

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:25th Nov, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

APPEAL NO.216 OF 2014

In the Matter of:

Municipal Corporation of Greater Mumbai
Brihanmumbai Electric Supply and
Transport Undertaking (of the Municipal Corporation
Of Greater Mumbai (i.e BEST)
BEST Bhawan,
BEST Marg, Post Box No.192,
Colaba, Mumbai-400 001

..... Appellant

Versus

- 1. Tata Power Company Limited (TPC)**
Bombay House,
24, Homi Mody Street,
Fort, Mumbai-400 001
- 2. Maharashtra Electricity Regulatory Commission**
(MERC)
World Trade Centre, Centre No.1,
13th Floor, Cufee Parade,
Mumbai-400 005

...Respondent(s)

Counsel for the Appellant(s) : Mr. Shanti Bhushan, Sr Adv
Mr. Harvinder Toor
Mr. Ganesh Kamath
Mr. Tavinder Sidhu
Mr. Kartik Seth

Mr. R Dubal
Mr. R D Patsute for BEST

Counsel for the Respondent(s): Mr. C S Vaidyanathan, Sr. Adv.
Mr. Ramji Srinivasan, Sr Adv.
Ms. Poonam Verma
Mr. Abhishek Munot
Mr. Akshat Jain for R-1

Mr. Parag Tripathy, Sr. adv.
Mr. Jayant Bhushan, Sr Adv.
Mr. Buddy A Ranganadhan
Mr. S Venkatesh for R-2
Mr. Anuj P Agarwal
Mr. Kunal Kaul
Ms. Poonam Verma
Mr. Amit Kapur
Mr. Dhruv Chopra

J U D G M E N T

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

1. BEST (Brihanmumbai Electric Supply and Transport Undertaking (of the Municipal Corporation of Greater Mumbai), is the Appellant herein.
2. Aggrieved by the Order passed by the Maharashtra State Commission dated 14.8.2014 in case No.90 of 2014

granting licence to the Tata Power Company Limited on the Application filed by the Tata Power, the present Appeal has been filed by the Appellant.

3. The short facts are as follows:

(i) The Appellant/Municipal Corporation of Greater Mumbai, is a local authority under the Constitution of India. The Municipal Corporation of Greater Mumbai has an undertaking known as the Brihanmumbai Electric Supply and Transport Undertaking (of the Municipal Corporation of Greater Mumbai), namely BEST.

(ii) The BEST being a statutory undertaking of Municipal Corporation of Greater Mumbai is also encompassed by the definition of a “local authority” under Section 2(41) of the Electricity, Act, 2003.

(iii) BEST is a municipal utility which has been providing two essential services in the city of Mumbai, namely, (i) mass public transportation in the city of Mumbai as well as its extended suburbs, and (ii) distribution of electricity in the Island City of Mumbai.

(iv) The BEST was earlier a “licensee” under the erstwhile Indian Electricity Act. It is currently a licensee under the present Electricity Act, 2003. BEST under the Maharashtra Electricity Regulatory Commission (Specific conditions of Distribution Licence applicable to Brihanmumbai Electric Supply & Transport Undertaking of the Municipal Corporation of Greater Mumbai) Regulations, 2007 is authorised and required to distribute or supply electricity in the area of supply specified therein namely the city of Mumbai.

(v) The Tata Power Company Limited is the First Respondent.

(vi) It was earlier a licensee/bulk licensee under the Electricity Act, 1903 and 1910. Under these Acts, it was licensed to supply electricity in various areas under four licences including the area of supply of BEST.

(vii) In the past, Tata Power Company was basically a “bulk licensee” under the erstwhile Act, 1903 and 1910. As such, the Tata Power used to supply electricity in bulk to the bulk electricity consumers in the specific areas.

(viii) In the year 2002, disputes arose between the Tata Power and Reliance Infrastructure Limited about the initiation of supply of electricity in retail by the Tata Power in the area of supply being suburban Mumbai of Reliance Infrastructure Limited. Ultimately, this dispute culminated in the Hon'ble Supreme Court judgment dated 8.7.2008 wherein it is held that the Tata Power under its said four licences was authorised to distribute electricity in retail directly to consumers including those whose maximum demand is less than 1000 kVA, apart from its entitlement to supply electricity to other licensees.

