

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

ORDER ON IA NO. 1104 OF 2017 IN
DFR NO. 3883 OF 2017
ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI

Dated: 02nd April, 2018

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

In the matter of:

Mahatashtra State Electricity Distribution Company Ltd.

Through its Director Operations,
5th Floor, Plot No.G-9,
Station Road, Prakashgad,
Bandra (East),
Mumbai-400 051.

..... Appellant(s)

Versus

1. Mahatashtra Electricity Regulatory Commission

Through its Secretary,
World Trade Centre
Centre No.1, 13th Floor,
Cuffe Parade, Colaba,
Mumbai-400 001.

2. Inox Air Products Pvt. Ltd.

Through its General Manager,
7th Floor, Ceejay House,
Dr. Annie Besant Road,
Mumbai-400 018.

3. Sai Wardha Power Generation Limited

Through its Director,
8-2-293/82/A/431/A Road No.22,
Jubilee Hills, Hyderabad-500 033.

- 4. Ramsons Industris Ltd.**
Through its Director,
A-301, Neeti Gourav,
Central Bazar Road, Ramdasepth,
Nagpur,
Maharashtra - 440 010.
- 5. Ramsons Casting Pvt. Ltd.**
Through its General Manager ,
A-301, Neeti Gourav,
Central Bazar Road, Ramdasepth,
Nagpur,
Maharashtra - 440 010.
- 6. Padumji Paper Product Ltd.**
Through its Director,
Thergaon, Pune,
Maharashtra – 411 033.
- 7. Mahindra CIE Automotive Ltd.**
Through its Director,
Dr.PK Kurne Chowk,
Worali,
Mumbai-400 018.
- 8. ACG Associated Capsule Pvt. Ltd.**
Through its General Manager,
131, Kandawali Industrial Estate,
Kandawali West,
Mumbai-400 0067.
- 9. Asahi India Glasses Limited**
Through its Director,
Plot No.T-7, Taloj MIDC Industrial Area,
Taloja Distt. Raigad,
Maharashtra-410 208.
- 10. Hindalco Industries Limited**
Through its Director,
Century Bhavan, 3rd Floor,
Dr. Anibesent Road,
Worali,
Mumbai-400 030.

11.The Chief Engineer.

Maharashtra State Electricity Transmission Co. Ltd.,
“Prakashganga”, MSETCL,
Plot No.C-19, E-Block,
Bandrakurla Complex,
Mumbai-400 051.

..... Respondent(s)

Counsel for the Appellant (s) : Ms. Rimali Batra
Ms. Nikita Choukse

Counsel for the Respondent(s) : Mr. S.K. Jaina for R-2
Mr. Anand K. Ganesan
Ms. Neha Garg for R-3

Maharashtra State Electricity Distribution Company Limited, the Appellant herein, has filed the instant Appeal, being DFR No. 3883 of 2017, under Section 111 of the Electricity Act, 2003, on the file of the Appellate Tribunal for Electricity, New Delhi, being aggrieved by the impugned order dated 27.06.2017 passed in misc. Application no. 12/2017 in Case No. 76 of 2017 on the file of the Maharashtra Electricity Regulatory Commission, Mumbai.

The Appellant has presented this Appeal considering the following substantial Questions of Law:

- a) Whether the impugned order dated 27.06.2017 passed by the MERC is a non-reasoned order.
- b) Whether the MERC has passed the impugned order dated 27.06.2017 without assigning reasons.
- c) Whether the MERC has passed the impugned order after appreciating its own orders, Regulations and practice directions.

- d) Whether the MERC has passed the impugned order which in effect is an amendment to its DOAR, 2016 without following the due process of law.
- e) Whether the MERC by passing the impugned order has created an environment which is not conducive for competition and fair play.
- f) Whether the MERC has changed the concept of “Full” and “Partial” Open Access.
- g) Whether the order passed by the Respondent No.1 is bad in law?
- h) Whether the order passed by the Respondent No.1 is erroneous?

The Appellant has sought the following reliefs in DFR No.3883 of 2017:

- (a) Allow the appeal and set aside / modify the order dated 27.06.2017 passed by the MERC to the extent challenged in the present appeal; and
- (b) Pass such other Order(s) that this Hon’ble Tribunal deems just and proper.

