

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Dated:4<sup>th</sup> Sept, 2014**

**Present:**

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

**IA NO.314 OF 2014**  
**IN**  
**APPEAL NO.201 OF 2014**  
**AND**  
**IA NO.316 OF 2014**

**M/s. Reliance Infrastructure Limited (Distribution)**  
**1<sup>st</sup> Floor,**  
**Dhirubhai Ambani Knowledge City,**  
**Navi Mumbai-400 710**

**... Appellant/Applicant**

**Versus**

- 1. The Maharashtra Electricity Commission**  
**No.1, 13<sup>th</sup> Floor,**  
**Cuffe Parade,**  
**Colaba, Mumbai-400 001**
- 2. Tata Power Company Limitd,**  
**Bombay House,**  
**24, Homi Mody Street,**  
**Mumbai-400 001**

**.....Respondent(s)**

**Counsel for the Appellant(s) : Mr. Kapil Sibal, Sr. Adv.  
Mr. J.J. Bhatt, Sr. Adv.  
Ms. Anjali Chandurkar  
Mr. Hasan Murtaza  
Mr. Salim Imandar  
Mr. Aditya Panda**

**Counsel for the Respondent(s) : Mr. Parag Tripathi, Sr. Adv.  
Mr. Jayant Bhushan, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. R. Venkatesh for R.1  
Mr. Ramji Srinivasan, Sr. Adv.  
Mr. Amit Kapur  
Ms. Poonam Verma  
Mr. Abhishek Munot  
Mr. Kunal Kaul  
Ms. Prerna for R.2  
Mr. Dhruv Chopra**

## **ORDER**

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

1. This is an Application in IA No.314 of 2014 filed by the Appellant praying for the grant of stay of a portion of the Impugned order dated 14.8.2014 passed by the Maharashtra State Commission in case No.90 of 2014

during the pendency of the Appeal in Appeal No.201 of 2014.

2. The Reliance Infrastructure Limited (Distribution Licensee) has filed this Appeal No.201 of 2014 challenging the part of the Impugned Order dated 14.8.2014 by which the Distribution License was granted to the Tata Power Company Limited with a permission to the Tata Power Company for using the network laid down by the Reliance Company.
3. The Appellant, at this stage is mainly aggrieved by the part of the Impugned Order revoking the earlier restriction and permitting the Tata Power Company for the unfettered use of the Appellant's network without any restrictions to supply its power whom so ever it choose. Hence, the Appellant has filed this Interim Application for the limited Interim Relief of Interim stay of the permission or direction given to Tata Power for using the Network of the Reliance Company without any conditions.
4. The short facts as narrated in this Application are as follows:
  - (a) The Reliance Infrastructure Limited (the Appellant) is the Distribution Company. The Tata Power Company, the 2<sup>nd</sup> Respondent is the Generator of electricity.

(b) Reliance, the Appellant was given a Distribution licence to distribute electricity in suburban Mumbai in the year 1926.

(c) The Tata Power Company (R-2) which generated 2077 MW of electricity within the State of Maharashtra was also given the distribution licence to distribute electricity in the city as well as in suburban of Mumbai right from 1907. This licence was to expire on 15<sup>th</sup> August, 2014.

(d) The Tata Power Company out of its generation supplied electricity in bulk to BEST and the Appellant who were the other Distribution Licensees. They, in turn, supplied electricity to the retail consumers within their respective licensed areas. The Tata Power Company supplied only to bulk consumers and chose not to develop complete infrastructure for distribution of electricity in retail and fulfil their Universal Service Obligations for supply of electricity on demand.

(e) As a matter of fact, the other Distribution Licensees like the Appellant and the BEST developed their respective infrastructure in complete fulfilment of their respective Universal Service Obligation.

(f) However, the Tata Power Company started selectively laying its network to directly supply to various high end consumers. The Appellant objected to the action of Tata Power Company and initiated proceedings before the State Commission contending that the Tata Power had no licence to supply in retail in suburban Mumbai and had only a licence to supply in bulk.

(g) Ultimately, the proceedings were taken up to the Hon'ble Supreme Court and it culminated in judgment in Civil Appeal No.2898 of 2006 which is reported in 2008 (10) SCC 321. In that judgment dated 8.7.2008, the Hon'ble Supreme Court held that Tata Power Ltd was entitled on the strength of its licence to distribute electricity in retail in suburban Mumbai also and the Distribution Licensee who was yet to install their distribution system to supply electricity directly to retail consumers, could make such a supply by using the network of the other Distribution Licensee subject to the payment of surcharge in addition to the charges for wheeling.

