

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY  
Appellate Jurisdiction, New Delhi**

Appeal No. 29 of 2008 & IA No.5 of 2008  
Appeal No. 30 of 2008 & IA No 7 of 2008  
Appeal No. 31 of 2008 & IA No.9 of 2008  
Appeal No. 32 of 2008 & IA No.11 of 2008  
Appeal No. 33 of 2008 & IA No.13 of 2008

Dated this 1st day of April, 2008

**Coram : Hon'ble Mr. H. L. Bajaj, Technical Member  
Hon'ble Ms. Justice Manju Goel, Judicial Member**

**IN THE MATTER OF:**

1. **Appeal No. 29 of 2008 & IA No. 5 of 2008**

Runwal Developers Pvt. Ltd. ..Appellant(s)  
Versus  
1. Maharashtra Elec. Regulatory Commission  
2. Maharashtra State Elec. Development Co. Ltd. ..Respondent(s)

2. **Appeal No. 30 of 2008 & IA No. 7 of 2008**

Shoppers Stop Ltd. ..Appellant(s)  
Versus  
1. Maharashtra Elec. Regulatory Commission  
2. Reliance Energy Ltd. ..Respondent(s)

3. **Appeal No. 31 of 2008 & IA No. 9 of 2008**

Hypercity Retail (India) Ltd. ..Appellant(s)  
Versus  
1. Maharashtra Elec. Regulatory Commission  
2. Reliance Energy Ltd. ..Respondent(s)

4. **Appeal No. 32 of 2008 & IA No. 11 Of 2008**

Shoppers Stop Ltd. ..Appellant(s)  
Versus  
1. Maharashtra Elec. Regulatory Commission  
2. Reliance Energy Ltd. ..Respondent(s)

5. **Appeal No. 33 Of 2008 & IA No. 13 of 2008**

Shoppers Stop Ltd. ..Appellant(s)  
Versus  
1. Maharashtra Elec. Regulatory Commission  
2. Maharashtra State Electricity Distribution Co. Ltd. ..Respondent(s)

Counsel for Appellants: Mr. Janak Dwarka Dass Sr. Counsel  
(In all the 5 appeals) Mr. M.G. Ramachandran Advocate  
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Counsel for Respondents: Mr. Ravi Parkash  
(In appeal No. 29 & 33)

(In appeal Nos. 30,31 & 32) Ms. Smieeta Inna Advocate

## **J U D G M E N T**

### **Ms. Justice Manju Goel, Judicial Member**

1. The appeal No. 33/08 in AFR 1362 of 2007 and Appeal No 29/08 in AFR 1333 of 2007 are directed against the order of the Maharashtra Electricity Regulatory Commission (MERC for short) dated 18.05.2007 and 24.08.07. The AFR No. 1333 of 2007 (Appeal No. 29 of 2008), AFR No. 1361 of 2007 (Appeal No. 30 of 2008) and AFR No. 1360 of 2007 (Appeal No. 32 of 2008) are directed against the order of the Commission dated 21.09.2007. The issues involved in all five appeals are common and therefore taken up together.
  
2. This tribunal had two occasions of hearing appeals against the order dated 24.08.07. The appeal of M/s. Spencer's Retail Ltd. challenging two orders was number 146/2007 and was allowed vide judgment dated 19<sup>th</sup> December, 2007. The question involved in that case as also in the two appeals of M/s. Runwal Developers Pvt. Ltd., Appeal No. 29 of 2008 (AFR No. 1333 of 2008) and Shoppers Stop, appeal No. 33 of 2008 (AFR No. 1362 of 2007) were common. M/s. Spencer's Retail Ltd. challenged

the two orders which related to determination of Annual Revenue Requirements (ARR) of Maharashtra State Electricity Distribution Company Ltd. (MSEDCL for short) applicable for the control period of financial year 2007-08 to financial year 2009-2010 and tariff for the financial year 2007-08. M/s. Spencer's Retail Ltd. is engaged in the retail business with various shops spread across the State of Maharashtra having sanctioned load of more than 20 kW and had been classified under LT-II (non-domestic) and HT-II (industrial) category. Vide impugned order dated 18.05.2007, the Commission created a new category of LT-IX for Multiplexes and Shopping Malls having sanctioned load of more than 20 kW including single ownership establishments. Subsequently, a clarificatory order dated 24.08.07 was issued on a petition filed by MSEDCL in which the Commission extended the category of LT-IX to single ownership establishments having large shops/departmental stores like Shoppers Stop, Big Bazaar, Shop Rite and Spencer's etc. without laying down any criteria for identifying such shopping/ departmental stores. M/s. Spencer's Retail Ltd. in their appeal challenged their being placed in category LT-IX which had the following tariff:

- |                  |                           |
|------------------|---------------------------|
| - Energy charges | Rs. 8.50 per kwh          |
| - Demand Charges | Rs. 300 per kVA per month |

3. It contended that had it continued under category LT-II (non-domestic), it would have paid energy charges @ Rs. 5.60 Kwh whereas in the LT-IX category, it had to pay Rs. 8.50 per KWA excluding the rate for demand charges. This allegedly caused a tariff shock.
  
