IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.169 OF 2016

Dated: 22.10.2024

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

In the matter of:

MAHARASHTRA SEAMLESS LIMITED
402, Sarjan Plaza,
100 Annie Bessant Road, Worli,
Mumbai – 400 018 … Appellant(s)

Versus

1. **MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**
World Trade Centre,
Centre No. 1, 13th Floor, Cuffe Parade,
Colaba, Mumbai – 400001

2. **MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.**
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051

3. **MAHARASHTRA ENERGY DEVELOPMENT AGENCY**
MHADA Commercial Complex,
II Floor, Opp. Tridal Nagar,
Yerwada, Pune – 411006 … Respondents

Counsel for the Appellant(s) : Anand K. Ganesan
Dipali Sheth

Swapna Seshadri

Counsel for the Respondent(s) : Pratiti Rungta for Res. 1

G. Saikumar, Sr. Adv.
Ravi Parkash
Varun Pathak
Varun Agarwal
Samir Malik for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this appeal the appellant has assailed the order dated 06.04.2016 of 1st respondent Maharashtra Electricity Regulatory Commission (in short "the Commission") vide which the Commission has rejected the prayer of the appellant seeking adjustment of banked energy units from its industrial plant at Vile Bhagad industrial area towards its other plant at Sukeli as well as other ancillary prayers.

2. The facts of the case lie within a very narrow canvass. The appellant is a flagship company of Jindal Group involved in manufacture of steel pipes at its manufacturing plant at Sukeli and Vile Bhagad. The two industrial plants are Extra High Tension (ETH) consumers and have been consuming energy vide consumer Nos.37279017847 and 38749024850 respectively having contract demand of 16330 KVA and 8000 KVA respectively. The

appellant set up a 7 MW Wind Energy Captive Power Plant in District Satara in the year 2011 which was supplying power to its Sukeli plant through Open Access (OA) for self-use till Financial Year (FY) 2012-13. On 12.08.2012, the appellant sought OA permission for consumption of power from JSW Energy Limited from 2nd respondent Maharashtra State Electricity Distribution Company Limited (MSEDCL), for the Sukeli plant and the same was granted on 02.07.2012. Subsequently, on 27.09.2012, 2nd respondent raised objection to the OA on the ground that the Sukeli plant was already obtaining power from Captive Power Plant (CPP) which fact was not disclosed at the time of seeking OA permission. It appears that the 2nd respondent MSEDCL was of the view that sourcing from multiple generators was not permissible and accordingly advised the appellant for change of drawl point of wind OA permission from Sukeli plant to Vile Bhagad plant.

3. Accordingly, at the request of the appellant, the OA permission and drawl point for its CPP power was changed from Sukeli plant to Vile Bhagad plant from September 2012 till end of FY 2012-13. On 04.02.2013, the 2nd respondent MSEDCL granted wind OA permission to the appellant for sourcing power from CPP for self-use at Vile Bhagad plant and on 28.03.2013, it granted OA permission to appellant's Sukeli Plant for sourcing 6 MW JSW power with effect from 01.04.2013. It appears that the Vile

Bhagad plant was unable to absorb the entire CPP power which led to the accumulation of around 50 lakh plus surplus unadjusted energy units. Accordingly, the appellant addressed letter dated 24.08.2013 to 2nd respondent MSEDCL seeking change in CPP drawl point back to the Sukeli plant to which MSEDCL does not seem to have responded.

4. Eventually, the appellant discontinued its Power Purchase Agreement with JSW and again sought a change in the drawl point of its CPP power back to Sukeli plant in order to enable the adjustment of the accumulated units. On 21.02.2014, MSEDCL granted OA permission to appellant for consuming power from its CPP at Sukeli plant with effect from 15.02.2014 till 31.03.2014. Subsequently, vide various letters the appellant sought the setting off of the unadjusted wind energy units of its Vile Bhagad plant for the FY 2013-14 against the energy bills of its Sukeli plant. The said request of the appellant was rejected by the MSEDCL vide letter dated 07.06.2014.

