

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

(Energy Conservation)

ORDER ON DFR NO. 1151 OF 2018 & IA NO. 989 OF 2018 ON THE FILE
OF THE APPELLATE TRIBUNAL OF ELECTRICITY, NEW DELHI

Dated: 21st August, 2018

Present: Hon'ble Mr. Justice N. K. Patil, Judicial Member
Hon'ble Mr. S. D. Dubey, Technical Member

IN THE MATTER OF:

Chandrapur Super Thermal Power Station

Maharashtra State Power Generation Company Limited,

Urjanagar, Chandrapur – 442 404

Through its Superintendent Engineer,

Anil Mungsaji Kathoye

.... **Appellant(s)**

VERSUS

1. The Secretary

Bureau of Energy Efficiency,

4th Floor, Sewa Bhawan, R.K. Puram, Sector-1.

New Delhi-110 0066

2. Technical Officer

State Designated Agency,

Maharashtra Energy Development Agency (MEDA)

Mhada Commercial Complex, 2nd Floor,

Opp. Tridal Nagar, Yerwada, Pune-411 006

.... **Respondents**

Counsel for the Appellant (s) : Mr. Anish Roy

Counsel for the Respondent(s) : ----

The Appellant has sought the following reliefs in the instant Appeal, being DFR No. 1151 of 2018:

- (a) Quashed and set aside impugned/alleged email dated 26.10.2017 at Annexure A1 by which the M & V Audit Report submitted by Appellant Company rejected on the ground of delay and laches and after perusing of the record and proceeding by this Hon'ble Court, may kindly be pleased to remand the matter thereby directing the respondent no.1 to re-considered the case along with the review application by following principle of natural justice.

OR IN ALTERNATIVE

Direct the Respondent No.1 to appoint fresh Auditor with the approval of MSPGCL (Government Undertaking Company) and conduct the Audit in accordance with Rule of Law and principle of natural justice and The Energy Conservation Act, 2001 and Rules there under.

- (b) Grant any other relief which this Hon'ble Court may deems thinks fit in the facts and circumstances of the case and in the interest of justice.

The Appellant has presented this Appeal for considering the following Questions of Law:

- (a) Whether the impugned/alleged email dated 26.10.2017 sent by Respondent No.1 is in consonance with the Rule of Law and Principle of Natural Justice?
- (b) It is submitted that in the said email, the Respondent No.1 stated only about delay in submitting the M&V Audit Report. However, it is no

where discuss or stated or observed and recorded the finding in the alleged email about the delay in submitting the M&V Audit Report especially on whom side such delay occurs in submitting Audit Report?

(c) It is also worthwhile take into judicial notice by this Hon'ble Tribunal of the admitted position of law that Auditor appointed for conducting and preparation of M&V Audit Report is on purely recommendation and panel of Respondent No.1. Thus, the chances of manipulation or other such aspects do not arise at all. In the present case, Appellant Company appointed the Auditor recommended by the BEE to whom many communications made about proper conduct of Audit and prepare Audit Report on the basis of Actual Data which is also brought to the knowledge of Respondent No.1. However, with due respect, the Auditor is continuing with the same hypothetical figures which resulted into delay in submitting the Wrong Audit Report against which review also filed and same yet not decided . In spite of all this admitted facts o records, still for delay the shifting of fault upon Appellant by Respondent No.1 is in proper, justify and in accordance with law and Act and Rules?

(d) Whether the BEE has erred, in not following the mandatory provision of Rule 8 of the Energy Conservation (Energy Consumption Norms and Standards for Designated Consumers, Form, Time within which and manner of preparation and implementation of scheme, procedure for issue of energy savings certificate and value of per metric ton of oil equivalent of energy consumed) Rule 2012 which speaks that if any person including designated consumer filed the complaint in respect of

audit report the same should be decided within stipulate period or as per Rule 8(e) it should be informed by the Respondent No.1 that same is rejected as per settled principle of law and after following principal of natural justice?