4. In our judgment we found that the average cost of supply had been determined Rs. 3.50 per kwh for financial year 2007-08 and that the weighted energy cost was Rs. 3.60 per Kwh. The Commission in its order dated 28.5.2007 stated that it had considered the average cost of supply by including only non-costly sources of supply and it preferred to ensure that cross subsidy was reduced. Justifying the creation of new category LT-IX the Commission said :

*“Tariff for Multiplexes and Hoardings”:*

*Considering the severe energy deficit situation in the state, the Commission has put a high cost on unwarranted commercial consumption like flood lights, shopping malls, multiplexes, advertisement and hoarding etc. by charging a higher tariff. The Commission feels that these are non-critical services and have higher capacity to pay. These categories also have a huge potential to conserve energy and a high price of power would send the economic signal for minimizing consumption.”*

5. Nonetheless, the Commission proclaimed that the tariff had been determined keeping in view the tariff philosophy that cross subsidy was to be reduced without subjecting any consumer category to a tariff shock. The Commission had purported to use section 61, 62 and 23 of The Electricity Act 2003. Section 23 gives power to the Commission to pass order to provide for regulating supply, distribution, consumption or use of power for securing equitable distribution of electricity and promoting competition. We, however, in our judgment held that while load management charge can be imposed under section 23 of The Electricity Act 2003, it did not form part of the tariff for generation, transmission and distribution and therefore the Commission was not required to follow the procedure for tariff determination for fixing such charges. Nonetheless, we emphasized the importance of equitable distribution of load management charges. The creation of LT-IX category, however, could not be justified under the power vested by section 23 of the Act.
  
6. We also observed that imposition of higher tariff on new classification could not be justified on the criteria given for distinguishing consumers on the basis of load factor, power factor, energy, total consumption of electricity etc., as available under section 62(3) of the Electricity Act 2003. We also observed that the new category created also violated the equality principle and as much as the shops within the shopping mall with

load more than 20 kW cannot be treated differentially with similar shops outside the shopping mall with loads more than 20 kW.

7. By the clarificatory order dated 24.8.2007, the Commission clarified “such large shopping/ departmental stores like Shoppers Stop, Big Bazaar, Shop Rite, Spencer’s etc. with sanctioned load above 20 KW will be classified under LT-IX category. Subsequently, a commercial circular was issued on 10.09.2007 referring to the clarificatory order which said “hence it is now applicable for electricity supply at LT/HT for multiplexes and shopping malls (above 20 kW load) and charge single ownership shopping/ departmental stores like Shoppers Stop, Big Bazaar, Shop Rite and Spencer’s etc. with sanctioned load above 20 kW. We also observed that the clarificatory order and the circular were silent about the manner in which targeted consumers for LT-IX category in pursuance to the impugned order could be identified in as much as “large” was not defined. In addition the Commission admitted that LT-IX category would yield additional revenue over and above the ARR of MSEDCL although there was no indication in the above impugned order about the purpose for which the same was to be utilized and under what provision of the Act the excess revenue was to be charged.
8. Accordingly this Tribunal allowed the appeal and set aside the tariff order dated 18.05.2007 and the order dated 24.08.2007 requiring the multiplexes

and shopping malls or in the single ownership shopping/departmental stores to be placed in the new category of LT-IX and to be charged as per rates mentioned earlier.

9. Following this judgment, appeal No. 16 of 2008 also filed by M/s. Spencer's Retail Ltd. was allowed. We directed that M/s. Spencer's Retail Ltd. be charged tariff applicable to it earlier under parent category of LPT-II (Presently LT-IV) from the date on which new order came into effect and the difference in charges be adjusted in the future bill of M/s. Spencer's Retail Ltd.
  
