

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.148 OF 2020

Dated: 22.10.2024

Present: Hon`ble Mr. Sandesh Kumar Sharma, Technical Member
Hon`ble Mr. Virender Bhat, Judicial Member

In the matter of:

GHATGE PATIL INDUSTRIES LIMITED

Uchagaon, Kolhapur 416005,
Maharashtra, India

... Appellant(s)

Versus

**1. MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION**

Through its Secretary
World Trade Centre,
Centre No. 1, 13th Floor, Cuffe Parade,
Colaba, Mumbai – 400005
Email: mercindia@merc.gov.in

**2. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION
COMPANY LIMITED**

Through its Managing Director
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051
Email: gmppmsedcl@gmail.com

... Respondents

Counsel for the Appellant(s)

:

Depali Sheth
Keyur Talsania

Counsel for the Respondent(s) : Deepa Chouhan, Sr. Adv.
Pratiti Rungta for Res. 1

Udit Gupta
Anup Jain
Akshay Goel for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant company, a consumer of 2nd respondent Maharashtra State Electricity Distribution Company Limited (MSEDCL), has preferred this appeal against the order dated 08.07.2020 passed by 1st respondent Maharashtra Electricity Regulatory Commission (in short "the Commission") whereby the Commission has, *inter alia*, rejected the appellant's prayers for relaxation of provisions of Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016 as amended by the Maharashtra Electricity Regulatory Commission (Distribution Open Access) (1st amendment) Regulations, 2019, grant of extension of the banking period provided under Regulation 20.3 of these regulations and adjustment of the banked units of Financial Year (FY) 2019-20, 2020-21, and 2021-22 as well as nonwaiver of fixed charge.

2. Facts of the case which are material for the disposal of this appeal as well as shorn of unnecessary details are that the appellant company is a

consumer of MSEDCL and maintains a contract demand of 10 MVA and 15 MVA for consumer Nos. 266549100040 and 251019054760, respectively. It also owns wind power plants, the details of which are given hereunder: -

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Sr. No.	Project Site	Location No.	Capacity (In MW)
1.	Village Brahmanvel, Taluka Sakri, District Dhule.	BH01 –BH08	6
2.	Village Brahmanvel, Taluka Sakri, District Dhule.	A-5	0.75
3.	Village Brahmanvel, Taluka Sakri, District Dhule.	L11, C5	3.30
4.	Village Brahmanvel, Taluka Sakri, District Dhule.	BB5, XX1, AD1	4.95
TOTAL			15 MW

”

3. Pursuant to commissioning of these wind power plants, the appellant was selling power to MSEDCL in accordance with Wind Energy Power Agreement (WEPA) but after termination of WEPAs in or about 2018, the appellant has been consuming power from these windmills for self-use in

accordance with the Open Access (OA) permissions granted by MSEDCL from time to time.

4. The appellant submitted applications bearing Nos.10085, 10086, 10087 and 10088 on 24.12.2019 for grant of Medium Term Open Access (MTOA) in accordance with MERC DOAR 2016 seeking open access for period from 01.04.2020 to 30.09.2020. These MTOA applications were in respect of the appellant's Foundry and Product Division located at Uchgaon, Kolhapur, Maharashtra for 5 MW and Kagal Plant which is the Foundry Division located at Plot No. D-2, MIDC Kagal, Five State Industrial Area, Village- Talandge, Taluka – Hatkanangale, Kolhapur, Maharashtra for 10 MW.

5. It appears that MSEDCL did not process these applications of the appellant within the requisite timeline i.e. 60 days from the date of application. At the same time, nationwide lockdown was imposed by the Government of India, with effect from 24.03.2020 in order to prevent the spread of COVID-19 pandemic. Appellant sent e-mails dated 02.04.2020 and 19.04.2020 to MSEDCL informing it that open access permission ought to have been approved on or before 22.02.2020 and further requested

MSEDCL for permission to bank the unused power to be adjusted in later months on account of prevailing *force majeure* conditions.

6. MSEDCL granted MTOA permissions to the appellant on 27.04.2020 with retrospective effect i.e. for the period from 01.04.2020 till 30.09.2020.

7. Since the appellant was unable to consume the power from its units at Uchgaon, Kolhapur, these units were shutdown due to imposition of lockdown. However, in view of must run status of the wind power projects, the appellant had been injecting power into the grid during the lockdown period till the units were shut down and has also been levied with transmission as well as wheeling charges for such power but such power was not permitted to be banked or adjusted at a later date.

8. Accordingly, the appellant approached the Commission by way of petition No.93/2020 under Sections 42, 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 as well as Regulation 39 of MERC DOA Regulations, 2016 seeking following reliefs: -

“a. Relaxation of Regulation 20.3 of DOA Regulations 2016, extension of monthly banking period as specified under the Regulations for adjustment of the banked units of FY 2019-20 and FY 2020-21 till the end of FY 2021-22.

b. Directions to MSEDCL to issue Generation Credit Notes for energy banked during the period of lockdown and its adjustment in the bills of Petitioner.

c. Directions to MSEDCL for waiver of fixed demand charges for the entire period of lockdown.

d. Directions to MSEDCL for reduction in its contract demand and reinstatement of the same at the request of Petitioner.”

