

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

Appeal Nos. 70 and 110 of 2008

Dated 5 August, 2010

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

Appeal No. 70 of 2008

In the matter of:

**Ispat Industries Limited
Park Plaza, 71 Park Street,
Kolkata-700 016**

Versus

- 1. Maharashtra Electricity Regulatory Commission
World Trade Centre No. 1
13th Floor, Cuffee Parade,
Mumbai-400 005** **....Respondent-1**

- 2. Maharashtra State Electricity
Distribution Co. Ltd.
Prakashgad, Bandra (East)
Mumbai-400 051** **.... Respondent-2**

**Counsel for the Appellant(s) Mr. C.S. Vaidyanathan,
Sr. Counsel
Mr. G. Umapathy**

**Counsel for the Respondent(s) Mr. Vikas Singh, Sr. Counsel
Mr. Abishek Mitra for R-2.**

Appeal No. 110 of 2008

In the matter of:

**Ispat Industries Limited
Park Plaza, 71 Park Street,
Kolkata-700 016**

Versus

- 1. Maharashtra Electricity Regulatory Commission
World Trade Centre No. 1
13th Floor, Cuffee Parade,
Mumbai-400 005** **....Respondent-1**

- 2. Maharashtra State Electricity
Distribution Co. Ltd.
Prakashgad, Bandra (East)
Mumbai-400 051** **.... Respondent-2**

Counsel for the Appellant(s) **Mr. C.S. Vaidyanathan,
Sr. Counsel
Mr. G. Umapathy**

Counsel for the Respondent(s) **Mr. Vikas Singh, Sr. Counsel
Mr. Abishek Mitra for R-2.**

JUDGMENT

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

1. M/s Ispat Industries Limited is the Appellant herein. Maharashtra State Electricity Regulatory Commission (State Commission) is the first Respondent and Maharashtra State Electricity Distribution Company Limited (MSEDCL) is the second Respondent. Appeal No. 70/08 and 110/08 are being disposed of through this common judgment as the issue in both the Appeals is the same.

2. The issue arising for determination in the present Appeal is whether the Appellant, who is one of the HT Industrial category consumers, is entitled to claim interest on the Regulatory Liability Charges paid by them to the Respondent-2 i.e. the distribution company during the period between March 2004 and October 2006 when the said charges are being refunded through tariff from FY 2008-09 onwards.

3. Appeal No. 70/08 filed by the Appellant is directed against the order dated 02.04.2008 passed by the Maharashtra Electricity Regulatory Commission (State Commission) and Appeal No. 110/08 is as against the tariff order dated 20.06.2008 passed by the State Commission.

4. Both these Appeals were admitted by the Tribunal on 16.12.2008 confined only to the issue of payment of interest on the Regulatory Liability Charges collected by the distribution company (R-2) from the bulk consumers like the Appellant during the period between March 2004 and October 2006 by virtue of the order dated 10.03.2004.

5. The short facts leading to the filing of these Appeals are as follows.

6. The State Commission passed the tariff order on 10.03.2004 for the FY 2003-04 on the application filed by the distribution company, the second Respondent herein. In that order, the State

Commission introduced the concept of Regulatory Liability Charges which provided that the subsidizing categories like the Appellant herein contribute amounts to Maharashtra State Electricity Board, the predecessor of the distribution company to keep it afloat to meet the cost of excess transmission and distribution losses. This amount was to be returned to these consumer categories in future through the tariff when the transmission and distribution losses are reduced.

7. The State Commission thereupon, by the order dated 20.10.2006, stopped the recovery of Regulatory Liability Charges with effect from 01.10.2006. It is held in that order that the Regulatory Liability Charges collected by the Respondent-2 is to be refunded to the consumers. The Respondent-2 accepted that revenue earned from the Regulatory Liability Charges has to be refunded to the consumers.