(ix) In the year 2009, the dispute arose between the Tata Power and BEST before the State Commission about the legal authority or right of supply of electricity in retail by the Tata Power in the area of supply of BEST i.e. Island city of Mumbai.

(x) In case No.60 and Batch of 2009, the Maharashtra State Commission on 22.2.2010 passed the order stating that the Tata Power is bound to supply electricity to all the consumers in its licensed area of supply including the consumers who

wish to change from BEST to Tata Power in the BEST area.

(xi) Against this Order dated 22.2.2010, the BEST filed an Appeal in Appeal No.149 of 2010 before this Tribunal. This Tribunal by the judgment dated 14.2.2011 held that the Maharashtra Commission's order dated 22.2.2010 is valid and justified and accordingly, the Appeal filed by the BEST was dismissed.

(xii) Against this judgment, the BEST filed the Appeal before Hon'ble Supreme Court in CA No.2458 of 2011.

(xiii) After hearing both the parties, the Hon'ble Supreme Court remanded the matter back to this Tribunal with a request to hear the parties again and decide the matter afresh on the issue of jurisdiction as well as on merits.

(xiv) Accordingly the Appeal No.149 of 2010 was restored. Ultimately, this Tribunal after hearing the parties on 4.4.2012 gave a judgment holding that the State Commission has got the jurisdiction to issue such directions and confirmed the order of the State

Commission dated 22.2.2010. Thus, the Tribunal dismissed the Appeal filed by the BEST.

(xv) Again this judgment dated 4.4.2012 was challenged by BEST in Hon'ble Supreme Court in Civil Appeal No.4223 of 2012 by the BEST on the main ground that the Maharashtra Commission acted without jurisdiction as no licensee including the Tata Power can supply electricity in the area of supply of BEST as a local authority.

(xvi) The Hon'ble Supreme Court admitted this Appeal and directed the parties to maintain the status-quo till the final disposal of the said Appeal.

(xvii) At this stage, the State Commission issued invitation for "expression of interest" for licence for distribution of electricity in Mumbai city and part of the suburbs Mumbai city where Tata Power is presently authorised to supply electricity on 1.1.2014 by publishing the same in various Newspapers. This invitation for "expression of interest" for distributing electricity was necessitated since the licence granted to the Tata Power would expire on 14.8.2014.

(xviii) In pursuance of the public notice, the BEST filed Case No.37 of 2014 on 31.1.2014 opposing the grant of distribution licence to any person where BEST is supplying electricity.

(xix) On 31.1.2014, the Tata Power submitted its “expression of Interest” to the State Commission expressing its continued interest in supplying electricity in Mumbai and suburbs of Mumbai.

(xx) On 7.4.2014, the Tata Power filed its licence application before the State Commission in case No.90 of 2014. The Tata Power also filed a reply in case No.37 of 2014 filed by the BEST challenging the maintainability of the Petition opposing the grant of licence.

(xxi) At this state when these matters were pending before the State Commission, the Hon’ble Supreme Court by the Order dated 8.5.2014 dismissed the Appeal filed by the BEST holding that the TATA power was a deemed licensee until 15th August, 2014. In the said order it was held that the Tata Power could supply electricity to any consumer in the area common to BEST and Tata Power by Tata Power laying out its own distribution network

and without availing of the distribution network of BEST.

(xxii) Thereupon on 9.5.2014, notice was issued by Tata Power inviting suggestions and objections on the Tata Power application in case No.90 of 2014 for grant of distribution licence.

(xxiii) The BEST on 7.7.2014 filed its objections to the licence application of Tata Power on various grounds.

(xxiv) Then the State Commission heard the parties in case No.37 of 2014 filed by the BEST and reserved the matter for judgment on 10.7.2014.

(xxv) Similarly on 10.7.2014 in case No.90 of 2014, the parties were heard.

