminal nature. The learned senior counsel contended that it is well-settled that where a provision specifically deals with a particular subject, such special provision will exclude the applicability of any general provision, which may also generally cover the said subject.

The proposition that the special provision dealing with a topic excludes the applicability of the general provision dealing with such subject cannot be disputed. But this rule has no application in the instant case as clauses (b) and (c) operate in different areas, situations and contingencies. As already pointed out clause (c) only relates to disqualification which comes into play once an applicant is convicted of an offence involving moral turpitude or any economic offence, but clause (b) comes into operation only when an applicant is involved in legal proceedings, whether of civil or criminal nature and such involvement of the applicant is likely to adversely affect the interests of the electricity sector or the consumers. Under clause (c) of Regulation 6A, an applicant is automatically disqualified once he is convicted of an offence involving moral turpitude or any economic offence but under clause (b) of Regulation 6A, the disqualification for the purpose of acquiring the licence is not automatic and depends upon the presence of the following two factors:-

- i) The applicant is involved in litigation; and

- ii) In the opinion of the CERC, the involvement of the applicant in legal proceedings is of such a nature that it adversely affects the interests of the electricity sector or the consumers.

36. Thus, in the case falling under clause (b) of Regulation 6A, there is no automatic disqualification. For application of clause (b) of Regulation 6A, the Regulatory Commission on consideration of the material on record must be satisfied that the grant of licence to an applicant involvement in the legal proceedings may adversely affect the interests of the electricity sector or the consumers. In other words, only involvement of an applicant in legal proceedings is not enough for operation of clause (b) of Regulation 6A. It must be coupled with the opinion of the appropriate Regulatory Commission that the interests of the electricity sector or consumers may be adversely affected by grant of licence to the applicant. In case the Regulatory Commission does not reach the requisite satisfaction, the disqualification does not attach to the applicant in securing the licence.

37. In view of the aforesaid discussions, we are of the view that Clauses (b) and (c) are independent of each other and it cannot be said that clause (c) specifically covers a topic dealt with in general terms by clause (b). The two clauses operate in distinct domains. Therefore, we do not find any force in the submission of the learned counsel for the appellant that involvement of an applicant in criminal proceedings cannot operate as disqualification unless he is convicted of an offence involving moral turpitude or any economic offence. While holding so, we are conscious of the fact that there are many statutes where disqualification is attracted only on conviction of a person for certain offences but in Regulation 6A of the Regulations conviction for an offence involving moral turpitude or any economic offence is one of the grounds for disqualification for securing an inter-state trading licence. Apart from this ground, there are other grounds as well on the basis of which an applicant can be disqualified from grant of a licence, including the ground specified in the Clause (b) of

Regulation 6A. The wisdom of the framers of the Regulations cannot be questioned. The involvement of an applicant in legal proceedings including the proceedings of criminal nature has been made a ground for disqualification in case the appropriate Regulatory Commission is of the view, based on objective appraisal of record, that the grant of licence may prejudicially affect the interests of the electricity sector or consumers. The Regulations have been upheld by the Delhi High Court. Therefore, to draw an analogy on the basis of various statutes for contending that disqualification should not operate unless a person is convicted of an offence involving moral turpitude or any economic offence, cannot be accepted.

38. The question that now falls for determination is whether the CERC came to the right conclusion in law that under Regulation 6A of the Regulations, the appellant is not a “fit and a proper person” for being granted inter-state trading licence. The material on the basis of which the finding has been rendered is related to the involvement of the appellant in

the legal proceedings. The CERC has referred to the fact that the appellant has been charge-sheeted by the CBI for serious offences involving moral turpitude. It has also alluded to the fact that a court of competent jurisdiction has already taken cognizance of the charges levelled against Shri Harry Dhaul, Managing Director of the appellant. The CERC has observed that “*prima-facie* a case has been made out against Shri Harry Dhaul”. It has noted that allegations of serious nature are under investigation by CBI against Smt. Laxmi Dhaul, who is also managing the affairs of the applicant. Besides it has referred to the proceedings initiated by the Government of Tripura, Haryana Vidyut Prasaran Nigam Ltd. and Karnataka Power Transmission Corpn. Limited against the appellant.

39. In so far as CBI case against the appellant is concerned, the charge-sheet filed before the Special Judge alleges that M/s. Belgundi Cements Pvt. Ltd. availed various credit facilities from the Central Bank of India, Belgaum Branch and Mumbai Main Office for the cement and power project of their

company situated at Belgundi village and diverted the funds sanctioned/disbursed by the bank, in the name of various non-existing firms, created by the Directors of the company, in the name of their own employees. The company had submitted false and inflated invoices to the Central Bank of India, Mumbai Main Office, against which funds have been disbursed by the Bank and the same was diverted for unproductive purposes by the company, which ultimately caused a wrongful loss of more than Rs. 39 crores to the Central Bank of India, Mumbai main Branch. The charge sheet has been filed for commission of offences punishable under Section 120-B read with 420, 467, 468 and 471 IPC and section 13(2) read with section 13(1) (d) of Prevention of Corruption Act, 1988.