8. On 18.05.2007, the State Commission passed the tariff order in respect of FY 2007-08 giving directions with regard to refund of

the Regulatory Liability Charges to the consumers like the Appellant. In this order the R-2 was directed to refund Rs. 500 crores of Regulatory Liability Charges to the specified consumer categories out of the total amount of Rs. 3225 crores collected through Regulatory Liability Charges from the subsidizing categories including the Appellant to help the distribution company to tide over the financial crunch due to excess transmission and distribution losses.

9. In this order the distribution company (R-2) has been specifically directed to refund Rs. 500 crores as Regulatory Liability Charges which were given like a loan by these subsidizing categories like the Appellant to the distribution company. In 2007, the distribution company defaulted in refunding the Regulatory Liability Charges in the bills issued for the months of May and June 2007. Several consumers made representations/ complaints to the State Commission regarding non-refund of Regulatory Liability Charges. In the meantime, the distribution company filed an Appeal before the Tribunal against

the order dated 18.05.2007 in Appeal No. 109/07. During the pendency of the said Appeal, the Respondent-2, distribution company filed an application before the State Commission seeking for the review for the correction of some calculations in the order dated 18.05.2007. In the said clarification petition, order was passed by the State Commission on 24.08.2007. In the said order, the State Commission held that the refund is to be made to the category as a whole, and not to the respective consumers. It is further held in that order that the refund has to be made in the same proportion as the contribution of Regulatory Liability Charges by the respective consumer category.

10. On 24.09.2007 the distribution company again filed a Review Petition seeking review of the order dated 24.08.2007. However, the said Petition was dismissed on 01.11.2007. In the meantime, the Appellant filed an application for impleading in Appeal No. 109/07. The Appellant also filed an application on 30.11.2007 seeking for a direction to the distribution company for

refund of the Regulatory Liability Charges pursuant to the dismissal of the Review Petition. Immediately thereafter the distribution company filed an Appeal in Appeal No. 138/07 before the Tribunal as against the order passed in the review dated 01.11.2007. On 02.01.2008, the State Commission disposed of the application filed by the Appellant directing the distribution company to implement the order by refunding the Regulatory Liability Charges in accordance with the order dated 18.5.2007 and 24.08.2007.

11. On 23.01.2008, the Tribunal allowed the Appeal No. 109/07 filed by the distribution company by setting aside the order passed in review and remanded the matter by directing the State Commission to hear the Review Petition afresh. In pursuance of the order of Remand, the State Commission passed the impugned order dated 02.04.2008 and directed that the total amount of Regulatory Liability Charges will be returned to the contributing subsidizing categories like the Appellant and the same would be in consonance with the Technical Valedictory Session dated

03.01.2008. It is further held in that order that no interest will be payable to the subsidizing categories like the Appellant with regard to the amount of Regulatory Liability Charges. As against this order, this Appeal 70/08 has been filed in May 2008.

12. Thereupon the distribution company (R-2) filed a Petition before the State Commission for approval of the Annual Performance Review for the FY 2007-08 and tariff for the FY 2008-09. In this application, the State Commission passed the tariff order on 20.06.2008 and in this order the State Commission without providing for the refund of the entire amount of Rs. 3225 crores collected by the distribution company as Regulatory Liability Charges during the period March 2004 and October 2006 proceeded to permit the distribution company to add the refund amount of Rs. 500 crores in the ARR and the same to be recovered from all the consumers. Against this Order dated 20.06.2008, the Appellant has filed this Appeal No. 110/08. In both the Appeals, though several grounds have been raised with reference to the refund of Regulatory Liability Charges,

challenging both the orders, the Appellant confined itself to issue of entitlement for the payment of interest alone and accordingly, both the Appeals were admitted only on that issue.

13. According to the Appellant, the amount collected from the subsidizing consumers and retained by the distribution company has to be refunded with interest and the various orders of the State Commission would reveal that the subsidizing consumers had paid the amount on the orders of the State Commission and the same had been paid like a loan and therefore the same has to be returned along with interest.