5. It is, in these circumstances that the appellant approached the Commission by way of petition No.129/2014 seeking following reliefs: -

> *"(a) Direct Respondent No. 1 to allow the unadjusted units of the Vile Bhagad plant in the Energy Bills of the Sukeli plant to the extent of 46,43,684 units;*

(b) Direct Respondent No. 1 to amend the Open Access permission for the FY 2014-15 being effective from April 1, 2014 and in consonance with current regulatory regime;

(c) Direct Respondent No. 1 to issue Credit Notes for wind units injected w.e.f April 1, 2014 immediately.

(d) Award costs of these proceedings against the Respondent and in favour of the Petitioner; and

(e) Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case."

6. The petition has been dismissed by the Commission vide impugned order.

7. We have heard the learned counsels appearing for the parties and have gone through the impugned order. We have also perused the written submissions filed by the learned counsels.

8. The reasons which persuaded the Commission to reject the appellant's petition are found in Paragraph No.18 of the impugned order which is quoted hereinbelow: -

"18. A conjoint reading of these definitions shows that there is a one-to-one relation between a Distribution Licensee and the premises of a consumer, i.e. every consumer premises is an independent entity for the supply of electricity and other supply-related matters. In this background, the Commission notes that the EA, 2003 distinguishes, in the usage of these terms, between a 'person' on the one hand, and a 'consumer' and 'premises' on the other. Thus, while MSL is a person owning the two Industrial Plants as well as the CPP, the two Plants are otherwise distinct and separate consumers and premises, the one at Sukeli bearing Consumer No. 37279017847 and the other at Vile Bhagad being Consumer No. 38749024850. These two separate consumer connections for two different premises have their own independent technical parameters for MSEDCL. Moreover, the OA permissions are also distinct and separate permissions for supply from a particular generation point to a particular consumer and premises. Hence, the Commission does not find any merit in MSL's claim for adjustment of unabsorbed consumption of its Vile Bhagad

Plant against that of the Sukeli Plant, notwithstanding the common ownership of these Plants as well as the CPP by the same 'person'. The Commission also finds no merit in MSEDCL's claim that it has no jurisdiction to entertain this matter: in the Commission's view, the banking adjustment issue as between its two Industrial Plants raised by MSL is not a merely a billing dispute qua MSL as a consumer of MSEDCL, and is not covered by the term 'grievance' under the Commission's CGRF and Electricity Ombudsman Regulations, 2006."

9. It was vehemently argued on behalf of the appellant that the Commission has completely ignored the fact that the 2nd respondent had compelled the appellant to change the user of CPP power from Sukeli plant to Vile Bhagad erroneously on the ground that sourcing from multiple generators was not permissible which was in clear violation of the order dated 22.04.2015 passed by this Tribunal in Appeal No.169/2014 titled Green Energy Association v. MERC and Anr. It is submitted that denial of OA permission to appellant for use of power from JSW plant at Sukeli on the ground that it was already getting CPP power was not only contrary to the above noted order of this Tribunal in Appeal No.169/2014 but also contrary

to OA Regulations, 2005. It is further submitted that since both the industrial units situated at Sukeli and Vile Bhagad belong to the appellant, denial of adjustment of wind energy units from Vile Bhagad plant against the energy bills of Sukeli plant is totally unjustified and cannot be sustained. It is submitted that no loss or prejudice would be caused to MSEDCL in case such adjustment is permitted.

10. On the other hand, the learned counsels appearing for the respondents entirely supported the impugned order saying that the same is in consonance with the provisions of the Electricity Act, 2003, as well as OA Regulations, 2005 and no infirmity can be found in the same. It is also argued that the appellant cannot take benefit of judgment of this Tribunal in Appeal No.169/2014 for the reason that the appellant in that appeal namely Green Energy Association had approached the Commission specifically challenging the denial of open access permission to it whereas the appellant in the instant case did not challenge the denial of OA permission by MSEDCL to receive power from JSW plant at its Sukeli plant before the Commission.