10. It is also necessary to mention that two other appeals being No. 125 of 2007 and 126 of 2007 challenged similar orders dt. 24.4.2007 and 26.07.2007 passed for the same period in the application for determination of tariff and approval of Annual Revenue Requirement of M/s. Reliance Energy Ltd., another distribution licensee. The two appeals were disposed of vide a judgment dt. 26.11.2007. The impugned orders in the two appeals were set aside and MERC was directed to pass a fresh order on the issue after giving full opportunities to the two appellants of being heard on the question as to whether they should also fall in the same category as those in LT-IX. The Commission, thereafter, heard the two appellants namely M/s. Inorbit Mall (India) Pvt. Ltd. and M/s. Vasudev

C. Construction and passed an order on 15.1.2008. Giving the history of litigation, the Commission in the penultimate paragraph said as under:

*“6. Although, it has been submitted on behalf of the Distribution Licensee, i.e. REL, that there was no undue enrichment to REL on account of levy of LT-9 tariffs to shopping malls and multiplexes, the Commission after having heard the public (including M/s. Inorbit Mall (India) Pvt. Ltd. and M/s. Vasudev C. Wadhwa Constructions) and REL, the distribution licensee, is of the view that with the subsequent judgment dated December 19, 2007 issued in case of ARR determination of Maharashtra State Electricity Distribution Company Limited, the applicability of tariff category Lt-9 for Multiplexes and Shopping Malls getting supply of HT voltage in the area of supply of REL, can no more survive. Accordingly, the Commission directs that consumers who were being billed (prior to the Errata/ Corrigendum Order dated July 26, 2007) under HT-2 category and who began receiving bills as LT-9 consumers (Multiplexes and Shopping Malls (MSM) be charged tariff applicable to the parent category (i.e. HT-2) with effect from the date on which the new tariff Order came into effect. The difference in tariff charges be adjusted in the future bills of such consumers.”*



11. The two appeals being AFR No. 1362 of 2007 (Appeal No. 33 of 2008) and AFR 1333 of 2007 (Appeal No. 29 of 2008) challenge the aforesaid order dt. 18.5.2007 and 24.08.2007. M/s. Runwal Developers Pvt. Ltd. in Appeal No. 29 of 2008 prays that instead of new category LT-IX in which they have now been placed, they be continued to be treated in the category HP 1-C (Industrial) from the date of impugned Order. M/s. Shoppers Stop Ltd. In AFR No. 1362 of 2007 (Appeal No. 33 of 2208) prays that it be treated in the category of HT and be charged at the same rate as applicable thereto as per the original order dated 18.05.2007. Since the issues involved have already been settled, M/s. Shoppers Stop Ltd., Consumer of MSEDCL cannot be billed in the category of LT IX. The Commission does not dispute that these two appellants, consumers of MSEDCL cannot be denied the benefit of the earlier order of this Tribunal as well as the order of the Commission dt. 15.1.2008. These two appellants therefore cannot be billed in the category of LT-IX and they can be billed only in their parent category. Whatever extra payment has been recovered from the two appellants need to be adjusted in the future bills.

12. The other three appeals challenge the order of the Commission in the matter of ARR and tariff petition of M/s Reliance Energy Ltd. for the same period. The first order refers to the original order passed on 24.4.2007 in which the new category LT-IX was introduced and was made applicable to Multiplexes and Shopping malls falling under the low

tension tariff category. Vide its order dt. 26.07.2007, the Commission applied the new category to Multiplexes and Shopping Malls categorized under high tension tariff category.

13. M/s. Shoppers Stop claims that it did not fall under the new category as given in the original order and were actually being charged in the category of HT-II (Industrial) as was the practice in the past. However, the Commission passed the order dt. 21.09.2007 clarifying its earlier order dated 24.4.2007 thereby enlarging the category of LT-IX and specifically putting its name as falling in the new category thereby causing the grievance. It prays for setting aside the clarificatory order and an appropriate order directing the Reliance Energy Ltd. to categorize the appellant in the category of HT and charge accordingly.
  
14. The other appellant M/s. Hypercity Retail India Ltd., Appeal No. 31 of 2008 seeks the relief of being treated in the parent category of LTP-II/LTP-IV instead of in the new category LT-IX. For the same reasons as above and in view of Commissions' own order dt. 15.1.2008 these three appeals also need to be allowed. These three appellants need to be placed in the category as claimed by them instead of in LT-IX category. They are entitled to adjust the excess payment against the future bill.

15. Accordingly we allow all the five appeals. All the five appellants be placed in the category of consumers as claimed by them as mentioned above instead of LT-IX. All of them are entitled to adjust the excess payment on account of being billed under category LT-IX against future bills.

Pronounced in open court on this 1st day of April, 2008.

(Mrs. Justice Manju Goel )  
Judicial Member

( Mr. H. L. Bajaj )  
Technical Member