(h) Accordingly, the Tata Power Company which had not laid its network in the entire licensed area, filed a Petition in case No.50 of 2009 for giving appropriate

direction to other Distribution Licensee namely Reliance in the light of the judgment of Hon'ble Supreme Court and for deciding the terms and conditions for use of other Distribution Licensee's network.

(i) In these proceedings, the Appellant Reliance gave the consent for permitting the use of Reliance Network by the Tata Power to supply electricity to the consumers of Reliance using the Distribution System of the Reliance. Accordingly, the State commission passed the Order on 15.10.2009. This Order was accepted and acted upon by both the parties.

(j) Sometimes later, the Reliance felt that the Tata Power had been misusing the said order dated 15.10.2009 by cherry picking high end subsidizing consumers of Reliance and laying selective network. Hence, the Reliance Company filed a Petition in case No.151 of 2011 for appropriate directions to the Tata Power on the ground that the Reliance was being left with low end consumers and Tata Power was taking away only high end consumers thereby destroying the competition, level playing field, etc.

(k) Endorsing those defects on the part of the Tata Power and acknowledging the difficulties experienced by the Reliance, the State Commission passed the Order dated 22.8.2012 in case No.151 of 2011 imposing various restrictions on Tata Power for using the network of Reliance.

(l) Though this Order was acted upon by both the parties, the Tata Power filed an Appeal against the said Order dated 22.8.2012 in Appeal No.246 of 2012 before the Tribunal. Similarly, the Appellant also filed the Appeal in Appeal No.229 of 2012 against the said order in this Tribunal. However, the restrictions imposed by the State Commission in case No.151 of 2011 have not been stayed during the pendency of these Appeals.

(m) At that stage, the State Commission initiated suo-motu proceedings in case No.85 of 2013 to review the progress of the Tata Power network laying activity in order to find out whether the conditional order in case No.151 of 2011 dated 22.8.2012 has been complied with by the Tata Power.

(n) Ultimately, in this case i.e. in case No.85 of 2013, the State Commission passed the order on 30.10.2013 holding that the Tata Power has defaulted

in achieving the targets set-up by the State Commission in laying network in the specified areas and however, it directed that the consumers of Reliance consuming the electricity below 300 units numbering about 7.92 lacs should be transferred to Tata Power on the Reliance network as direct consumers of Tata Power forthwith. In this Order, the State Commission however, observed that the other restrictions imposed on Tata Power in case No.151 of 2011 were to be continued.

(o) As against this Order, the Reliance, the Appellant filed the Appeal No.278 of 2013. This Tribunal after admitting the Appeal passed the Interim Order dated 29.11.2013, postponing the implementation of the directions given in the Order dated 30.10.2013 in case No.85 of 2013 and as such, the implementation of the directions issued in the said order has remained in abeyance since then.

(p) In the meantime, the Tata Power on being aggrieved by certain observations in the Order dated 30.10.2013 in case No.85 of 2013 filed the Appeal in Appeal No.36 of 2014. Thus, both the Appeals being the Appeal No.278 of 2013 filed by the Appellant and

Appeal No.36 of 2014 filed by the Tata Power are still pending before this Tribunal.

(q) At this stage, on noticing that the licence of the Tata Power to supply electricity was to come to an end on 15<sup>th</sup> August, 2014, the State Commission issued notice on 1.1.2014 inviting the Expression of Interest for the grant of licence for distribution of electricity in the area of supply. In pursuance of this notice, the Tata Power made an application for the grant of licence in the area of supply before the State Commission.

(r) Thereupon, public notice was issued inviting comments on the Tata Power's application for grant of Distribution Licence.

(s) The Appellant filed objections along with others for grant of licence in favour of the Tata Power raising various grounds. Public hearing was held on 10.7.2014. Written Submissions were filed on 16.7.2014 by the Appellant. Ultimately, the State Commission passed the Impugned Order dated 14.8.2014 granting a fresh licence to the Tata Power. While granting such licence to Tata Power, the State Commission in addition, directed the Appellant to permit the Tata Power to use its network to comply

with the Tata Power's Universal Service Obligations on the basis of the said licence granted in favour of Tata Power.

(t) Aggrieved by the Order dated 14.8.2014 whereby permitting the Tata Power for the unfettered use of the Appellant's network without any restrictions on the strength of the fresh licence, the Appellant has filed this Appeal in Appeal No.201 of 2014 assailing both the grant of license in favour of Tata Power as well as the permission granted to Tata Power to use the network of Reliance.