11. We note that initially the appellant was granted open access permission for consuming power from its captive power plant at its Sukeli industrial unit. Subsequently, when the appellant sought OA permission to

avail power from JSW plant at its Sukeli unit, the 2nd respondent MSEDCL raised objection to the effect that such permission cannot be granted for the reason that sourcing from multiple generators was not permissible. Case of the appellant is that upon insistence of MSEDCL, it had to change drawl point of CPP power from Sukeli to Vile Bhagad in order to source power from JSW under open access at its Sukeli unit. It is true that under the OA Regulation, 2005 and in view of judgment dated 22.04.2015 of this Tribunal in appeal No.169/2014, OA permission cannot be denied on the ground that power is sought to be sourced from multiple generators. However, it was for the appellant to assail the denial by MSEDCL of OA permission to it for sourcing power from JSW at its Sukeli plant in addition to the power supplied from CPP, before the Commission. The appellant did not do so and instead it accepted the denial of MSEDCL without any demur and proceeded to change the drawl point of CPP power form Sukeli unit to Vile Bhagad unit. Considering the said conduct of the appellant, it cannot be permitted to find fault with such denial on the part of the MSEDCL now during these proceedings.

12. We are unable to find any fault in the finding of the Commission that while the appellant company Maharashtra Seamless Limited is a person as defined under Section 2(51) of the Electricity Act, 2003, owning the two

industrial units at Sukeli and Vile Bhagad as well as the captive power plant, yet the two industrial units are distinct and separate consumers within the definition of the term “consumer” in Section 2(15) of the Electricity Act, 2003 bearing consumer Nos.37279017847 and 38749024850 respectively. Manifestly, the two industrial units are situated at two different places and have two separate consumer connections. Further, the two industrial units had been consuming electricity from captive power plant of the appellant in pursuance the two separate OA permissions granted by 2nd respondent MSEDCL and for different time periods. Therefore, the Commission has rightly rejected the claim of the appellant for adjustment of unabsorbed wind energy units of its Vile Bhagad plant against the energy bills of its Sukeli unit.

13. The other claim of the appellant before the Commission was that even though it had applied for OA permission for consuming CPP power at its Sukeli Unit from 01.04.2014, MSEDCL granted such permission with effect from 13.06.2014 i.e. dated when appellant installed special electricity meters (SEM) at the said unit, and therefore, it is entitled to credit notes for the wind power units injected with effect from 01.04.2014. We find that this claim of the appellant has also been rightly rejected by the Commission in view of regulation 7.1 of OA Regulations 2005 which require electricity connector to install every meter in accordance with the regulations. The Commission has

clarified in its order dated 03.01.2023 passed in case Nos.8,18, 20, and 33 of 2012 that installation of SEMs is mandatory under OA Regulations, 2005 and all third-party sale as well as self-use consumption under open access shall have to install SEMs at generation as well as at consumption end. Commission had also vide said order directed all the wind turbine generators and open access consumers to install SEMs by them at wind energy and consumption end within a time period of six months from the date of issuance of that order.

14. Thus, the submission made on behalf of the appellant that installation of SEM was not mandatory and would not affect the open access runs in the teeth of the above noted OA Regulations, 2005 as well as the order dated 13.01.2013 of the Commission. We do not find any force in further submissions made on behalf of the appellant that OA permissions had been given to several wind power consumers have continued despite them not having installed SEMs before 03.07.2013. It is for the reason that the statement is absolutely vague and omnibus. The appellant has nowhere given the particulars of those wind power consumers who had been granted OA permissions without ensuring that they had installed SEMs.

15. Having regard to the above discussions on the rival submissions made on behalf of the parties, we do not find any ground to interfere with the impugned order of the Commission. The appeal is found to be devoid of any merit and is accordingly dismissed.

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

(Virender Bhat)	(Sandesh Kumar Sharma)
Judicial Member	Technical Member (Electricity)

√
REPORTABLE / ~~NON-REPORTABLE~~

tp