COURT-I
(Vacation Bench)

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA No. 351 of 2016 in
APPEAL NO. 108 & IA No. 256 of 2016

Dated: 10th June, 2016

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I. J. Kapoor, Technical Member

In the matter of:-

Maharashtra State Electricity Distribution Co. Ltd. …Appellant(s)
Versus
Maharashtra Electricity Regulatory Commission & Anr. ...Respondent(s)

Counsel for the Appellant (s)	:	Mr. Nirav Shah Ms. Ramni Taneja
Counsel for the Respondent(s)	:	Mr. Sanjeev Sidhwani, Sr. Adv. Mr. Bhavesh Panjuani Mr. Hasan Murtaza for R-2

ORDER

On 06.05.2016, IA No. 256 of 2016 was disposed of by us with a reasoned order. The Appellant wants this Tribunal to modify the said order to the extent that the Appellant now be permitted to provide Bank Guarantee of the Nationalized Bank in favour of Respondent No. 1 for Rs. 394.19 Crores.

This Application is filed by the Appellant praying for the following reliefs:

> *"a) the Order dated 6th May, 2016 made by this Hon'ble Tribunal be modified to the extent that the Appellant be permitted to provide Bank Guarantee of the Nationalized Bank in favour of Respondent No. 1 for Rs. 394.19 Crores*
>
> *a) as provided in Annexure D hereto instead of depositing the same for the period upto March, 2017;*
>
> *b) this Hon'ble Tribunal be pleased to permit this Appellant/Applicant to amend/alter/modify/add/delete the pleadings in the above Appeal;*
>
> *c) Pass an ad-interim relief, in terms of prayer Clause (a) and (b);*
>
> *d) Pass any such further and other orders as this Hon'ble Tribunal may deem fit to pass in the facts and circumstances of the case."*

Admittedly, the order dated 06.05.2016 was challenged by the Appellant in the Supreme Court. The Supreme Court by its order dated 11.05.2016 disposed of the Appeal. While disposing of the Appeal the Supreme Court observed that it was not a fit case for exercise of its jurisdiction under Section 125 of the Electricity Act, 2003. The Supreme Court, however, to some extent modified our order by observing as under:

> *"However, we make It clear that before releasing the amount as per order of the Appellant Authority to the 2nd respondent, an undertaking that the amount thus being released to the 2nd respondent is subject to the outcome of the result of the final disposal of the Appeal and in case there is a direction in the appeal that the 2nd respondent is not entitled to the amount, the said amount would be refunded to the appellant with interest should also be filed by the 2nd respondent."*

Thus, order dated 06.05.2016 was confirmed with the above modification directing the 2nd Respondent to give an undertaking that the amount being released to the 2nd Respondent is subject to the outcome of the result of the final disposal of the Appeal and in case there is a direction in the Appeal that the 2nd Respondent is not entitled to the same the said amount shall be refunded to the Appellant with interest. We are informed that the said undertaking has been filed.

The order of the Supreme Court is dated 11.05.2016. Almost one month thereafter this application is made. It is not understood why this prayer was not made before the Supreme Court.

We are unable to modify our order dated 06.05.2016 as requested by the Appellant because what is in the field today is the order of the Supreme Court dated 11.05.2016. Order dated 06.05.2016 passed by this Tribunal

has merged in the Order passed by the Supreme Court (See - **Kunhayammed and others Versus State of Kerala and another (2000) 6 SCC 359)**. If we modify Order dated 06.05.2016 we will be in effect modifying the Supreme Court's Order which we cannot do.

Before parting, however, we must refer to a very distressing circumstance. It appears that a statement was made before the Supreme Court on behalf of the Appellant 'that the infrastructure, in fact, is that of the Appellant'. This submission was strongly disputed by the senior Counsel for the 2nd Respondent. We must note that when we passed the Order dated 06.05.2016 not a word was said by the Counsel for the Appellant 'that the infrastructure, in fact, is that of the Appellant'. In fact on this aspect there was consensus between the parties. We only refrained from recording the same. We wish such statement was not made in the Supreme Court.

With these observations, the Application is rejected.

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

mk/jps