(xxvi) On 14.8.2014, the State Commission passed the Impugned Order in case No.90 of 2014 filed by the Tata Power by which the Distribution licence was granted to Tata Power to supply electricity in the entire area of supply proposed by the Tata Power for a period of 25 years from 16.8.2014. On the same date, the State

Commission passed an order in case No.37 of 2014 filed by the BEST dismissing the said Petition.

(xxvii) Being aggrieved over the Impugned Order dated 14.8.2014 passed by the State Commission in case No.90 of 2014 filed by Tata Power granting distribution licence has filed the present Appeal in Appeal No.216 for 2014 challenging and seeking to set aside the Impugned Order dated 14.8.2014 in case No.90 of 2014 granting licence to Tata Power in the entire area of supply of Tata Power including the area of supply of BEST.

4. The learned Senior Counsel appearing for the Appellant made the following submissions challenging the Impugned Order dated 14.8.2014 in the Petition filed by the Tata Power:

(a) The Appellant is a Local Authority and that No Distribution Licence can be granted to any other entity in the area of Distribution of the Appellant.

(b) The grant of Distribution Licence is not in accordance with the mandate of the judgment of this Tribunal in appeal No.7 of 2011 in the case of Noida

Power Company Limited vs Paschimanchal Vidyut Vitran Nigam Limited.

(c) The Impugned Order is against the mandate of Section 14, 6th Proviso of the Electricity Act, 2003 as the Distribution Network is required to be created first before the Licence is granted.

(d) Alternatively to argument (c) above the Distribution Licence can only be operationalised once the new Licensee has developed the network for the entire area.

(e) The Licence could not have been granted by the Respondent Commission, as the previous performance of TPC was inadequate.

(f) Respondent Commission has erred in holding that Network Roll Out can be prescribed as a subsequent specific condition and the same has to be approved before the grant of Licence.

(g) Impugned Order was passed in contravention to the previous orders passed by the Respondent Commission.

(h) The Respondent Commission ought to have rejected the Application of TPC, as the Power Purchase Plan of TPC was inadequate.

5. In reply to the above submissions, the learned Senior Counsel Mr. Parag Tripathi and Mr. Janyant Bhushan, appearing for the Commission have elaborately argued by giving the reply to each of the points and submitted that the Impugned Order is perfectly justified and it does not suffer from any infirmity.
6. The learned Senior Counsel appearing for the Tata Power also in justification of the Impugned Order has elaborately made submissions in line with the two Senior Counsels appearing for the State Commission.
7. Apart from the other points, the learned Senior Counsel for the Tata Power questioned the "Maintainability of the Appeal" on the ground that the BEST is not an aggrieved person and therefore, the Appeal filed by the party who has failed to demonstrate that it is a person aggrieved, is not maintainable.
8. In the light of the rival contentions, we have to consider the question **whether the Appeal is filed by the persons aggrieved so that it is maintainable and even assuming that the Appellant is a person aggrieved, whether the**

Impugned Order would suffer from any infirmity on the points raised by the Appellant in this Appeal?

9. At the threshold, it has to be mentioned that the argument of the learned Senior Counsel for the Appellant that the grant of distribution licence in favour of the Tata Power is not in accordance with the ratio decided by the judgment of this Tribunal in Appeal No.7 of 2010 in the case of Noida Power Company Limited Vs Paschimachal Vidyut Vikas Nigam Limited is misplaced.
10. According to the Appellant, the direction to roll out the network in the phased manner is contrary to the judgment of this Tribunal in Appeal No.7 of 2010. The Appellant has placed heavy reliance on the judgment in Para 26 of the judgment. The same is reproduced as below:

“26. In terms of provisions of the Act and the second licence Rules, there cannot be a phased development of the distribution network in the case of the second licence. The applicant for the second licence should establish the capital adequacy and creditworthiness to meet service obligation for the entire area under Section 43 first in the manner mentioned above before this second licence is made effective. Otherwise, the purpose of granting second licence, to provide level playing field and competition to the existing licensee in the interest of the consumer will never be achieved. In this context, the relevant

provisions of the National Electricity Policy, 2005 is relevant.....