5. During the pendency of this Appeal, this Interim Application has been filed seeking for Interim Relief. Though in the Interim Application in IA No.314 of 2013 the prayer has been made seeking for grant of the stay of the Operation of the Impugned Order in entirety, now the Appellant/Applicant has confined itself with the limited Interim prayer at this stage for stay of the operation of the portion of the directions given in para 7.1.7 (d) of the Impugned Order alone, by which Tata Power was permitted to use the network of the Appellant by revoking all the restrictions and conditions imposed in case No.151 of 2011.
6. In view of the limited Interim prayer seeking for a direction for grant of stay in respect of a portion of the directions given

in the Para 7.1.7 (d) we are only concerned with the following question:

**“Whether such a partial stay could be granted in favour of the Applicant/Appellant pending disposal of the main Appeal in Appeal No.201 of 2014?”**

7. It is interesting to note that the Appellant has engaged two very eminent Senior Counsel to argue this Application seeking for the limited Interim Relief.
8. Both the learned Senior Counsel Mr. Kapil Sibal as well as Mr. J J Bhatt in their inimitable style have argued the matter elaborately praying for the limited interim relief seeking for the stay of the only portion of the direction given in Para 7.1.7 (d) of the Impugned Order.
9. Both the learned Senior Counsel have made the following submissions:
  - (a) By virtue of the Impugned Order dated 14.8.2014, the restrictions and conditions imposed in case No.151 of 2011 on Tata Power have been revoked. The purpose of putting those conditions or restrictions was to create a level playing field by equalising the number of low end consumers connected by Tata Power at par with Reliance so that

Tata Power does not have undue advantage over the Reliance who is saddled with a large number of low end consumers connected to its network. If those conditions or restrictions are removed or revoked, the very purpose of the State Commission to bring a convergence in per capita consumption in each licensee's network would never get achieved.

(b) The State Commission in the Order dated 30.10.2013 in case No.85 of 2013 in the suo-motu proceedings has specifically held that Tata Power has continued to flout the directions of the State Commission but in spite of the said conclusion, the State Commission directed the consumers of the Reliance consuming below 300 units consumption should be transferred overnight to Tata Power on the Reliance network as direct consumers. However, in the said order, the State Commission allowed the other conditions and restrictions imposed on Tata Power in case No.151/2011 to be continued. This order has been challenged in Appeal No.278 of 2013 filed by the Appellant. In this Appeal, the Tribunal passed the Interim Order on 29.11.2013 postponing the implementation of all the directions in the Order dated 30.10.2013 except the directions imposing restriction in case No.151 of 2011 which were allowed

to be continued by the order of the State Commission dated 30.10.2013 in case No.85 of 2013. Hence, the directions given in the Impugned Order revoking the said directions in case No.151 of 2011 that too in the absence of any reason is patently illegal.

(c) The Appellant is not seeking for the stay of the operation of the entire order granting the license in favour of Tata Power. The Appellant is only seeking the stay of the operation with reference to the portion of direction that the Reliance shall permit the Tata Power to use its network without any conditions whatsoever by revoking the restriction imposed earlier in case No.151 of 2011. If the stay is not granted in respect of the directions given in Para 7.1.7 (d), this would deprive the Reliance to collect the Cross Subsidy Surcharge and Regulatory asset charge. The removal of the restrictions as referred to in Para 7.1.7 (d), would result in complete and unfettered freedom given to Tata Power to selectively cherry pick high end consumers of Reliance to directly connect to Tata Power by selectively laying net work and leave the Reliance with the low end consumers. Further, this direction would completely render the Appeal No.246 of 2012 filed by Tata Power and 229 of 2012 filed by Reliance which are pending in this Tribunal nugatory.

On the other hand, if Para 7.1.7 (d) is stayed, the existing situation would continue so that Tata Power will have the licence subject to the restrictions imposed in case No.151 of 2011 in the Order dated 22.8.2012 which will achieve the level playing field. If the said directions are stayed, there cannot be any disadvantage to the Tata Power but on the other hand, there would be huge disadvantage to the Appellant, if the Impugned directions are not stayed.

(d) The order passed in case No.151 of 2011 was aimed at achieving the level playing field and spirit of competition. If the order is not stayed, the Reliance would be driven out of business and the object of Act, 2003 would be negated. Having found that the rollout plan submitted by the Tata Power is inadequate and not in compliance with the earlier directions, the State Commission has wrongly given complete freedom to Tata Power to do as it chooses. This is clearly illegal.