40. The learned senior counsel for the appellant submitted that mere filing of the charge-sheet does not mean that a *prima-facie* case has been made out against the accused. He submitted that the observation of the CERC in this regard that

a *prima-facie* case has been made out against Shri Harry Dhaul cannot be countenanced in law.

41. It is a settled legal position that at the time of taking cognizance of an offence, the Court considers only the averments made in the charge-sheet filed under Section 173 of the Code of Criminal Procedure. The court takes cognizance in case an offence is made out on the basis of the allegations levelled in the charge-sheet. A charge-sheet contains only accusations and on that basis it cannot be said that *prima-facie* accused has committed an offence. But it is equally well settled that at the time of taking cognizance the court is not to sift or appreciate evidence with reference to material and come to a conclusion that no *prima-facie* case is made out. It needs to be noted that gravity of accusations are material and this is evident from the fact that they are considered for the purposes of bail.

42. It was pointed out to us that in so far as the civil disputes are concerned, they have been referred to various

Arbitral Tribunals. It was argued by the learned senior counsel for the appellant that involvement of the appellant in the legal proceedings by no stretch of imagination will adversely affect the interests of the electricity sector or the consumers in case inter-state trading licence is granted to him.

43. The question whether or not grant of inter-state trading licence to the appellant is likely to adversely affect the interests of the electricity sector or the consumers, as it is involved in civil and criminal proceedings, is basically for the Regulatory Commission to determine. In fact, the CERC has not determined this question. After referring to the legal proceedings in which the appellant is involved, it came to the conclusion that the applicant cannot be considered a “fit and a proper person” for grant of inter-state trading licence. This is not an ingredient of clause (b) of Regulation 6A. The CERC has not applied its mind to the question as to in what circumstances a person is not to be considered a “fit and a

proper person” for grant of a licence. For holding that the CERC ought to have proceeded under clause (f) of Regulation 6A. The CERC in declining to grant licence seems to have initially traversed the path of clause (b) of Regulation 6A by relying on the legal proceedings, in which the appellant is involved, but there after suddenly took detour to clause (f) of Regulation 6A by coming to the conclusion that the appellant is not a “fit and proper person” for the grant of licence. Both clauses operate in different spheres in as much as under clause (b), an applicant is disqualified if he is involved in any legal proceedings and the Commission is of the opinion that grant of licence to the applicant may adversely affect the interests of the electricity sector or the consumers but clause (f) applies where the applicant is not considered a “fit and a proper person” for the grant of licence for any other reason to be recorded in writing. This means that the reason for disqualification under clause (f) must be other than the reasons specified in other clauses of Regulation 6A. Involvement of an applicant in legal proceedings is covered by

clause (b) and not by clause (f). In case CERC was to rely on clause (f) of Regulation 6A, in that event, the CERC was required to give reasons as to why it does not consider the appellant to be a “fit and a proper person” for grant of a licence and the reasons for disqualification must be other than the ones contained in clause (b) of Regulation 6A. Under clause (b) of Regulation 6A, the CERC in order to disqualify the appellant, ought to have been of the view that the involvement of the appellant in legal proceedings is of such a nature that the grant of licence may adversely affect the interests of the electricity sector or the consumers. The CERC has failed to analyse the ingredients of clause (b) of Regulation 6A and clause (f) of Regulation 6A. It has mixed up the two provisions.

44. The learned senior counsel for the appellant vehemently argued that no one other than Central Transmission Utility or the State Transmission Utility, as the case may be, were authorized to file objections to the notice issued under sub-

section (5) of Section 15 of the Act. According to the learned senior counsel objections to the proposal for grant of inter-state trading licence to a trader can only be filed by the Central Transmission Utility or the State Transmission Utility. Consequently, it was submitted that the CERC could not take into consideration the anonymous e-mail, which was in the nature of objections, received after the issue of notice under sub-section (5) of Section 15 of the Act. According to the learned senior counsel, since the Central Transmission Utility or the State Transmission Utility did not file any objections to the proposal for grant of inter-state trading licence to the appellant, the CERC ought to have granted the licence.

45. In order to determine the question raised by the appellant, it is necessary to set out the relevant part of Section 15 of the Electricity Act, 2003 as under:

15. Procedure for Grant of Licence

(2) Any person who has made an application for grant of licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such

manner as may be specified and a licence shall not be granted

- i. until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:**

Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of such notice as aforesaid;

- ii. until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.**
- 3. A person intending to act as a transmission licensee shall, immediately on making the application, forward a copy of such application to the Central Transmission Utility or the State Transmission Utility, as the case may be.**
 - 4. The Central Transmission Utility or the State Transmission Utility, as the case may be, shall, within thirty days after the receipt of the copy of the application referred to in subsection (3), send its recommendations, if any, to the Appropriate Commission:**

Provided that such recommendations shall not be binding on the Commission.

