

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 50 of 2011

Dated: 6th Sept, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member,
Hon'ble Mr. Justice P. S. Datta, Judicial Member

In The Matter Of

1. M/s Lloyds Steel Industries Ltd.,
Trade World, 'C' Wing,
16th Floor, Kamala City,
Senapati Bapat Marg,
Lower Parel (W),
Mumbai-400 013

... Appellant(s)

2. M/s R.L. Steels Limited

3. M/s Nath Pulp & Paper Mills Limited

4. M/s Balaji Electro Smelters Limited

5. M/s Value Industries Limited

6. M/s Trend Electronics Limited

7. M/s Videocon Industries Limited

....Intervener(s)

Versus

- 1. Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No.1,
World Trade Centre,
Cuffe Parade,
Mumbai-400 005**
- 2. M/s. Maharashtra State Electricity Distribution
Co. Ltd.,
Prakashgad, Bandra (East), Mumbai-400 051**
- 3. M/s. Ispat Industries Ltd.,
'Casablanca', Plot No.45,
Sector-11, CBD Belapur,
Navi Mumbai, 400 614
Maharashtra**

....Respondent(s)

**Counsel for Appellant(s): Mr. Rajneesh Agarwal,
Mr. Prashant Puri,
Mr. Rohit Singh,**

**Counsel for Respondent(s): Mr. Vikas Singh, Sr. Adv.,
Mr. Abhishek Mitra for R-2
Mr. Amrita Narayan for R-2
Mr. Samir Malik for R-2
Mr. G Umapathy for R-3**

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. The short question which arises for consideration in the present Appeal is this:

“Whether the judgement dated 5.8.2010 passed by this Tribunal in the Appeal No.70 of 2008 filed by Ispat Industries Limited is a judgement in rem i.e. to say whether it would be applicable to all the HT Consumers including the Appellant in the present Appeal who paid the RLC amount pursuant to the order passed by Maharashtra State Commission dated 20.03.2004 or the said judgement in personam, confined only to the Ispat Industries Limited, the Appellant in Appeal No.70/2008 ” ?

2. The short facts are as under:

(i) Lloyds Steel Industries Limited, the Appellant herein, is one of the HT consumers of the Maharashtra State Electricity Distribution Co. Ltd (R-2).

(ii) The Maharashtra State Commission (R-1) passed the tariff order dated 10.3.2004 for the year 2003-04 introducing the concept of RLC charges which provided that the subsidizing consumer categories to contribute the amount to the Distribution Licensee (R-2) to keep it afloat to meet the cost of the excess T&D losses and directing that the said amount was to be returned to these subsidizing consumer categories in future through tariffs when the T&D losses are reduced.

(iii) Subsequently, the State Commission by the order dated 20.10.2006 in the matter of the approval of the Annual Revenue Requirements filed by the Distribution Licensee (R-2), directed it to stop the recovery of Regulatory Liability Charges (RLC) w.e.f. 1.10.1996. Further, the

State Commission directed the Distribution Company (R-2) to refund the RLC to the HT consumers.

(iv) The State Commission by the subsequent order dated 2.4.2008, in the Review Petition filed by the Distribution Company (R-2) though retained the direction to Distribution Company to refund the amount of RLC collected from subsidizing consumer categories, directed that no interest should be payable to subsidizing consumer categories.

(v) Against the said order of non grant of interest, one of the subsidizing consumers, namely M/s. Ispat Industries Limited filed an Appeal in Appeal No.70 of 2008 before this Tribunal seeking for payment of interest on RLC collected by the Distribution Companies. The Tribunal after hearing the parties allowed the Appeal and directed the Distribution Company (R-2) to make the payment of interest as well. The relevant portion of the direction is as follows:

“We hold that the APPLICANT is entitled to the payment of interest along with the principal amount. To this extent, impugned orders are set-aside. The APPLICANT claims the interest to be calculated at 18% p.a. However, in our opinion, it would be appropriate to direct the State Commission to fix the rate of interest keeping in view the prevalent prime lending rate”.