(e) If the stay of the operation of the portion of the direction is granted, it would not affect the consumer's choice and it would in no way conclude the Appeal No.246 of 2011 and Appeal No.229 of 2012 and it would be on the prima facie basis on a consideration of balance of convenience. On the other hand, if stay

is refused, it would conclude the Appeal No.246 of 2012 and 229 of 2012 in which the restriction imposed in 151 of 2011 are the subject matter of challenge.

10. On these grounds, both the learned Senior Counsel had exhaustively and elaborately argued at length and prayed for the limited interim relief as referred to above.
11. In order to meet the arguments of the above two learned Senior Counsel appearing for Reliance, the State Commission also engaged two Senior Counsel of equal eminence namely Mr. Parag Tripathi and Jayant Bhushan. They also have argued at length with equal vehemence opposing the stay Application.
12. In addition to the said two Senior Counsel, Mr. Buddy A Ranganadhan who is already on record as a Counsel for the State Commission has also effectively argued in defending the Impugned portion of the Order and prayed for the dismissal of the Application for the Interim Stay.
13. The crux of the arguments of the two learned Senior Counsel as well as learned Counsel on record on behalf of the State Commission is as follows:
  - (a) The Interim prayer sought for as referred to in the Interim Application by the Appellant transcends beyond the prayer sought in the main Appeal itself

and hence it cannot be granted. The Appellant in IA sought the stay of the Impugned Order thereby meaning that the licence granted to Tata Power should be stayed in its entirety. But in the main Appeal, the Appellant has not challenged the grant of licence to the Tata Power but has only assailed a portion of the Order permitting the Tata Power to supply to the consumers through the network of the Appellant. Therefore, the stay on the licence of the Tata Power is beyond the scope of the present Appeal.

(b) The reinstatement of the restrictions imposed in the earlier order could not be done at the initial stage as it would amount to Appeal being allowed at the interim stage itself. Further, the apprehension of the Appellant is also misplaced as no blanket permission has been given by the State Commission to Tata Power to utilise the network of the Appellant. In fact, it has been directed that the Tata Power has to operate its business in accordance with Section 43 of the Act and in accordance with all the applicable laws, regulations, rules and policies etc.,

(c) The impugned directions have been given only after taking into consideration of the Hon'ble Supreme

Court's order as well as the various orders passed by the Tribunal on the issue of use of network of one licensee by second licensee till network is established by second licensee. Therefore, there is nothing wrong in the Impugned directions given in Para 7.1.7 (d) .

(d) Further the restrictions imposed in case No.151 of 2011 were not in perpetuity. In fact, the State Commission in case No.85 of 2013 observed that it would review the restrictions on Tata Power at the time of grant of licence. Accordingly in the present case, it was reviewed and those restrictions were revoked. Therefore, the Interim relief sought for by the Appellant in the absence of prima facie case, balance of convenience and the apprehension of loss may not be granted in favour of the Appellant.

14. On these grounds, both the learned Senior Counsel as well as the learned Counsel on record appearing for the State Commission have defended the Impugned part of the Impugned Order.
15. Although the Applicant/Appellant as well as the State Commission have engaged two eminent Senior Counsel respectively, the Tata Power has chosen to engage only one Senior Counsel namely Mr. Ramji Srinivasan to argue in

support of the Impugned directions for opposing the Interim Relief.

16. Mr. Ramji Srinivasan, the learned Senior Counsel also made elaborate and effective arguments with equal vehemence defending the Impugned directions in line with the arguments made by the two Senior Counsel as well as learned Counsel on record on behalf of the State Commission.

17. The gist of the arguments made by the Senior Counsel Mr. Ramji Srinivasan is as follows:

(a) The Appellant has not made out a case for grant of mandatory injunction;

(b) Mandatory injunction can be granted only in exceptional cases. The present case does not qualify as an exceptional case.

(c) Granting mandatory injunction would amount to re-writing the licence as also granting final relief in the present Appeal.

(d) Granting mandatory injunction will interfere in the functioning of the State Commission to evaluate the supplemental rollout plan to be

submitted by Tata Power within six weeks in terms of the Interim Order.

(e) Granting mandatory injunction will amount to interference in the Appeal proceedings in Appeal No.246 of 2012 and 36 of 2014 filed by the Tata Power which are pending adjudication before this Tribunal.