14. According to the Respondent-2, distribution company, the subsidizing categories like the Appellant voluntarily agreed to pay the Regulatory Liability Charges to the distribution company which is the portion of tariff and the same has to be returned through tariff when the transmission and distribution losses come down and therefore the Appellant cannot claim interest and further that the Appellant never claimed interest when the Regulatory Liability Charges had been paid to the distribution company

earlier and it claimed interest for the first time only on 30.11.2007 and therefore, the Appellant is not entitled to claim interest.

15. We have carefully considered the submissions made by the Counsel for the parties.

16. 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?”

17. While dealing with this question, it is worthwhile to refer to some of the authorities where the principles have been laid down by the Hon’ble Supreme Court relating to the payment of interest.

These decisions are as follows:

- (i) **(1984) 4 SCC 508 *M/s Jagdamba Paper Industries (P) Ltd. & Ors. Vs.: Haryana State Electricity Board & Ors.***

In this case, it is held by the Hon'ble Supreme Court that even when security deposit is made, interest is payable.

The relevant observation is as follows:

“Since the amount is held as a security, we indicated to the Counsel for the Board that security amount should bear the same interest as admissible on fixed deposit of scheduled banks for a term of years.”

(ii) (1996) 1 SCC 597 Kerala State Electricity Board Vs. M.R.F. Ltd.

In the instant case it is held by the Hon'ble Supreme Court that the Regulatory Liability beyond permissible tariff directed as a temporary measure has to be paid back with payment of interest. The relevant observation is as follows:

“It is an imperative duty of the court to ensure that the party to the lis does not suffer any unmerited hardship on account of an order passed by the court. It should, however, be noted that in an action by way of restitution no inflexible rule can be laid down. It will be the

endeavour of the court to ensure that a party who had suffered on account of the decision of the court, since finally reversed, should be put back to the position, as far as practicable, In giving full and complete relief in an action for restitution, the court has not only power but also a duty to order for mesne profits, damages, costs, interest, etc.”

(iii) (2006) 6 SCC 113 Ghaziabad Development Authority vs. Union of India and Another

In this case, the Hon’ble Supreme Court has held that the interest is payable on the principles of justice, equity and good conscience. The relevant observation is as follows:

“We are, therefore, of the opinion that the interest on equitable grounds can be awarded in appropriate cases. The rate of interest awarded in equity should neither be too high nor too low. The authority does not have justification for resisting refund of the claimant’s amount with interest.”

(iv) (2004) 5 SCC 65 Ghaziabad Development Authority Vs. Balbir Singh

In this case also, it is held that interest must be granted on equity. The relevant observation is as follows:

“While so awarding, it must be shown that the relationship between the amount awarded and the default/unjustifiable delay/harassment. The principle that the interest must be granted, would apply where the refund of the amount is being claimed and the direction is to refund amounts with interest.

(v) (2002) 1 SCC 367 Central Bank of India vs. Ravindra and Ors.

In this case, the Hon’ble Supreme Court held that interest is just compensation for deprivation of the use of money. The relevant observation is as follows:

“Black Law Dictionary defines interest inter alia as the compensation fixed by law or allowed by law for the use or retention of money or for the loss of money by one

who is entitled to its use especially the amount owed to a lender in return for the use of the borrowed money.

..... The general idea is that it is entitled to the interest, if the money due to creditor is not paid or in other words was withheld from him by the debtor after the time payment should have been made. Any breach of its legal rights, interest was compensation whether the compensation was in an agreement or statute.

Mulla on the Code of Civil Procedure sets out three divisions of interest as dealt with in section 34 of the Code of Civil Procedure. The division is according to the period for which interest is allowed by the court namely, (i) interest accrued due prior to the suit or so on the principal sum adjudged; (ii) additional interest on the principal sum adjudged from the date of the suit to the date of decree, at such rate as the court deem reasonable; and (iii) further interest on the principal sum adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit at

a rate of 6% p.a..... If there is no express stipulation for payment of interest, the plaintiff is not entitled to interest except on proof of a statutory rate of interest, or an implied agreement. The interest from the date of suit to date of decree is in the discretion of the court. Interest from the date of decree to the date of payment is again in the discretion of the court to award or not to award as also the rate at which to award.”