3. Since this judgement, directed for payment of interest along with principal amount apply to all the subsidizing consumer categories, the Appellant HT Consumer also approached the Distribution Company for the refund of the principal amount along with the interest, on the strength of the judgement of this Tribunal. But, the Distribution Licensee (R-2) denied the liability stating that no specific order from any competent authority was obtained as far as the present Appellant is concerned.

4. Therefore, the Appellant approached the State Commission and filed Petition in case No.75 of 2010 for a direction to refund the principal amount along with the interest to the Appellant in the light of the judgement of this Tribunal. However, the State Commission after considering the submissions made by the parties concerned, held that it would not be

appropriate for the State Commission to interpret the Tribunal's judgement in Appeal No.70 of 2008 to the effect that it would apply to M/s. Llyods Industries Limited also and so directed the Appellant to move this Tribunal for clarification, if required. Accordingly, this Appeal has been filed by the Appellant seeking clarification over this issue.

5. In this context, the above question raised in this case. We quote the same again:

“Whether the judgement of this Tribunal dated 5.8.2010 in the Appeal No.70 of 2008 filed by Ispat Industries Limited is a judgement in rem i.e. to say that it would be applicable to all the HT Consumers including the Appellant, the Ispat Industries who paid the RLC amount pursuant to the order passed

by Maharashtra State Commission dated 20.03.2004 or the said judgement, is the judgement in personam confined only to the Ispat Industries Limited, the Appellant in Appeal No.70 of 2008" ?

6. According to the Appellant, the judgement dated 5.8.2010 passed by this Tribunal would be applicable to all the subsidizing consumers, including the Appellant since the Appellant is similarly placed as that of M/s. Ispat Industries, the Appellant in Appeal No.70 of 2008 and as such the Appellant also is entitled to the same relief granted in Appeal No.70 of 2008. On the other hand, it is strongly opposed by the Respondent, the Distribution Company contending that the Appellant who was not a party in the earlier Appeal, who was not vigilant in filing the Appeal immediately, would not

be entitled to the benefit of the judgement dated 5.8.2010.

7. In the light of the rival stand taken by the parties it would be appropriate for this Tribunal to give clarification to the question as to whether the judgement in Appeal No.70 of 2008 dated 5.8.2010 would be the judgement in rem which is applicable to all the HT-1 Consumers who paid the RLC charges like the Appellant in Appeal No.70 of 2008 or not ?

8. Having heard the Learned Counsel for the parties and having regard to ratio decided by this Tribunal in Appeal No.70 of 2008 dated 5.8.2010, filed by Ispat Industries Limited, we conclude that the relief granted in Appeal No.70 of 2008 dated 5.8.2010 to the M/s. Ispat Industries is applicable to the Appellant as well as to all the subsidizing categories of consumers of the

Distribution Company (R-2) who contributed RLC amount to the Distribution Company as per the order of the Commission. The reasons for the above conclusion are as follows:

9. The judgment of the Appellant Tribunal clearly is dealing with the case of contributing subsidizing consumers, including all HT consumers like Appellant and the same is apparent from plain reading of the issue raised in the said judgement in Para-16 reads as under:

“The sole question which arises for consideration in both these Appeals is this “whether the amount of Regulatory Liability Charges which had been collected by the Respondent-2 from the subsidizing consumers like Appellant, treating as a loan has to be refunded to them along with interest or not?”

10. Likewise Para 21 and 22 of the judgement dated 5.8.2010 also clearly indicate that the contention of the rival parties were considered in the Appeals No.70 of 2008 and 110 of 2008 and the finding rendered. Thus, it is apparent that the judgement rendered by this Tribunal on 5.8.2010 dealt with the question framed in Para-16 answered the said question in Para- 21 and 22 of the said judgement. Para 21 and 22 of Judgement in Appeal No.70 and 110 of 2008 reads as under:

***“Para-21:** There are 3 aspects which are not in dispute. These are:*

(a) Only in pursuance of the order of the State Commission, the subsidizing industries, like the Appellant paid the Regulatory Liability Charges to the distribution company (Respondent-2), in order to save the distribution company from the financial crunch being faced by it.