18. On these grounds, the limited interim relief is sought to be opposed by the Tata Power as well.
19. In the light of the above rival submissions which were made vehemently and strenuously before this Tribunal, we are called upon to consider the question as to whether there is any case made out for granting the limited Interim Relief sought for by the Appellant in the present Application during the pendency of this Appeal.
20. We have heard the learned Senior Counsel for both sides and have given our anxious consideration to their respective contentions which were exhaustively and forcefully urged.
21. At the outset, it shall be observed as indicated above that though in the Interim Application in IA 314 of 2014, the Applicant sought for grant of stay of the Impugned Order dated 14.8.2014 in case No.90 of 2014 in entirety, both the learned Senior Counsel confined themselves with the limited

prayer praying for a stay of the operation of the direction of Para 7.1.7 (d) of the Impugned Order alone and they are not seeking for the stay of the operation of the Impugned Order granting licence in favour of the Tata Power.

22. In the light of the said limited prayer, we shall now discuss the relevant aspects in the matter.
23. Let us first, refer to the directions in the Impugned Order revoking the restrictions against which, the stay is sought for which is given below:

**“Para 7.1.7**

***(d) Any direction issued by the Commission restricting TPC’s network expansion and supply to identified categories, consumers or areas in the earlier license are hereby revoked.”***

24. There is no dispute in the fact that by way of the above directions, the State Commission revoked its earlier order imposing restrictions or conditions in case No.151 of 2011. It is pointed out that above said restrictions is imposed on the parties in case No.151 of 2011 in order to create a level playing field between Tata Power and Reliance so that Tata Power does not have the undue advantage over the Reliance which is connected with large number of low end consumers with their network. In the impugned order, the State Commission itself observed that some developments

have taken place due to network development of the Tata Power in the recent past because of restrictions imposed in case No.151 of 2011 and case No.85 of 2013 in which the directions were issued to Tata Power to expand its network in the 11 identified clusters as well as to increase the residential consumers consuming below 300 units average monthly consumption. This would show that the State Commission itself felt that some improvement have been made in network development of the Tata Power only due to the restrictions imposed on Tata Powers in the earlier orders.

25. The State Commission in the Impugned Order has referred to the following network developments by Tata Power:

*“(i) In the last 5 years, TPC has added on an average 173 ckt km of HT cable per annum;*

*(ii) In the last 5 years, TPC has added on an average 152 ckt km of LT cable per annum. However, in FY 2013-14 alone TPC has added 336 ckt km of LT cable, which is the maximum LT cable addition by TPC in the last 5 years.*

*(iii) In the last 5 years, TPC has added on an average three 33/11 kv DSS per annum. However, in FY 2013-14 alone TPC has added six DSS, which is the maximum DSS addition by TPC in the last 5 years.*

*(iv) In the last 5 years, TPC has added on an average sixty six CSS per annum. However, in FY 2013-14 alone TPC has added total eighty five CSS,*

*which is the maximum CSS addition by TPC in the last 5 years.*

*(v) As regards change over consumers, TPC added an average of 66,269 consumers every year in the last 5 years. As regards 0-300 unit changeover consumers, TPC added an average of 51,755 consumers every year in the last 5 years. There is a sharp increase in the number of such consumers added in FY 2013-14, i.e. 111,152 consumers.*

*Much of this acceleration and development may be attributed to the Commission's Order in case No.151 of 2011 and Case No.85 of 2013 directing TPC to expand its network in the 11 identified clusters as well as to increase the number of residential consumers and restrict the addition of changeover consumers only to residential consumers with 0-300 units average monthly consumption."*

26. The underlined observations of the State Commission would make it evident that the State Commission was conscious of the fact that these developments referred to in Para (i) to (v) were mainly due to the conditions and restrictions imposed in case No.151 of 2011 and case No.85 of 2013 by giving suitable directions to the Tata Power.

27. In addition to the above observation, the State Commission has specifically held that though the Tata Power has made some progress in laying its network, it is not satisfactory enough and purported reasons of constraints in laying network given by Tata Power cannot be accepted.

28. Despite the above conclusions and observations, the State Commission has thought it fit to remove all restrictions by revocation of the earlier orders passed in case No.151 of 2011 and case No. 85 of 2013.
29. As indicated above, the State Commission concluded that because of these restrictions, there are some developments in the network system of the Tata Power. The State Commission also held that the network development so far made by the Tata Power is not satisfactory enough. When such was the finding and conclusion by the State Commission, then what was the necessity for the State Commission to remove all restrictions imposed on Tata Power through earlier orders? There is no clear answer in the Impugned Order.
30. As a matter of facts, we have repeatedly asked this question to both the learned Senior Counsel appearing for the State Commission as well as the learned Senior Counsel for Tata Power as to whether any reasons have been given by the State Commission for the removal of those restrictions or any circumstances shown which constrained the State Commission to allow the Tata Power to use the network of Reliance by revoking the earlier restrictions imposed by the State Commission.