18. The gist of the principles relating to the payment of interest laid down by the Hon’ble Supreme Court, as referred to above, would be summarized as follows:

- (i) Even in the case of security deposit, the interest is payable. Since the amount is held as security, the security amount should bear the same interest as admissible on fixed deposit of scheduled banks.
- (ii) In an action by way of restitution, it is the duty of the court to give full and complete relief to the party.

In other words, the court has not only the power but also has a duty to order for interest.

- (iii) The interest on equitable grounds can be awarded in appropriate cases. The rate of interest awarded in equity should neither be too high nor too low.
- (iv) The general provision of section 34 of Civil Procedure Code being based upon justice, equity and good conscience would authorise the redressal forum like the State Commissions as well as the National Commissions to grant interest appropriately.
- (v) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by calling it by any name. It can be called interest, compensation or damages. This is the principle of section 34 of the Code of Civil Procedure.

- (vi) It is well settled law that when the party is entitled to the principal amount, which was retained by the other party, the said party is entitled to get back the principal amount as well as the interest.

19. In the light of the above principles, let us now go into the issue raised in the present case.

20. As mentioned above, the case of the Appellant is that the amount collected from the subsidizing consumers like the Appellant and retained by the distribution company (R-2) for some period has to be refunded with interest. On the contrary, the case of the Respondent-2 is that the subsidizing industry like the Appellant voluntarily agreed to pay the said amount as Regulatory Liability Charges to the distribution company and at that time the Appellant never claimed interest and therefore, the Appellant is not entitled to claim interest.

21. There are 3 aspects which are not in dispute. These are:

- (i) 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.
- (ii) 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.
- (iii) 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.

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.

23. In the order dated 10.03.2004, the State Commission has observed as follows:

“As regards the Regulatory Liability, the Commission is of the opinion that only subsidizing consumers should contribute to the Regulatory Liability, which would have to

be returned by the MSEB in future. Thus, for the subsidizing categories, a separate component of tariff has been shown as 'Regulatory Liability Charge' which will be used by the MSEB for funding the cost of excess T&D losses, which will be returned to these consumer categories in future through tariff".

24. In the order dated 20.10.2006, the State Commission observed as follows:

"The Commission through this order, rules that Regulatory Liability Charges shall be discontinued from October 1, 2006."

25. The State Commission while passing the tariff order dated 18.05.2007 directed the distribution company (R-2) to refund Rs. 500 crores of Regulatory Liability Charges to the subsidizing consumer categories out of the total amount of Rs. 3225 crores collected through Regulatory Liability Charges which were

treated like a loan given by the subsidizing categories to the distribution companies. The relevant portion is as under:

*“The Commission, in line with its directions in march 10, 2004 Tariff Order (Case 2 of 2003), while keeping in mind the principles of ‘promissory estoppels’, directs MSEDCL to refund Rs. 500 crores of Regulatory Liability Charge, **which were like a loan given by the subsidizing categories** to help MSEDCL tide over the financial crisis due to its heavy distribution losses.”.*

26. The above orders would clearly indicate that the amount collected as Regulatory Liability Charges, from subsidy industries had been retained by the distribution company till October 2006 and the repayment commenced in pursuance of the State Commission’s order only in the year 2008-09. The retention of the money by the distribution company has, admittedly been held as a loan as per the orders of the State Commission. As such, the amount when returned, the principle of restitution and mandatory payment of interest would clearly be applicable.

