

COURT-II

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

Appeal No. 281 of 2015 & IA No. 460 of 2015

Dated: 08th December, 2015

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of:-

**The Tata Power Delhi Distribution Ltd. Appellant(s)
Versus
Delhi Electricity Regulatory Commission & Ors. ... Respondent(s)**

Counsel for the Appellant(s) : Mr. Amit Kapur,
Mr. Vishal Anand &
Mr. Anupam Varma
Mr. Rahul Kinra &
Mr. Anurag Bansal (Rep) for TPDDL

Counsel for the Respondent(s) : None.

ORDER

Heard.

Admit.

Issue notice of the Appeal to all the respondents returnable within two weeks from today. Reply/counter affidavits be filed by the respondents within four weeks from today and rejoinder, if any, may be filed by the appellant within two weeks thereafter.

Dasti service is permitted.

Interlocutory Application No. 460 of 2015 has been moved in the instant Appeal on behalf of the appellant/Tata Power Delhi Distribution Ltd. citing the details of our earlier judgment as well as pendency of the matter before the Hon'ble Delhi High Court in Writ Petition No. 1698 of 2010 titled as Delhi State Electricity Workers Union Vs. Govt. of NCT of Delhi & Ors. and praying therein for grant of ad interim stay of the

impugned order dated 29.09.2015 passed by the Delhi Electricity Regulatory Commission in the main Petition No. 17 of 2015 filed by the Delhi Transco Ltd., to the extent the learned Delhi Commission has allowed an ad hoc amount of Rs. 573.23 crores towards funding of Pension Trust. It is further prayed in the said I.A. that ex-parte ad interim stay of the alleged illegal Invoice No. DTL/TPDDL/PT/15-16/03 dated 12.11.2015 may be granted till the final adjudication of this Appeal.

This Appellate Tribunal in its recent judgment dated 24th March, 2014 in Appeal No. 238 of 2013 in the matter of Mahendra Gupta, Delhi & Ors. Vs. DERC & Ors. reported in 2014 ELR (APTEL) 0847 has held as under:-

“SUMMARY OF FINDINGS

14. Any State Commission or this Appellate Tribunal has got no jurisdiction to decide the identical issues which are pending consideration before the Hon’ble High Court because the Hon’ble High Court being a Writ Court as well as the Court of Record has inherent powers under Article 226 and 227 of the Constitution of India. The learned State Commission has no jurisdiction to go into the dispute between the Appellants and the Pension Trust with regard to release of terminal benefits in their favour. The grievances of individual employees/appellants relating to service matters relating to the terminal benefits including pension are not under the jurisdiction of the State Commission. Since the same issue is pending before the Division Bench of the Hon’ble High Court of Delhi at the instance of the identical category of the employees as that of the Appellants, the parties should get the same decided from the Hon’ble High Court.

15. It is not open to any State Commission or to this Appellate Tribunal to entertain and decide the issue pending before the Hon’ble High Court because the Doctrine of Comity of jurisdiction requires that this Tribunal should restrain from passing any order which may be in conflict with any order passed by any Competent Court namely; the Hon’ble High Court of Delhi in the instant matter.”

In view of the earlier judgment passed by this Tribunal which is quoted hereinabove, we deem it proper to stay the operation of the impugned order dated 29.09.2015 till the next date of hearing.

Copy of this order be given dasti.

Dasti service is permitted.

Respondents during the above period may file their objections/reply to the said I.A.

The aforesaid I.A. shall be heard and finally disposed of on merits on the next date of hearing.

List this Appeal and I.A. No. 460 of 2015 on 9th February, 2016.

(T. Munikrishnaiah)
Technical Member

rkt

(Justice Surendra Kumar)
Judicial Member