27. The reading of the above clause would make it clear that the Applicant for the second licence should not be allowed to resort to cherry picking few areas and it shall have the obligation of supply to all consumers in accordance with the provisions of Section 43 of the 2003 Act....”

11. The reliance is placed on the above paragraph, would not support the Appellant for the following reasons:

(a) The judgment of this Tribunal in Noida Power case does not at any point stipulate that the entire network of the second licensee over its distribution area must be laid to be eligible for grant of licence.

(b) The judgment of this Tribunal mandates that the Applicant for the second licensee must prove its credit worthiness and capital adequacy for the entire area of supply and the same cannot be judged for a phased development of network.

(c) Therefore, the judgment prohibits the issuance of a second licence without proving its credit worthiness and capital adequacy to cover for the network only for a part of the area of supply.

12. On the basis of these findings the ratio has been decided by this Tribunal as against the grant of licence. But in the present case, the Tata Power in fact has proved its credit worthiness and capital adequacy as held by the State Commission.
13. Therefore, there is no merit in the contention of the Appellant that the Noida Power Company case would apply to the present Appeal.
14. Hence, this submission does not merit consideration.
15. In regard to the other grounds relating to the claim made by the Appellant that it is a local authority and that no distribution licence can be granted to any other entity in the area of distribution of the Appellant and other allied points, we feel that it would be appropriate to consider in the other Appeal filed by the BEST in Appeal No.243 of 2014 seeking to set aside the Impugned Order dated 14.8.2014 passed by the State Commission in case No.37 of 2014 filed by the BEST.
16. Almost all the points relating to the grant of licence have been raised in Appeal No.243 of 2014 by the BEST as against the rejection of the prayer made by the BEST in case No.37 of 2014.

17. Furthermore, the points regarding non compliance of the directions issued earlier would stand in the way of granting licence to the Tata Power despite the objections raised by the Reliance, have been raised by the Reliance in their Appeal as against the same Impugned Order in Appeal No.201 of 2014.
18. In other words, these grounds have been raised by the Reliance in its Appeal as against the grant of licence in respect of the common areas of Reliance and Tatas in Appeal No.201 of 2014 in which the portion of the Impugned Order has been stayed by this Tribunal. Therefore, all these points relating to the roll out plan be submitted to the Tata Power either after or later to the grant of distribution licence to the Tata Power would be elaborately considered in other Appeal filed by the Reliance which is pending before this Tribunal.
19. Similarly in respect of the area supply relating to the BEST, the grant of licence is being objected to by the BEST on the ground that it is a local authority.
20. As indicated above that very same grounds have been raised in Appeal No.243 of 2014 filed by the BEST as against the order dated 14.8.2014 in case No.37 of 2014.

21. Therefore, the aspects relating to the objections to the grant of licence in respect of the portion of the area of supply of the BEST as well as the aspect relating to the common area of supply of Tata Power are the subject matter of other Appeals in Appeal No.243 of 2014 filed by the BEST and Appeal No.201 of 2014 filed by the Reliance.
22. It is strenuously contended by the State Commission that Hon'ble Supreme Court already has considered this aspect relating to the right of the local authority to object to the grant of licence to any other person and decided as against the BEST, the Appellant in the judgment by Civil Appeal No.4233 of 2012 dated 8.5.2014.
23. If this contention of the State Commission is now accepted in this Appeal, it would amount to give a finding on this aspect which will have a bearing and impact on the other Appeal pending in Appeal No.243 of 2014 filed by BEST.
24. Therefore, it will be better to allow the parties the BEST and the State Commission as well as the Tata Power to raise the points in Appeal No.243 of 2014 and in that Appeal this Tribunal will decide as to the applicability of the judgment of the Hon'ble Supreme Court rendered on 8.5.2014 to the present case.