- (5) Before granting a licence under section 14, the Appropriate Commission shall -**

- (a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name of the person to whom it proposes to issue the licence;**
- (b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or State Transmission Utility, as the case may be.**

46. As is evident from the above, an applicant is required to publish a notice of his application for grant of licence within seven days after making such an application. In case of a person intending to act as a transmission licensee, he is required to forward a copy of the application to the Central Transmission Utility (CTU) or the State Transmission Utility (STU), as the case may be. The Central Transmission Utility or the State Transmission Utility, as the case may be, is required to send their recommendations, if any, to the Appropriate Commission.

47. In case the Appropriate Commission finds the applicant eligible and qualified for grant of licence, it is required to publish a notice in two daily newspapers stating the name and address of the applicant to whom it proposes to issue the licence. After receipt of all the suggestions, objections and recommendations of the Central Transmission Utility or State Transmission Utility, decide the application. It is important to emphasize that clause (a) of sub-section (5) of Section 15 of the

Act requires a notice of the proposal to grant licence to be published. Clause (a) of sub-section (5) of Section 15 of the Act does not confine notice to be given only to the CTU or the STU. It is a notice for the public at large. Just because clause (b) of sub-section (5) of Section 15 of the Act specifically requires the Regulatory Commission to consider the recommendations of the Central Transmission Utility or the State Transmission Utility does not mean that no objections can be filed by the members of the public to the proposal. Section 15 requires two notices to be given, one at the time of filing of the application and the other after the Commission has proposed the grant of licence to an applicant. Even if the provision requiring the Commission to publish a notice of its proposal to the grant of licence, was absent from Section 15, the Commission would still not be powerless to consider the objections filed before taking a final decision in the matter. In any case Section 15 of the Act does not interdict the Commission from considering the objections filed after the publication of the proposal. What is necessary is that the

applicant must be given an opportunity to meet the objections. It needs to be noted that sub-section (4) of Section 15 talks of the recommendations of the CTU or STU to the proposal. Clause (b) of sub-section (5) of Section 15 requires the Commission to consider all the suggestions or objections, besides the recommendations. The suggestions or objections cannot be that of the CTU or the STU as they are required under sub-section (4) of Section 15 to send their recommendations with regard to the notice forwarded by the applicant seeking grant of transmission licence. It appears that the Parliament in Section 15 purposely used the term 'recommendations' for the response of CTU or the STU and the word 'objections' for the response of the public at large. Clause (b) of sub-section (5) of Section 15 uses both the words 'objections' and 'recommendations'. One refers to the response of the public at large, which is in the nature of objections and the other refers to the response of the CTUs and STUs, which is in the nature of recommendations. The recommendations envisaged in Clause (b) of Sub-Section 5 of

Section 15 are with regard to the proposal for the grant of a Transmission licence to the applicant, who is required under Regulation 15(3) to issue notice to CTU & STU of his application for grant of Transmission licence. Therefore, we cannot give a limited interpretation to clause (b) of sub-section (5) of Section 15 as urged by the learned senior counsel for the appellant. Therefore, we hereby reject the contention that the suggestions and objections of the public at large cannot be considered by the CERC after the publication of the proposal for grant of inter-state trading licence.

48. We will also like to clear the air with regard to the legitimacy of the action of the CERC in requiring the appellant to furnish information in regard to the anonymous e-mail received by it during the pendency of the proceedings. The Calcutta High Court in *British Electrical & Pumps Pvt. Ltd. vs. Income-Tax Officer 'B' Ward , Companies District -I, Calcutta & Ors.* (1978) 113 ITR 143, held that anonymous information is information from unknown authorship but none the less it

constitutes information. It was further held that non-disclosure of the source of information by itself does not reduce the credibility of the information.

49. An enquiry based on the information contained in an anonymous e-mail or complaint is not illegal or without jurisdiction. Where the Commission merely asks for information, it cannot be surmised that the order prejudicially affects the person against whom anonymous information has been received. But no finding can be based on mere information. If that happens, the aggrieved party is justified in challenging the same on the basis of violation of the principles of natural justice. It is not the case of the appellant that the application for grant of inter-state trading licence has been rejected merely on the basis of the information contained in the anonymous e-mail.

50. In the circumstances, we are of the view that the CERC could act on the anonymous e-mail and ask the appellant to furnish information.

51. We are also not impressed with the plea of discrimination raised by the appellant by drawing a parallel between the instant case and the case of the G.E. Energy System India Ltd. The fact situation of both the cases is different. Basically, it is for the Commission to come to a conclusion whether or not any of the clauses of Regulation 6A are attracted in the context of the material on record.

52. In the circumstances, therefore, we remit the matter to the CERC to consider afresh the question whether the grant of licence to the appellant is likely to adversely affect the interests of the electricity sector or the consumers in view of the involvement of the appellant in the legal proceedings.

53. It will also be open to the CERC to consider the application of the appellant in the light of the other relevant provisions of the Regulations including clause (f) of Regulation 6A. The

appellant shall be heard by the Commission on the aforesaid questions before passing the order.

54. No costs.

(Justice Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member

(H.L. Bajaj)
Technical Member

Dated : June 07, 2007