ORDER

1. Though this matter was posted for orders for condoning the delay in filing the Appeal with the consent of the learned counsel, Ms. Rimali Batra, appearing for the Appellant and learned counsel, Mr. S.K. Jaina appearing for the Respondent No.2 and learned counsel, Mr. Anand K. Ganesan, appearing for Respondent No.3, the matter was taken up for final disposal.

2. Other respondents served and unrepresented.

3. We have heard the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent No.2 and Respondent No.3.

4. The learned counsel, Ms. Rimali Batra, appearing for the Appellant, at the outset submitted that order impugned passed on misc. application vide No. MERC/MS No.12 of 2017 in Case No.76 of 2017 cannot be sustainable and reliable, to be set aside on the ground that in the Maharashtra Electricity Regulatory Commission, heard on merits and reserved for orders. Entertaining the misc. application filed by the Applicant / Respondent No.2 and passing the interim order is contrary to the relevant regulations and it will become bad precedence to the other cases. Therefore, she submitted that the order impugned passed by the Maharashtra Electricity Regulatory Commission liable to be vitiated. Further, she submitted that when the matter was reserved for orders on merits, entertaining the misc. applicant filed by the applicant / Respondent No.2 (herein) by including a new additional condition in Open Access permission for power of flow for MSEDCL and OA shall be restricted to quantum of technical and metering constraints. The said additional condition is contrary to the DOAR, 2016 as well as the practice directions dated 19.10.2016. Moreover, the said condition is

contrary to the principle of equity and fair play as under the Open Access Mechanism each and every entity including the Distribution Licensee is competitor to one another. Therefore, order impugned passed by the Maharashtra Electricity Regulatory Commission is liable to be set aside on this ground also.

5. ***Per-contra***, the learned counsel appearing for the Respondent No.2 & 3, inter alia, contended and substantiated that order impugned passed by the Maharashtra Electricity Regulatory Commission on misc. application filed by the second respondent/applicant is just and reasonable and the said interim order passed on misc. application will merge with the final order to be pronounced by the Maharashtra Electricity Regulatory Commission. Therefore, interference by this Court at this stage is not justifiable for the reason that till final order is pronounced on merits of the case, the interim arrangement has been considered by way of interim order. Therefore, they submitted that the Appellant herein has not made out any good ground as such to entertain the relief sought in this appeal. Hence, it is liable to be dismissed as premature in nature.

6. After careful consideration of the submission made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent No.2 & 3, the only issue that arises for consideration

is whether the State Regulatory Commission has justified entertaining the misc. application filed by the Applicant / Respondent No.2 herein and passing on daily order is sustainable in law and the order has been reserved on the main matter on merits. What is emerged after careful consideration of the reasoning given for passing the interim order on misc. application filed by the Applicant / Respondent No.2 is just and reasonable because till the final order is pronounced on merits of the case, the request and prayer sought by the Applicant / Respondent No.2 is just and reasonable. The same has been rightly considered and passed the interim order on misc. application filed by the Applicant / Respondent No.2 herein in the interest of justice and equity exercising their inherent powers. Therefore, we do not find any error nor we find any good ground as such made out by the Appellant to consider the prayer sought in the instant appeal for the reason that the interim order passed on misc. application filed by the second respondent will be merged with the final order to be pronounced by the Maharashtra Electricity Regulatory Commission. Taking all these facts and circumstances into consideration, as stated above, the appeal filed by the Appellant shall stand disposed of.

7. All the contentions of both the parties are left open

8. With these observations, the appeal being DFR No. 3883 of 2017 filed by the Appellant stands disposed of.

9. Order accordingly.

IA NO. 1104 OF 2017 (for delay in filing)

10. In view of the disposal of the appeal being DFR No. 3883 of 2017, on the file of the Appellate Tribunal for Electricity, New Delhi has been disposed of as withdrawn, on account of which, the prayer in this application being IA No. 1104 of 2017 does not survive for consideration as it has become infructuous.

11. Order accordingly.

(S.D. Dubey)
Technical Member

(Justice N. K. Patil)
Judicial Member

bn/pr