25. Therefore, we do not propose to go into details and to give any finding on this aspect.
26. But, most important point which has been raised by the Tata Power is to the maintainability of the Appeal. According to Tata Power, the BEST is not an aggrieved person and as such this Appeal by the BEST, who is not aggrieved, cannot be entertained.
27. This point deserves consideration in depth.
28. As indicated above, in the year 2009, a dispute arose between the Tata Power and the BEST relating to aspect of local authority or the right of supply of electricity in retail by the Tata Power in the area of supply of BEST. This has led to the initiation of the proceedings in case No.60 batch of 2009.
29. On 22.2.2010, the State Commission passed the Order holding that the Tata Power is bound to supply the electricity to all the consumers in its licence area of supply including the consumers who wish to change from BEST to Tata Power in the area of supply of BEST.
30. Against this order, the BEST filed an Appeal in Appeal No.149 of 2010 before this Tribunal. This Tribunal by the judgment dated 14.2.2011, dismissed the said Appeal.

However, in the Appeal filed by the Appellant before the Hon'ble Supreme Court by the Order dated 21.10.2011, the Hon'ble Supreme Court remanded the matter back to the Tribunal to hear the parties again and decide the matter afresh and decide the matter including jurisdiction issue.

31. Accordingly, this Tribunal heard the parties again and restored the Appeal No.149 of 2010 and ultimately held in the judgment dated 4.4.2012 that the State Commission's Impugned Order dated 22.2.2010 is valid and accordingly dismissed the Appeal filed by the BEST. Against this judgment, the Appellant filed the Appeal again in the Hon'ble Supreme Court. This Appeal had been admitted and parties were directed to maintain the status-quo.
32. In this context, it is to be pointed out that the earlier licence granted to Tata Power would expire on 14.8.2014. Therefore, at this stage, the State Commission issued invitation for "expression of interest" on 1.1.2014 for the distribution of electricity both in Mumbai city and suburbs Mumbai city.
33. After receipt of invitation, the Appellant filed case No.37 of 2014 on 30.1.2014 challenging the grant of distribution licence to any other person where the BEST is supplying electricity. Case No.37 of 2014 was entertained. The

maintainability of the Petition was challenged by the Tata Power.

34. On 7.4.2014, the Tata Power filed its licence application in case No.90 of 2014. During the pendency of the proceedings in case No.37 of 2014 as well as the public hearing for grant of licence filed by the Tata Power, the Hon'ble Supreme Court which earlier entertained the Appeal filed by the BEST dismissed the Appeal on 8.5.2014 confirming the judgment of this Tribunal.
35. Thereupon, both the Applications i.e. 37 of 2014 filed by BEST and 90 of 2014 filed by Tata Power were heard on separate dates.
36. On 14.8.2014, the State Commission passed the Impugned Order granting Distribution licence to the Tata Power in case No.90 of 2014 and on the same date, i.e. on 14.8.2014, the State Commission passed a separate order in case No.37 of 2014 filed by the BEST rejecting the claim made by the Appellant as a local authority.
37. Immediately after the order was passed on 14.8.2014, the Reliance filed an Appeal in Appeal No.201 of 2014 before this Tribunal which was admitted by this Tribunal on 20.8.2014 and limited stay was granted.

38. Earlier, as mentioned above, immediately after the issuance of the invitation for “expression of interest” for the distribution of electricity in the Mumbai City and other area on 1.1.2014, the BEST filed a case No.37 of 2014 on 30.1.2014 challenging to the grant of distribution licence to any person where the BEST is supplying electricity thereby challenging the invitation for “expression of interest”.
39. This Petition in No.37 of 2014 was rejected by the State Commission on 14.8.2014.
40. As indicated above 37 of 2014 relating to the area of supply of BEST was filed on 30.1.2014. But case No.90 was filed by Tata Power requesting for grant of licence was on 7.4.2014. This application was allowed by the State Commission on 14.8.2014.
41. Thus, it is clear that the BEST in advance filed objections petition before the State Commission for granting licence to any other person in the area of supply of Appellant even before the Application has been filed by the Tata Power for grant of licence on 7.4.2014.
42. Even though the Appellant in advance filed the objection to the invitation for Expression of Interest, the Appellant has not chosen to file the Appeal as against the order in case

No.37 of 2014 filed by the BEST in respect of its exclusive area.