27. It is not open to the distribution company to contend that the order of the State Commission directing the subsidizing consumers to pay the Regulatory Liability Charges to the distribution company to save them from financial crisis, has not been challenged and, therefore, the subsidizing industries like the Appellant cannot claim interest. As indicated above, the amount is paid only on the orders of the State Commission. The very same State Commission has ordered in various orders that this amount is refundable. Similarly, the State Commission observed in its order that the said amount paid to the distribution company as Regulatory Liability Charges, which is refundable, has to be treated as a loan. When the said amount is treated as a loan as per the orders of the State Commission, which has not been challenged by the distribution company and when the said amount belonging to the subsidizing industries like the Appellant, is retained by the distribution company for over a long period during which the subsidizing industries had not been able to use that money, could it be contended that the subsidizing industries like the Appellant is not entitled to the payment of interest along with the principal

amount? The answer must be 'No'. Therefore, the contention urged by the Counsel for the Respondent that the amount was voluntarily agreed to be paid by the subsidizing industries as a part of the tariff and when the same has to be returned through tariff, the Appellant cannot claim interest, is untenable. As indicated above, when the State Commission directed the subsidizing industries to pay the amount to the distribution company and when it observed that the amount is refundable and the said amount has to be treated as a loan, it goes without saying that the amount which was treated as a loan is to be refunded with interest.

28. The State Commission, without looking into its own earlier orders observed in the impugned orders that the total amount of Regulatory Liability Charges will be returned to the subsidizing categories and the same will be included as an expense in the ARR of the Appellant. It is also observed in the impugned order, referring to the minutes of the Technical Valedictory Session dated 03.01.2008, that no interest will be payable to the subsidizing categories with regard to the amount of Regulatory Liability

Charges not refunded till date. As a matter of fact, in the order passed by the State Commission on 18.05.2007 with regard to refund of the Regulatory Liability Charges, it directed the distribution company to refund Rs. 500 crores of Regulatory Liability Charges out of the total amount of Rs. 3225 crores collected by the distribution company through Regulatory Liability Charges, which were treated like a loan given by these subsidizing industries to the distribution company to tide over the financial crisis. This finding given by the State Commission in the earlier order, has not been taken into consideration while passing the impugned orders.

29. The reliance placed by the State Commission on minutes of the meeting held on 03.01.2008 is not appropriate since it is the case of the Appellant that in the said meeting adequate opportunities had not been given to the parties concerned including the Appellant. In the light of the said stand taken by the Appellant before the State Commission, the State Commission passed an order dated 02.04.2008 to the effect that the order

passed by the State Commission must be implemented by the distribution company which has no objection to comply with the same. Therefore, the State Commission after recording that the Regulatory Liability Charges was to be treated as a loan in the earlier orders, has hastened to hold in the impugned order that no interest would be payable. This approach in our view is wrong. Thus, this order is not in consonance with the earlier orders passed by the State Commission.

30. When the State Commission, as indicated above, gave a categorical finding that the Regulatory Liability Charges would be a deposit collected from the subsidizing consumers, it may not be proper on the part of the State Commission to hold that the R-2 is not obliged to pay interest on the said deposit which has been retained by the distribution company over a number of years. If this amount was not available to Respondent-2, it would have raised the same by taking loan from Banks and Financial Institutions at the prevailing market rate of interest. Therefore,

finding by the State Commission that the Appellant is not entitled to the interest is wrong.

31. **Summary of our findings**

A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for such a deprivation through interest. In an action by way of restitution, it is the duty of the court to give full and complete relief to the party by ordering for interest as well.

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. Hence, the Appellant, who is deprived of the use of money to which he is legitimately entitled has a right to be compensated for such a deprivation through interest in accordance with the principle of Section 34 of the Code of Civil Procedure.

32. In view of the above, we hold that the Appellant is entitled to the payment of interest along with the principal amount. To this extent, impugned orders are set aside. The Appellant 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.

33. With these observations, the Appellant succeeds in these Appeals and the impugned orders are set aside to that extent as indicated above. Accordingly, the State Commission is directed to ensure that the Appellant is paid principal amount along with interest which is to be fixed taking note of the prevailing prime lending rate.

34. The Appeals are allowed. No costs.

(JUSTICE P.S. DATTA)
JUDICIAL MEMBER

(RAKESH NATH) (JUSTICE M.KARPAGA VINAYAGAM)
TECHNICAL MEMBER

CHAIRMAN

REPORTABLE/NON-REPORTABLE

Dated: August, 2010