31. Unfortunately, the learned Senior Counsel for the Respondent parties are unable to point out any reasons whatsoever in the Impugned Order which necessitated the State Commission to pass such a direction given in Para 7.1.7 (d) of the Impugned Order removing those restrictions.
32. On the other hand, three learned Senior Counsel appearing for the Respondent parties, pointed out various reasons given by the State Commission for the grant of the licence in favour of the Tata Power but admittedly, they failed to point out any reason referred to in the Impugned Order with reference to the necessity for revocation of the earlier conditions imposed in case No.151 of 2011 and case No.85 of 2013.
33. As indicated above, the learned Senior Counsel for the Tata Power as well as the learned Senior Counsel appearing for the State Commission made exhaustive arguments by pointing out the various reasons which have been given for the grant of licence for opposing the prayer for limited interim relief sought for by the Appellant. How could those reasons would be applicable to the limited Interim prayer now sought for by the Appellant?
34. We are unable to appreciate the submission made on behalf of the Respondent parties as at this stage we are not going into the validity of those reasons for grant of licence in

favour of the Tata Power but we are concerned only with the question as to whether the reasons for the removal of the restrictions have been referred to in the Impugned Order.

35. Hence, we wanted the learned Senior Counsel appearing for the Tata Power as well as the learned Senior Counsel appearing for the State Commission to point out any reason for revoking those conditions imposed by the State Commission in the earlier order. But, we are not able to get the direct answer from them as indicated earlier.
36. In the light of the above fact situation and in the absence of any reason whatsoever for giving a direction in Para 7.1.7 (d) revoking the earlier conditions, we are to decide the issue with reference to the limited interim relief sought for by the Appellant/Applicant seeking for stay for the portion of the directions alone given in the Impugned Order.
37. On behalf of both the Respondents, it was argued that this interim prayer which is limited is beyond the scope of the main prayer made in the Appeal.
38. They submitted that at any rate, during the pendency of the Appeal, the mandatory injunction which is the main prayer in the Appeal could not be granted at the Interim stage.
39. We are not impressed with these submissions.

40. As a matter of fact, the prayer in the interim application would relate to the stay of the Impugned Order in entirety in line with the main prayer made in the Appeal. But, when the matter was taken up for arguments in the Interim Application, both the learned Senior Counsel appearing for the Appellant would submit that they confined themselves with a limited prayer of the stay of the operation of the directions given in Para 7.1.7 (d) by which the Tata Power was permitted to use the network of the Appellant without any conditions.
41. As mentioned above, the Appellant is not seeking for the stay of the grant of the licence to the Tata Power at this stage. This prayer for grant of limited interim relief with reference to the directions given in Para 7.1.7 (d) could not be construed to be mandatory injunction.
42. Similarly, it cannot be contended that the prayer for stay of the Para 7.1.7 (d) could be construed to be the prayer for relief which is beyond the scope of the main Appeal. The prayer now sought by the Applicant is limited to interim relief which is connected with the portion of the main prayer.
43. This aspect could be viewed from yet another angle as well.
44. Let us now reiterate the directions given in Para 7.1.7 (d):

**“Para 7.1.7**

***(d) Any direction issued by the Commission restricting TPC’s network expansion and supply to***

***identified categories, consumers or areas in the earlier license are hereby revoked.”***

45. By these directions given in the Impugned Order, the State Commission revoked all the restriction imposed in the earlier orders by the State Commission in case No.151 of 2011 and case No.85 of 2013.
46. As indicated earlier, the order in case No.151 of 2011 would make it clear that various restrictions were imposed on the Tata Power in order to create a level playing field for Reliance and Tata Power. These conditions were imposed in the Petition filed by the Reliance in case No.151 of 2011 before the State Commission seeking for suitable directions, since the Reliance claimed that it was being left with low end consumers and Tata Power was taking away only high end consumers thereby completely destroying competition, level playing field and consumer's choice.
47. On the basis of the prayer and the materials furnished by the Reliance in the said Petition, the State Commission made some observations as against the Tata Power and imposed restrictions on Tata Power while it was using the network of Reliance in order to avert cherry picking and ensure level playing field between the two licensees.
48. Let us now refer to those conditions or restrictions imposed by the State Commission in the Impugned Order dated