43. On the other hand, the Appellant has filed this Appeal in Appal No.216 of 2014 on 3.9.2014 as against the Order in case No.90 of 2014. Till then, the Appellant had not chosen to file the Appeal as against the order in case No.37 of 2014 which was filed by the Appellant.
44. When the matter came up for hearing, we raised the query to the learned Senior Counsel for the Appellant as to why they have not chosen to file the Appeal as against the order in case No.37 of 2014 filed by them which order directly affects the BEST. Then, it was represented by the Appellant that they have also proposed to file the Appeal as against the order passed in case No.37 of 2014.
45. At this stage, it was pointed out by the Respondent that the BEST has actually proposed not to file the Appeal as against the Order in case No.37 of 2014 because the issue in case No.37 of 2014 has already been decided by the Hon'ble Supreme Court.
46. But rejecting this reply, the learned Senior Counsel for the Appellant submitted that they would file the Appeal in due course of time in case No.37 of 2014 as well.

47. Strangely, it is noticed that the Appellant has mentioned in this Appeal No.216 of 2014 that they have already filed the Appeal before this Tribunal as against the Order in case No.37 of 2014 before this Tribunal and the same is pending.
48. This is factually incorrect. However, we did not want to hear this aspect since it was represented that the Appeal would be filed as against the Order 37 of 2014 soon.
49. When the IA in this Appeal has been heard for some time relating to the Interim Order, the Appellant filed the Appeal in Appeal No.243 of 2014 as against the Order in Case No.37 of 2014 and the same was admitted on 30th October, 2014 when the Appeal proceedings in case No.216 of 2014 were pending.
50. It is to be pointed out that there is no reason as to why the Appeal No.243 of 2014 as against the case No.37 of 2014 has been filed belatedly. Equally, there is no explanation as to why the Appellant has stated in the present Appeal that they have already presented the Appeal as against the order in case No.37 of 2014 in the Appeal. Be that as it may.
51. Now, the learned Senior Counsel appearing for the Commission as well as the Tata Power as indicated above, has represented that the Appellant had taken a conscious

decision not to file the Appeal as against the order in case No.37 of 2014 since the finding given by the Hon'ble Supreme Court is as against their claims as referred to in case No.37 of 2014.

52. However, as mentioned earlier, we do not want to analyse this aspect in this Appeal since liberty has been given to the parities to raise this aspect in the other Appeal in Appeal No.243 of 2014 as against the Order in case No.37 of 2014.
53. Now let us come to the question of the "Maintainability of the Appeal".
54. The case No.90 of 2014 was filed by the Tata Power praying for grant of licence for the whole area including the area of the BEST namely Mumbai city as well as including the suburbs of Mumbai. This area covers area of Tata Power and Reliance which is a common area of supply as well as the city of Mumbai the supply area of BEST.
55. Even before this application filed by the Tata Power for grant of licence, the BEST filed Application in case No.37 of 2014 challenging the invitation for "expression of interest" contending that nobody including Tata Power can be allowed to be a distribution licensee as far as the area of supply of the Appellant is concerned.

56. Thus, the subject matter of the area of supply is only in case No.37 of 2014 filed by the Appellant but the area of supply referred to in case no.90 of 2014 is a comprehensive area of supply.
57. Now, this Appeal has been filed only against the order passed by the State Commission granting a licence in the Application filed by the Tata Power in case No.90 of 2014 relating to entire comprehensive area.
58. The Reliance also, as indicated above has challenged this order in case No.90 of 2014 in so far as common area of supply is concerned. The Reliance rightly has not objected to the other area of supply other than the common area of supply.
59. Similarly, the question would arise whether the BEST could object to the grant of licence in respect of the other area of supply which is common area of supply relatable to the Reliance and Tata Power. On that basis, the maintainability question has been raised by the Tata Power contending that the BEST cannot question the grant of licence to whole of the area including the area which is not the area of supply of the BEST.
60. In view of the above, we have to consider the question as to whether the BEST could be considered to be aggrieved

party in respect of the order passed in case No.90 of 2014 on 14.8.2014.