(b) In the order of the State Commission, it was specifically mentioned that the said amount paid by them as Regulatory Liability Charges, is refundable, treating the same as

loan since the same were given to the distribution company by the subsidizing categories to help the distribution company to tide over the financial crisis due to its heavy distribution losses.

(c) During the period between March 2004 and October 2006, the amounts collected by the distribution company from the subsidizing industries in pursuance of the order of the State Commission treating the same as loan, were retained by them for a considerable period, thereby the subsidizing industries were deprived from using the said amount for their own purposes.

Para-22: *These 3 aspects, referred to above, would clearly indicate that the amount of Regulatory Liability Charges were paid by the subsidizing industries to the distribution company to help them in pursuance of the order of the State Commission treating it as a loan. When that being so, could the Respondent-2 claim that the subsidizing industries, are not entitled to claim interest along with principal amount? To answer this question, it would be better to refer to some portions of the orders passed by the State Commission on various dates.*

11. Likewise, para 30 also clearly indicates that this Tribunal vide its judgement dated 5.8.2010 set aside the impugned orders in these Appeals wherein the State Commission earlier held that the Distribution Company shall not be liable to pay interest on the deposits collected from **subsidizing consumers**. The effect of setting aside the impugned orders to the extent of non grant of interest clearly means that not only M/s. MSEDCL (R-2) shall have to pay interest to M/s. Ispat Industries but also to all other subsidizing consumers including the Appellant who contributed and paid Regulatory Liability Charges to the Distribution Company. If this is not the import of this Tribunal judgement dated 5.8.2010, then the Tribunal would not have set aside the orders passed by MERC (R-1) in which it was held that interest to the subsidizing categories of consumers shall not be paid.

12. So also, in the summary of findings, at Para 31 it is clearly and categorically held:

“In the present case the State Commission gave a categorical finding that the Regulatory Liability Charges would be construed to be the deposit collected from the subsidizing consumers. When the said amount is considered to be the deposit or loan, then it must be held that Respondent No.2 is obliged to pay interest on the said deposit or loan which has been retained by it over a number of years”.

13. The Respondent No.2 has opposed this Appeal seeking clarification of order dated 5.8.2010 on the ground that since the Applicant, M/s. LSIL had not participated in the Appeal filed by M/s. Ispat Industries, they are not entitled to the benefit of this order particularly when there was no finding as regards to other HT Consumers. This objection is unsustainable.

14. It is apparent, that the order dated 2.4.2008 and 20.6.2008 were impugned in Appeal No.70 of 2008 and 110 of 2008 wherein the proceedings were of general nature.

15. The order dated 2.4.2008 was passed in an application preferred by MSEDCL to review earlier order of MERC dated 20.10.2006 which was a public proceeding and wherein all orders passed were binding upon all the consumers within the jurisdiction of State Commission.

16. Likewise, order dated 20.6.2008 also was a tariff proceeding and consequently both these judgements were passed in the proceedings, which were public proceedings, and admittedly the judgements passed therein are applicable to all the consumers.

17. When such orders were challenged before this Tribunal in this Appeal on the principle of Appeal being continuation of the original proceedings, the said Appeal should not be construed as a mere contest between the parties named therein, but the said proceedings which involve the public as well as the representative of the parties would be of general nature. Only on this concept, this Tribunal during the pendency of the Appeal No.70/2008 directed M/s. Ispat Industries Ltd., to issue a public notice to all the HT consumers of MSEDCL of the hearing of the said Appeal, which accordingly was published.

18. It is thus evident from the reading of entire judgement as a whole, that whatever orders that were passed in the said Appeal would be applicable to all the HT consumers of MSEDCL and hence the submission of Distribution Company is unacceptable.