22.8.2012 in case No.151 of 2011. Those conditions are as follows:

*“(i) Changeover was allowed only for consumers in 0-300 units residential category on R/Infra’s network. All consumers other than 0-300 units residential category not permitted. This was allowed in all clusters.*

*(ii) Switchover (i.e., on TPC’s own network) was allowed only for consumers in 0-300 units residential category on R/Infra’s network. All consumers other than 0-300 units residential category not permitted. This was allowed in selected clusters (i.e., 11 out of 20 clusters).*

*(iii) Direct consumers (i.e., New Consumers) were allowed to be connected in respect of all categories on TPC’s network in all clusters”.*

49. As mentioned earlier, though both the parties filed the Appeal as against the Order in case No.151 of 2011 in Appeal No.246 of 2012 and Appeal No.229 of 2012 respectively, both of them acted upon, the said order since there was no stay in the Appeal proceedings.

50. Even in the suo-motu Order in case No.85 of 2013 passed on 30.10.2013, the State Commission came to the conclusion that the Tata Power had not complied with the directions of the State Commission but even then, it directed that large number of low end consumers of Reliance consuming below 300 units be transferred to Tata Power on the Reliance network as direct consumers. However, in this

order, it was directed that other conditions or restrictions imposed in case No.151 of 2011 were to be continued.

51. Against this order passed on 30.10.2013, the Appellant has filed the Appeal in Appeal No.278 of 2013. In this Appeal, this Tribunal by the order dated 29.11.2013 directed the implementation of all the directions in the Order dated 30.10.2013 in case No.85 of 2013 to be postponed as such, the directions given in the case No.85 of 2013 have not been given effect to. However, the directions given in case No.151 of 2011 had been allowed to be continued.

52. When we raised the query to the State Commission as to why the restrictions imposed in case No. 151 of 2011 were revoked, it was submitted on behalf of the State Commission that the State Commission in the Order dated 30.10.2013 in case No.85 of 2013 observed that the restriction imposed in the earlier orders would be reviewed at the time of grant of Distribution license in 2014 and that in pursuance of that order, the earlier restrictions were reviewed and revoked by the State Commission. This explanation cannot be accepted for two reasons:

(a) The State Commission in case No.85 of 2013 dated 30.10.2013 stated that the restrictions could be reviewed at the time of grant of distribution licence in 2014. If it is so, the State Commission

should have considered the question as to whether the valid ground has been made out for review of the said restriction. As indicated above, no circumstances have been shown in the Impugned Order necessitating for the review of those restrictions nor any reasons given for revocation of those directions in the Impugned Order.

(b) The issue with regard to the conditions imposed in case No.151 of 2011 is pending before this Tribunal in Appeal No.229 for 2012 and 246 of 2012 filed by both the parties respectively. Similarly, the issue of the conditions imposed in 85 of 2013 are also pending in Appeals in 278 of 2013 and Appeal No.36 of 2014 before this Tribunal filed by both the parties. When those issues relating to the restrictions imposed earlier, are pending in the Tribunal in the Appeals in which the State Commission was a party, there is no reason as to why the State Commission has rushed to revoke these restrictions imposed in case No.151 of 2014 which has been reiterated in case No.85 of 2013 that too without reasons and that too without the clearance of those issues relating to those restrictions through the disposal of the Appeals by this Tribunal.

53. It is contended by the Appellant that because of the order of revocation of the restriction passed by the State Commission, the Appeals filed by the parties as against the condition imposed in case No.151 of 2011, Appeals No.229 of 2012 and Appeal No.246 of 2012 have been made in fruituous. We find force in the submissions made by the Appellant.
54. The State Commission ought to have approached the Tribunal in these Appeals to seek the permission for passing such orders with reference to the conditions imposed in case No.151 of 2011 or at least to seek for clarification over the issue.
55. Admittedly, this has not been done. In addition, as mentioned earlier, no reasons have been given in the reply filed by the State Commission before this Tribunal in this Application for this blatant failure on the part of the State Commission.
56. There is one more sad feature we noticed.
57. As mentioned above, the State Commission while passing the orders in case No.85 of 2013 dated 30.10.2013, the State Commission observed that the earlier directions given by the State Commission would be reviewed at the time of grant of licence to the Distribution Licensee.