61. There cannot be any dispute in the Appeal filed by the Appellant in case No.243 of 2014 filed as against the order dated in case No.37 of 2014 dated 14.8.2014, the Appellant has to be construed to be aggrieved since the prayer of the Appellant claiming that no other party except the local authority can be granted distribution licence in respect of his area of supply has been rejected. But this would not be applicable to other area of supply.
62. The learned Counsel for the Tata Power has cited various decisions with regard to the guidelines to be taken into consideration in order to find out a person as to whether he is aggrieved or not? Those decisions are as follows:
- (a) Grid Corporation of Orissa Ltd v Gajendra Haldia and Ors reported as (2008) 13 SCC 414 (Para 5)
 - (b) BSES Rajdhani Power Ltd Vs Delhi Electricity Regualtory Commission & Ors reported as 2010 ELR (APTEL) 0404
 - (c) Bharat Jhunjhunwala Vs Uttar Pradesh Electricity Regualtory Commission order dated 20.12.2012 in IA

No.392,393, 394 and 399 of 2012 in DFR No.1844 of 2012 passed by this Tribunal on 20.12.2012;

(d) Pushpendra Surana Vs Central Electricity Regualtory Commission and Ors reported as 2014 ELR (APTEL) 820;

(e) Gujarat Electricity Regualtory Commission V Century Rayon reported as (2013) ELR (APTEL) 786;

(f) GRIDCO Limited v Jindal Stainless Limited reported as 2009 ELR (APTEL) 459;

63. It is to pointed out by the Tata Power that in the present Appeal, the BEST has failed to establish that it has:

(a) Suffered a legal grievance or legal injury or has been wrongly deprived of something or wrongfully refused him something or wrongly affected his title to something by the grant of distribution licence to Tata Power.

(b) Been prejudicially or adversely affected by the grant of distribution licence to Tata Power.

(c) Suffered a legal grievance which has wrongly deprived him of something or wrongfully refused him something or wrongly affected his title to something.

(d) The words “person aggrieved’ does not mean that a man who is merely disappointed of a benefit which he may have received if some other order had been passed. A person aggrieved means a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongly deprived him of something or wrongfully refused him something or wrongly affected his title to something.

64. If these guidelines as referred to in the various judgments of this Tribunal and Hon’ble Supreme Court are to be followed, the Appellant cannot be construed to be a person aggrieved in respect of grant of licence to the areas other than the area of supply of the BEST.
65. As mentioned above, the BEST may be a person aggrieved in Appeal No.243 of 2014 in respect of the area of supply of BEST exclusively.
66. In view of the above, we hold that this Appeal is not maintainable as the Appellant cannot be a person aggrieved in respect of grant of licence to the other area of supply.
67. As mentioned above, in respect of the area of supply of BEST, already Appeal is pending in this Tribunal in Appeal No.243 of 2014 so all the points related to the merits, may

be considered in this Appeal as we feel that this Appeal relating to the comprehensive area of supply is not maintainable since the Appellant in the present Appeal cannot be construed to be a person aggrieved who has not satisfied the ingredients of the term "Aggrieved".

68. Sum-Up

(a) This Appeal No.216 of 2017 is not maintainable as the Appellant cannot be a person aggrieved in respect of grant of license to other area of supply. As regards the area of supply of BEST, the points raised to the merits will be considered in Appeal No.243 of 2014 pending before this Tribunal.

(b) Findings of this Tribunal in Appeal No.7 of 2010 in Noida Power case will not be applicable to the present case as Tata Power, in this case has met the conditions for credit worthiness and capital adequacy for the entire area of supply.

69. In view of the above findings, we hold that this Appeal is not maintainable. Consequently, this Appeal is dismissed. However, there is no order as to costs.

70. Pronounced in the Open Court on this 25th day of November, 2014.

(Rakesh Nath)
Technical Member
Dated: 25th Nov, 2014

(Justice M. Karpaga Vinayagam)
Chairperson

√REPORTABLE/~~NON-REPORTABLE~~