19. It is pointed out by the Appellant, that the Respondent MSEDCL challenged the said judgement of this Tribunal of way of SLP before Hon'ble Supreme Court.

20. In the said SLP vide grounds 'R' it is contended by MSEDCL themselves that:

“Because the Tribunal further failed to appreciate that the Appellant is a revenue neutral entity professing in public interest, and vide the impugned order, the Appellant was directed to disburse a massive amount of interest quantified in thousands if crores of rupees to the industrial undertakings like Respondent No.1. On this ground itself and in the interest of justice of impugned order is liable to be quashed”.

21. From the plain reading of the averments made in the SLP, it is clear that even MSEDCL (Respondent) themselves interpreted the judgement of this Tribunal dated 5.8.2010 that the Tribunal directed them to disburse interest to all subsidizing consumers and industrial undertakings like M/. Ispat Industries and therefore, they were aggrieved. M/s. MSEDCL (R-2) having taken such stand before Hon'ble Supreme Court vide its SLP, is estopped from contending that the judgement and orders dated 5.8.2010 does not direct them to pay interest to all the subsidizing categories but it directed payment of interest to M/s. Ispat Industries Ltd only.

22. As a matter of fact, M/s. Ispat Industries in the Appeal was representing consumer categories as a whole and as mentioned earlier that was why the public

notice was issued to all consumers of MSEDCL to allow them to participate in the hearing of the Appeal.

23. It is clear from language of judgement passed by this Tribunal as referred to above that the judgement was rendered in favour of all the consumers of MSEDCL who contributed to Regulatory Liability Charges and there were no indications in the judgement to show that the decision is personally in favour of M/s. Ispat Industries alone and not in favour of other consumers having common interest.

24. MSEDCL has relied upon the following three judgements to contend that the persons who were non vigilant and who were sitting on the fence would not be entitled to the benefit of the judgement dated 5.8.2010:

(i) UP Jalnigam and Another Vs. Jaswant Singh and Anr. (2006) 11 SCC 464

(ii) M/S. Rup Diamonds & Ors Vs. UOI & Ors- (1989) 2 SCC 356

(iii) Shibha Shankar Mohapatra Vs. State of Orissa & Ors 2009 (13) SCALE 689.

25. The above judgements would not be applicable to the facts of the present case. The case of UP Jal Nigam and the case of SS Mohapatra relate to service matters and the said principles of the fence sitters would not be applicable to the present case. The case relating to Rup Diamonds, which is a case of filing a Writ Petition after the claim made 4 years after the discharge of the export obligation and 5 years of expiry of the import license. Therefore, these judgements would be of no help to the Respondent.

26. As mentioned earlier, in the present case, the order dated 5.8.2010 was passed by this Tribunal after

a public notice was issued pursuant to the directions of this Tribunal and all the similarly placed persons were at liberty to participate in the said proceedings. The appearance or non appearance of those persons before this Tribunal would not be a ground to deny the benefits of the judgement. It is made clear that all the similarly situated subsidizing consumers like the Appellant and the intervening parties who have contributed substantial amount as RLC to R-2, would be clearly entitled to the payment of interest on the said amount.

27. Summary of Our Findings:

(i) The judgement of this Tribunal dated 5.8.2010 in the Appeal No.70 of 2008 filed by M/s. Ispat Industries Ltd is a judgement in rem. Therefore, the relief granted to M/s. Ispat Industries, the Appellant in Appeal No.70/2008 dated 5.8.2010 is applicable to

all the subsidizing categories of consumers of the Distribution Company (R-2) who contributed the RLC amount to the Distribution Company as per the order of the State Commission.

(ii) The reading of the Judgement dated 5.8.2010 as a whole would clearly indicate that the findings have been rendered by this Tribunal that the benefit relating to the payment of interest would accrue to all the subsidizing categories of consumers including the Appellant. Therefore, it is clear that all the similarly situated subsidizing category consumers like the Appellant and the intervening parties who have contributed substantial amount as RLC to Distribution Company would be clearly entitled to the payment of the said amount.

