

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**IA NO. 119 OF 2017 IN
APPEAL NO. 32 OF 2015**

Dated: 3rd March, 2017

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

In the matter of :

Talwandi Sabo Power Ltd.

...Appellant(s)

Vs.

Punjab State Electricity Regulatory Commission & Ors.

...Respondent(s)

Counsel for the Appellant(s) : Mr. Kapil Sibal, Sr. Adv.
Mr. Sujit Ghosh
Mr. Shashank Shekhar
Mr. Prashanto Sen

Counsel for the Respondent(s) : Mr. Matrugupta Mishra for
Ms. Shikha Ohri for R.1

Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Mr. Shubham Arya for R.2

ORDER

The Applicant/Appellant has challenged the Order dated 02.12.2014 passed by the Punjab State Electricity Regulatory Commission ("State Commission") rejecting the claim of the Appellant

that it was entitled to deemed export benefits under the Foreign Trade Policy, 2004-09 as at the date of the bidding. The Appellant is aggrieved by direction in the impugned order that the Appellant is liable to pass on benefits actually availed under the Mega Power Policy 2009 to Respondent No.2. In this application, the Appellant has *inter alia* prayed for the following reliefs:

- (a) "Fix a very early & expeditious date of hearing in the Appeal for final disposal;
- (b) hear and dispose off the appeal on that day;
- (c) stay the deduction by Respondent No. 2 on account of grant of mega power project status to the Appellant and maintain status qua till the matter is decided by this Hon'ble Tribunal; and
- (d) pass such further Order of Orders as this Hon'ble Tribunal may deem just and proper in the circumstances of the case."

A little background needs to be stated. I.A. No. 35 of 2015 was filed by the Appellant praying for stay of the impugned order. On that application, on 01.04.2015, the following order was passed:

"We have heard the learned counsel for the parties. Prayers made in the interim application cannot be granted at this Stage. IA is dismissed."

The Appellant carried the matter to the Supreme Court. On 24.04.2015, the Supreme Court passed the following order:

"We are informed by the learned counsel that the Appellate Authority has adjourned the matter to a date which actually falls on a vacation. In the

circumstances, we deem it appropriate to dispose of the matter with a direction that the demand by the assessee for refund or recovery, as the case may be, shall remain stayed for a period of eight weeks from today. In the meanwhile, it is open for the parties to approach the Commission to dispose of the appeal itself."The special leave petition is disposed of accordingly."

It appears that the Appellant moved an interim application for modification of the said order before the Supreme Court being I.A. No. 2 of 2015. On 08.05.2015, the Supreme Court modified its Order, dated 24.04.2015. The following is the order of the Supreme Court:

"We are informed by the learned counsel that the Appellate Authority has adjourned the matter to a date which actually falls close to vacation. In the circumstances, we deem it appropriate to dispose of the matter with a direction that the deemed by Respondent No.2 for refund or recovery, as the case may be, shall remain stayed for a period of eight weeks from today. In the meanwhile it is open for the parties to approach the Tribunal to dispose of the appeal itself. The Special Leave Petition is disposed of accordingly. I.A. No. 2 of 2015 for modification of the order dated 24.04.2015 is accordingly disposed of as allowed."

On 06.06.2015 the Supreme Court extended its order dated 24.04.2015 till 08.05.2016. Following is the relevant portion of the order:

"Heard learned counsel of the parties.

The order dated 24th April 2015 as rectified on 8th May 2015 is extended for a period of six weeks. Application stands disposed of."

It appears that the Appellant filed another interim application being I.A. No.5 of 2015. On that application, on 28.02.2016, the Supreme Court issued notice and passed the following order:

"I.A. No. 5/2015

Issue notice on IA.

In the meanwhile, interim order dated 16.06.2015 passed by this court in IA.No. 3 of 2015 in SLP (C) No. 11840 of 2015 stand extended until further orders."

On 06.02.2017, the I.A. No. 5 of 2015 was dismissed. Thus, stay order granted by the Supreme Court was vacated. Following is the order of the Supreme Court:

"Upon hearing the counsel the court made the following:

ORDER

IA No. 5/2015 (Application for extension of stay granted vide Order dated 16.06.2015) is dismissed."

Since the stay order was vacated by the Supreme Court, the present interim application is filed by the Appellant. On 13.02.2017, we directed to list this application for hearing on 23.02.2017 at 2.30 p.m. On 23.02.2017 we heard the instant application for some time. However, looking to the nature of the issues involved we felt that instead of hearing arguments on interim relief, it would be better to dispose of the appeal itself. We therefore fixed the appeal for final hearing on 02.03.2017. Counsel for the parties were also keen to go on with final hearing of the matter.