- (e) Whether the BEE has erred in not following its own principle and has inconsistent approach regarding determination of Appellant Company in respect of audit report thereby no deciding review application and representation which is still pending for kind consideration?
- (f) Whether the BEE has erred in adopting an inconsistent approach towards truing down representation of Appellant Company because he submitted audit report belatedly when the Auditor is appointed and from the panel of the Respondent No.1.
- (g) Whether the BEE has erred in accepting the audit report submitted by its own appointed auditor especially when the same is full with lot of mistakes and therefore, auditor is once again required to re-audit the report and data. Moreover, the re-audited report is yet not submitted by the Auditor. It is submitted that said Auditor has utterly failed to consider other normalization factors inspite of repeated reminders. It is submitted that because of this reason, final revised M&V Audit Report is still awaiting from the end of said auditor?
- (h) Whether there is strict compliance of Rule 10 of Energy Conservation (Energy Consumption Norms and Standards for Designated Consumers, Form, Time within which and manner of preparation and implementation of scheme, procedure for issue of energy savings certificate and value of

per metric ton of oil equivalent of energy consumed) Rule 2012 while preparing audit report?

- (i) Whether there is strict compliance of Rule 4 of Bureau of Energy Efficiency (Manner and Intervals of time for conduct of energy audit) Regulations 2010 read with Section 14(1) of the Act from the end of Respondent No.1.
- (j) In the facts and law, whether Respondent No.1 committed gross error of law and facts in rejecting the Audit Report?
- (k) In the present case, there is delay in submitting the audit report but the question remains is that from whom end it got delayed while uploading on the official website of Respondent No.1? It is submitted that in the Fiscal Act like Income Tax Act, if any assessee hires the service of professional which is now legally mandatory above certain income, then it is legal duty casted upon such professional to upload all data of such assessee on the official website of concerned department otherwise he is liable for professional misconduct. Similarly, in the present case, there is a delay on the part of Auditor; therefore action is necessary as per Rule 8 of the Bureau of Energy Efficiency (Qualification for accredited energy auditors and maintenance of their list) Regulation 2010 which is not done. Therefore, the question for kind consideration is that there is really delay and if yes, then on whose side it got delay?
- (l) It is submitted that with due respect, the present appellant company is an government company and regulated and control by MSPGCL (Government Undertaking Company) and thus required lot of prior

approval and formalities for each task and work and also keep the production of electricity on time as the Appellant Company is major producer of electricity of Maharashtra State and supply near about more than 40% Electricity to state. Therefore, in worst to worst case but not admitting the same, inspite of aforesaid fact, the Respondent No.1 legally justify in shifting the negligence of delay in submitting M&V Audit Report upon Appellant Company?

ORDER

PER HON'BLE MR. JUSTICE N. K. PATIL, JUDICIAL MEMBER

1. The Appellant questioning the correctness of the order/email communication dated 26.10.2017 of the Bureau of Energy Efficiency, New Delhi, first Respondent herein, presented this appeal, being DFR No. 1151 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi.
2. We have heard the learned counsel, Mr. Anish Roy, appearing for Mr. Abhay S. Undal, learned counsel for the Appellant.
3. The learned counsel, Mr. Anish Roy, appearing for Mr. Abhay S. Undal, learned counsel for the Appellant, on instruction, submitted that, the instant appeal, being DFR No. 1151 of 2018, may kindly be dismissed as withdrawn reserving liberty to the Appellant to redress their grievance before the appropriate Legal Forum in the event of any Order has been

passed by the first Respondent/Competent Authority and all the contentions of the Appellant may kindly be left open in the interest of justice and equity.

4. Submission made by the learned counsel appearing for the Appellant, as stated supra, is placed on record.

5. Registry is directed to number the Appeal.

6. In the light of the submissions made by the learned counsel appearing for the Appellant and having regard to the facts and circumstances of the case, the instant Appeal, being DFR No. 1151 of 2018, filed by the Appellant is dismissed as withdrawn at the risk of the learned counsel appearing for the Appellant reserving liberty to the Appellant to redress their grievance before the appropriate Legal Forum, if they so advised or the need arises and in the event of any order has been passed by the first Respondent/Competent Authority. All the contentions of the Appellant are left open.

7. With these observations, the instant Appeal, being DFR No. 1151 of 2018, filed by the Appellant stands disposed of.

IA NO. 989 OF 2018

8. In view of the Appeal, being DFR No. 1151 of 2018, on the file of the Appellant Tribunal for Electricity, New Delhi being dismissed as withdrawn, the relief sought in IA No. 989 of 2018 does not survive for consideration and, hence stands disposed of.

9. Order accordingly.

(S. D. Dubey)
Technical Member

(Justice N. K. Patil)
Judicial Member

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