58. As pointed out by the learned Senior Counsel for the Appellant, the Tribunal in Appeal No.278 of 2013 passed the Interim Orders postponing the implementation of the orders passed in case No.85 of 2013 by the Order dated 29.11.2013 in Appeal No.278 of 2013 as under:

*“We have heard the learned senior counsel for the parties.*

*In view of the urgency in the matter, we deem it appropriate to fix an early date for final disposal of the Appeal.*

*The learned senior counsel appearing for Tata Power Company Limited is directed to file the reply on or before 06.12.2013 after serving copy on the other side. Thereafter, Rejoinder, if any, be filed by the Appellant after serving copy on the other side.*

*As agreed by the learned counsel for the parties, post the matter for final disposal on 16<sup>th</sup> & 17<sup>th</sup> December, 2013. In the meantime, implementation of the directions given in Para No.35 (a) to (h) is postponed. With these observations, the IANo.377 of 2013 is disposed of”.*

59. The above order has got the force of stay of the operation of the order passed under Paragraphs 35 (a) to (h) in Case No.85 of 2013. However, the direction under Paragraph (i) of the Order dated 29.11.2013 regarding continuation of all

other directions given by the State Commission in the order dated 22.8.2012 in case No.151 of 2011 was not stayed in the Appeals filed by both the parties. When that being the case, the State Commission ought not to have revoked the earlier directions in case No.151 of 2011 as referred to in case No.85 of 2013 when the above interim Order dated 29.11.2013 passed by this Tribunal in Appeal No.278 of 2013 was in force.

60. As a matter of fact, the directions given in the case No.151 of 2011 were allowed to be continued in case No.85 of 2013. When the issue with reference to the conditions in case No.151 of 2011 is pending in various Appeals and the order passed by the Tribunal postponing the implementation of the directions given in the Order in case No.85 of 2013 was in force, the State Commission ought not to have revoked the said directions as referred to in Para 7.1.7 (d).
61. Thus, we feel that there is a prima facie case made out by the Appellant to grant the limited interim relief.
62. As mentioned above, the very purpose of putting restrictions was to create a level playing field. Even in the Impugned Order, the State Commission was not fully satisfied with the network development as claimed by the Tata Power. If that is the case, there is no situation which would be a compelling necessity for the State Commission to revoke the

earlier directions especially when the State Commission in the Impugned Order was not fully satisfied with the network development. Since the network development was not found to be satisfactory, the State Commission was constrained to direct the Tata Power to come with a rollout plan for the proposed area of supply within six weeks. When such a direction has been issued, the State Commission ought to have waited till the roll out plan is submitted before the State Commission on the basis of which the State Commission could have come to the conclusion with reference to the network developments. Unfortunately, this was not done.

63. Therefore, the balance of convenience is in favour of the Appellant.

64. As pointed out by both the learned Senior Counsel appearing for the Appellant, if the limited interim relief is granted, it will not conclude Appeal No.246 of 2011 and 229 of 2011 as the interim relief would be on a prima facie basis on the circumstances of balance of convenience and that on the other hand, if the interim relief is refused, it would conclude Appeal No.246 of 2012 and 229 of 2012 and resultantly, it will make the Appeal in fruituous.

65. Apart from the prima facie case as well as the balance of convenience, it is also to be pointed out that if limited stay is

not granted, the Reliance would suffer a loss because of the fact that there is a possibility of Tata Power to connect with high end consumers of the Reliance directly through Tata Power laid net work.

66. In these circumstances we feel it appropriate to grant interim relief by grant of stay of the Impugned portion of the Order in Para 7.1.7 (d). Accordingly the said direction contained in Para 7.1.7 (d) is stayed, pending disposal of this Appeal.
67. The findings and observations made in this order are only confined to the issue of grant of limited interim relief. The parties are at liberty to raise all the connected issues at the time of final disposal of the Appeal.
68. In view of the serious objections raised by the Respondents through the eminent Senior Counsel to the grant of Interim Relief, we deem it appropriate to have the main Appeal disposed of by fixing an earlier date.
69. Accordingly, the main Appeal in Appeal No.201 of 2014 is posted for final hearing for disposal on **10<sup>th</sup> Oct, 2014 at 12.30 PM.** In the meantime, the pleadings be completed.

70. With these observations, the Application is allowed.

**(Rakesh Nath )**

**Technical Member**

Dated:4<sup>th</sup> Sept, 2014

**(Justice M. Karpaga Vinayagam)**

**Chairperson**

√REPORTABLE/~~NON-REPORTABLE~~