9. The main two prayers of the appellant at “a” and “b” hereinabove have been dealt with by the Commission in the impugned order in the following manner: -

“12. After going through the submissions of the Parties, as regards to prayers (a) and (b) above, i.e. relaxation of Regulation 20.3 of DOA Regulations 2016 on the banking issue and prayer for directions to MSEDCL for issuance of Generation Credit Notes and its adjustment, the Commission notes that identical prayers had been made by Indian Wind Power Association (Maharashtra Council) (IWPA) in Case No. 92 of 2020. Also, the identical grounds/contentions /arguments had been made by IWPA

as are made in the present Petition by GPIL. MSEDCL's defense in that Case was also same as is there in present Petition. Hence, the Commission is of the view that Ruling in Order dated 4 July, 2020 in Case No. 92 of 2020 squarely applies to the present Case as far as prayers related to banking adjustment and issuance of Generation Credit Notes are concerned. The Commission, in Case No. 92 of 2020, has held as follows:

“45 The Commission in the above Paras 21 to 41 has analysed the applicability of force majeure clause and the consideration/ intentions of banking as envisaged under the Wind Tariff Order 2003 and the DOA First Amendment Regulations 2019. In view of the foregoing the Commission is not inclined to accept the contentions of IWPA as regards the extension of the banking period provided under Regulation 20.3 of DOA Regulations, 2016 and permitting adjustment of the banked units of FY 2019-20 and FY 2020-21 till the end of FY 2021-22.

46 Since the contentions of IWPA are not accepted as discussed above, the Commission neither finds it necessary to invoke its powers under Regulation 39 of the DOA Regulations, 2016 of 'Power to relax' for

relaxing any provisions of the said Regulations, nor is issuing any direction to MSEDCL as per prayers of the present Petition.”

13. In light of the above, GPIL cannot be granted the prayer for relaxation of Regulation 20.3 of DOA Regulations 2016, extension of monthly banking period as specified under the Regulations for adjustment of the banked units of FY 2019-20 and FY 2020- 21 till the end of FY 2021-22. Also, GPIL’s prayer for seeking directions to MSEDCL for issuance of Generation Credit Note and its adjustment in the bills of the Petitioner cannot be granted as a fallout of above.”

10. From the perusal of the above quoted relevant portion of the impugned order, it is evident that the Commission has founded its decision on above two main issues in the present case on its previous decision dated 04.07.2020 in case No.92 of 2020 which had been filed by IWPA against MSEDCL. The Commission has simply noted that identical grounds / contentions / arguments had been made by IWPA in the said case No.92/2020 as are made in the petition filed by the appellant herein and identical prayers had been made by IWPA in that case. We are unable to countenance the said approach of the Commission in deciding the above noted main two prayers of the appellant in this case.

11. We may note that the State Electricity Regulatory Commission is a forum of first instance for a generator or a distribution licensee for seeking resolution of their disputes. Therefore, the Commission is obligated to not only record the rival contentions / submissions of the parties before it in a case but also discuss and deal with all those contentions / submissions specifically in its order. Even if the Commission finds the facts of the case and the issues involved therein identical to the facts / issues involved in a previously decided case, it is not permissible for it to simply quote its findings of the previous case in the case at hand and decide accordingly, without elaborating the similarities between the facts and issues involved in the two cases.

12. The judgment passed by a court/ forum of first instance ought to be on the basis of individual facts appearing in a particular case and the issues involved therein. A court / forum of first instance like the State Commission is expected to discuss all relevant facts of the case before it and give a detailed judgment. This would not only help in understanding the decision making process but also ensures transparency and facilitates effective review and appeal. In case, the State Commission wishes to rely upon any

of its previous decision, it ought to bring that decision to the notice of the parties before it before relying upon the same in its order.

13. In the instant case, the Commission has after noting the contentions of the parties, stated that prayers made herein as well as the grounds / contentions / arguments of the parties are identical to those made by IWPA in case No.92/2020 and accordingly decided the issues involved in the case at hand as per its decision in case No.92/2020. The facts of the case No.92/2020 as well as the prayers made therein have nowhere been quoted in the impugned order by the Commission. Therefore, it is impossible not only for the appellant but also for this Tribunal to ascertain as to whether or not are the facts / issues involved in this case actually identical to the facts / issues involved in the case No.92/2020. It also remains undisputed that before pronouncing the impugned order in this case, the Commission did not apprise the appellant or its counsel about its order dated 04.07.2020 in previous case No.92/2020 and therefore appellant has been precluded from making endeavour before the Commission to highlight the distinctness of the facts and issues involved in the two cases.

14. It was vehemently argued on behalf of the Commission that both the cases i.e. case No.93/2020 (to which the instant appeal relates) and case

No.92/2020 were heard by the Commission on the same date i.e. 09.06.2020 and therefore, it cannot be said that the appellant was not aware about the facts of that case. Be that as it may, admittedly the appellant was not a party to the case No.92/2020, and therefore, the knowledge of the facts / issues involved in that case cannot be attributed to it.

15. The proper approach which could have been adopted by the Commission in these circumstances was to note briefly the facts of the case No.92/2020 as well as the issues involved therein in the impugned order in order to show the similarity between those and the facts & issues involved in this case and only thereafter it ought to have proceeded to base its findings in the instant case on the decision rendered in the said case No.92/2020.

16. In view of the above noted peculiar and unacceptable approach adopted by the Commission in arriving at decision in the instant case, we are unable to sustain the impugned order. The same is absolutely erroneous and is hereby set aside. Accordingly, the appeal stand allowed.

17. The case is remanded back to the Commission with direction to hear the parties again and pass a fresh order within two months from the date of this Judgment.

18. The Registrar of this Tribunal is directed to transmit a copy of this judgment to all the Electricity Regulatory Commissions for information and compliance.

Pronounced in the open court on this the 22nd day of October, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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