On 02.03.2017 when we began the hearing of the appeal, we were told by learned counsel for the Appellant that Respondent No.2 has adjusted the amount to an extent of 215 Crores from the monthly running bills of the Appellant. It was contended that since the appeal was to be finally heard, Respondent No.2 ought not to have taken precipitative action and this amounts to over-reaching this Tribunal. Since Respondent No.2 had effected deduction in the running bills of the Appellant and learned counsel for Respondent No.2 on instructions from his client expressed inability of Respondent No.2 to stay its hands during the hearing and disposal of this appeal, we had no option but to list the interim application for hearing. We had not done so earlier because we were under the impression that since hearing of the appeal has started, Respondent No.2 will not take any precipitative action. We must however make it clear that Mr. M.G. Ramachandran, learned counsel for Respondent No.2 had not made any statement before us that his client would stay its hands. It is in these circumstances that we are hearing this application in the midst of final hearing of the appeal.

This application is heavily contested by Respondent No.2. We have heard Mr. Kapil Sibal, learned senior counsel appearing for the Appellant and also Mr. Sujit Ghosh, learned counsel appearing for the Appellant. Mr. Sibal contended that Respondent No.2 has tried to

overreach this court by effecting deductions in the monthly running bills of the Appellant when the appeal itself was being heard. It was also urged that the stay order passed by the Supreme Court was not on the merits, but it was on the ground that this Tribunal has adjourned the matter to a date which fell close to vacation and liberty was given to the Appellant to move this Tribunal for disposal of the appeal itself. It was submitted that even the vacation of the stay order by the Supreme Court is not on merits. It was submitted that the appeal could not be taken up for final hearing because of administrative difficulties of this Tribunal and the Appellant cannot be faulted for it. Except one adjournment taken on the ground of illness of the counsel, no adjournment was taken by the Appellant. It is submitted that there is a change in the circumstances now inasmuch as this Tribunal has started hearing the appeal and therefore the fact that the Supreme Court has vacated the stay order would not come in the way of this Tribunal in staying the impugned order. It was also submitted that the order passed by the Supreme Court is not a reasoned order. Relying on the judgment of the Supreme Court in ***KUNHAYAMMED AND OTHER VS. STATE OF KERALA AND ANOTHER ((2000) 6 SCC 359*** it is contended that this Court can consider the change in circumstances and pass any interim order staying the impugned order though the Supreme Court has vacated the interim order. It is the case of the Appellant that it has good case on

merits and that if the impugned order is not stayed, the whole project would become unviable leading to closure.

Mr. M.G. Ramachandran, learned counsel for Respondent No.2, on the other hand, submitted that the Supreme Court has vacated the stay order, which was in operation for considerable period after hearing the parties and that order holds the field. There is absolutely no change in the circumstances. Therefore, this Tribunal should not contrary to the Supreme Court's order stay the impugned order. Counsel submitted that there is absolutely no difference between the Interim Application No. 35 of 2015 and the present interim application being I.A. NO. 119 of 2017. Repeated applications for interim relief in the absence of change in the circumstances ought not to be encouraged. Counsel severely commented on the conduct of the Appellant and submitted that the Appellant repeatedly asked for adjournment from this Tribunal. Counsel submitted that if Respondent No.2 is not permitted to effect deductions that will also have an adverse impact on Respondent No.2. Counsel submitted that in the circumstances, application may be rejected. Several authorities of the Supreme Court and of different High Courts have been cited before us. We, however, feel that for disposal of this application, it is not necessary to refer to them as the issue involved lies in narrow compass.

The Supreme Court had stayed the impugned order as far back as on 24.02.2015. The Supreme Court continued the stay order till 06.02.2017. On 06.02.2017, the Supreme Court upon hearing the parties vacated the stay order. It is true that the Supreme Court's order is not a reasoned order. Both sides have different versions as to why the Supreme Court vacated the stay order. We do not propose to enter into that controversy. It is not for us to analyse the Supreme Court's order in this manner. The fact remains that the stay order, which was in operation for a long time has been vacated by the Supreme Court after hearing counsel for the parties. Such order even if it does not contain reasons, in the circumstances of the case, cannot be varied by us. It is for the Appellant to approach the Supreme Court if it wants any variation.

Both sides have commented on the conduct of each other. We do not want to go into that aspect because we feel that instead of going into the rival allegations, it would be better to dispose of the appeal itself. There is some substance in the submission of learned senior counsel for the appellant that Respondent No.2 could have refrained from deducting amounts from Appellant's monthly bill when the appeal itself is being heard by us. We express our unhappiness over this. However, in the

aforestated circumstances, prayer for stay of the impugned order is rejected and prayer for fixing date of hearing does not survive as we are already hearing the appeal.

The application is disposed of in the aforestated terms.

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson