

COURT-II

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**ORDER IN APPEAL NO. 03 OF 2018 AND
IA NOS. 08 OF 2018, 18 OF 2018 & 17 OF 2018 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

Dated: 9th January, 2018

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

In the matter of:

**OPGS Power Gujarat Private Limited
Village Bhadreshwar
Taluka – Mundra
District Kutch
Gujarat 370 411**

... Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission

Through its Secretary
World Trade Centre
Centre No. 1, 13th Floor, Cuffe Parade, Colaba,
Mumbai 400 005

2. Maharashtra State Electricity Distribution Company Limited

Through its Chairman & Managing Director
Hongkong Bank Building,
M.G. Road, Fort
Mumbai 400 001

... Respondent(s)

Counsel for the Appellant (s): Mr. S.B. Upadhyay, Sr. Adv.
Mr. Hemant Singh
Mr. Divyanshu Bhatt

Counsel for the Respondent(s): Mr. Udit Gupta
Mr. Anup Jain for R-2 (MSEDCL)

(I) The Appellant has sought the following reliefs in Appeal No. 03 of 2018 :

- (i) Set aside the impugned order dated 29.12.2017, passed by the Ld. Maharashtra Electricity Regulatory Commission in Case No. 180 of 2017.
- (ii) Direct the Respondent Commission to adjudicate the petition, being Case No. 180 of 2017, on merits with respect to all the issues mentioned in para 2,3 and 8 of the impugned order;
- (iii) Upon disposal of the present appeal, grant a period of one month to the Appellant to approach the appropriate Commission, as may be decided by this Hon'ble Tribunal in the present appeal, and that within the above time period the Respondent No. 2 be restrained from taking any coercive actions against the Appellant; and
- (iv) Pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.

(II) Presented this Appeal for consideration under following Question of Law:

- (i) Whether the Respondent Commission is correct in arriving to the conclusion that the Ld. Central Electricity Regulatory Commission has the power or the jurisdiction to adjudicate the dispute relating to wrongful imposition of Cross Subsidy Surcharge (CSS) and Additional Surcharge by the Respondent No. 2 on the captive users of the Appellant for the FYs 2015-16 and 2016-17 as per Electricity Act 2003?
- (ii) Whether the Respondent Commission is correct in observing that the Ld. Central Electricity Regulatory Commission has the power or the jurisdiction to adjudicate a dispute relating to ascertaining of the captive status of the Appellant?
- (iii) Whether the Ld. Central Commission can adjudicate a dispute between generating company (which includes a captive generating plant) and a distribution licensee under Section 79(1)(f) of the Electricity Act, 2003?
- (iv) Whether it is only the State Commission, in the present case the Respondent Commission, which has the jurisdiction to adjudicate a dispute between

generating company (which includes a captive generating plant) and a distribution licensee under Section 86(1)(f) of the Electricity Act, 2003?

- (v) Whether the impugned order is arbitrary as there is no reasoning whatsoever arriving at the conclusion by the Respondent Commission that the Appellant need to approach the Ld. Central Commission?
- (vi) Whether the impugned order is against the principles of natural justice as the observation qua jurisdiction was given in an order passed in the very first/preliminary hearing without completion of pleadings?
- (vii) Whether the impugned order has been passed by exercise of improper jurisdiction, and without proper application of mind leading to denial of principles of natural justice of the Applicant in seeking to redress its grievances, thereby being violative of Article 14 of the Constitution of India read with Section 62(3) of the Electricity Act, 2003?

ORDER

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

The learned counsel Mr. Udit Gupta accepts notice on behalf of the second Respondent.

2. We have heard the learned senior counsel, Mr. S.B. Upadhyay, appearing for the Appellant and the learned counsel, Mr. Udit Jain, appearing for the second Respondent for quite some time.

3. During the course of the submissions, the learned senior counsel, Mr. S.B. Upadhyay, appearing for the Appellant submitted that, the instant Appeal, being Appeal No. 03 of 2018, filed by the Appellant may be dismissed as withdrawn reserving liberty to the Appellant to file a review petition reviewing the impugned order dated 29.12.2017 passed in Petition No. 180 of 2017 on the file of the Maharashtra Electricity Regulatory Commission, Mumbai and also file an interim application for seeking interim direction.

4. Further, the learned senior counsel for the Appellant submitted that, the interim direction ordered in the operative portion at para 11. Clause 3 sub-clause (iv) of the impugned order dated 29.12.2017 by the Maharashtra Electricity Regulatory Commission, Mumbai may kindly be extended for another two weeks to enable the Appellant to file a review petition and an interim application for stay before the State Commission and all the grounds urged by the Appellant in the instant memo of appeal may kindly be left open.

5. *Per contra*, the learned counsel, Mr. Udit Gupta, appearing for the second Respondent submitted that, in the light of the submissions made by the learned senior counsel may be placed on record. He fairly submitted that they do not have any objection on withdrawal of the instant Appeal and filing of a review petition before Maharashtra Electricity Regulatory Commission, Mumbai if they so advised. He, further submitted that interim direction ordered in the operative portion at para 11. Clause 3 sub-clause (iv) of the impugned order dated 29.12.2017 by the Maharashtra Electricity Regulatory Commission, Mumbai should not be extended in the event, the Appellant withdrawing the instant Appeal to file a review petition before the State Commission as this is not the case of extension of interim direction.

6. The submissions made by the learned counsel for the parties, as stated above, are placed on record.

7. In the light of the submissions made by the learned senior counsel for the Appellant and the learned counsel for the second Respondent, as stated above, and having regard to the facts and circumstances of the case in the interest of justice and equity, we permit the Appellant to withdraw the instant appeal, being Appeal No. 03 of 2018, to file a review petition reviewing the impugned order dated 29.12.2017 passed in Petition No. 180 of 2017 on the file of the Maharashtra Electricity Regulatory Commission, Mumbai and interim application for stay within a period of two weeks

from today. The interim direction ordered by the first Respondent in its order dated 29.12.2017 at para 11 clause 3 sub-clause (iv), read thus, “*In view of the above the Commission directs OPGS to agitate the matter before CERC and seek appropriate relief, if they deem fit, within one month. The Commission also directs MSEDCL not take any coercive action during this period*”, is further extended for a period of two weeks from today reserving liberty to the Appellant to file a review petition and also file an interim application for seeking interim direction before the State Commission. All the contentions of both the parties are left open.

8. With these observations the instant appeal, being Appeal No. 03 of 2018, stands disposed of.

ORDER ON
IA NO. 08 OF 2018, IA NO. 18 OF 2018 & IA NO. 17 OF 2018

9. In view of the Appeal No. 03 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi has been disposed of as withdrawn, on account of which, reliefs sought in IA No. 08 of 2018, IA No. 18 of 2018 and IA No. 17 of 2018 does not survive for considerations as it has become infructuous.

10. Order accordingly.

11. The learned counsel appearing for the second Respondent is permitted to file his vakalatnama within four weeks from today.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

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