

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA No.92 OF 2014 IN APPEAL No.243 OF 2012

AND

IA No.97 OF 2014 IN APPEAL No.243 OF 2012

Dated:25th April, 2014

Present:

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

IA No.92 OF 2014 IN APPEAL No.243 of 2012

In the Matter of:

Industrial Area Manufacturers Association

Applicant/Intervener

Versus

- 1. Uttar Pradesh Electricity Regulatory Commission
Vibhuti Khand, Kisan Mandi Bhawan,
Gopmti Nagar,
Lucknow-226 010
Uttar Pradesh**

- 2. Uttar Pradesh Power Corporation Limited
Shakti Bhawan Extension
14, Ashok Marg,
Lucknow-226 001
Uttar Pradesh**

- 3. Paschimal Vidyut Vitran Nigam Limited
Urja Bhawan, Victoria Park,
Meerut-250 001
Uttar Pradesh**

...Respondent(s)

Counsel for the Appellant(s) : Ms. Pyoli

Counsel for the Respondent(s): Mr. Sanjay Singh for R-1
Mr. Amit Kapur
Mr. Vishal Anand
Mr. Gaurav Dedeja
Mr. Pradeep Misra for R-2 & R-3

IA No.97 OF 2014 IN APPEAL No.243 OF 2012

In the Matter of:

**Association of Steel Rolling Mills & Furnaces
10/A, Industrial Estate, Meerut Road,
Muzfar Nagar, 251 003**

**Association of Secondary Steel Manufacturers,
C/232, B.S Road Industrial Area,
Ghaziabad-201 001
Uttar Pradesh**

**Shri Rama Shankar Awasthi
301, Surabhi Delux Apartment
6/7, Dali Bagh,
Lucknow-226 001
Uttar Pradesh**

**M/s. Star Papers Mills Ltd.,
Paper Mill road,
Saharanpur-247 001
Uttar Pradesh**

.....Applicant(s)

Versus

**Uttar Pradesh Electricity Regulatory Commission
Vibhuti Khand, Kisan Mandi Bhawan,
Gopmti Nagar,
Lucknow-226 010**

Uttar Pradesh

**Uttar Pradesh Power Corporation Limited
Shakti Bhawan Extension
14, Ashok Marg,
Lucknow-226 001
Uttar Pradesh**

**Paschimal Vidyut Vitran Nigam Limited
Urja Bhawan, Victoria Park,
Meerut-250 001
Uttar Pradesh**

...Respondent(s)

Counsel for the Appellant(s) : Ms. Swapna Seshadri
Mr. Anand K Ganesan

Counsel for the Respondent(s): Mr. Sanjay Singh for R-1
Mr. Amit Kapur
Mr. Vishal Anand
Mr. Gaurav Dedeja
Mr. Pradeep Misra for R-2 & R-3

ORDER

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

1. The Applications in IA No.92 of 2014 and IA No.97 of 2014 have been filed by the Applicants who were the Appellants and Interveners in Appeal No.243 of 2012, seeking for a clarification of the final judgment dated 28.11.2013 rendered

by this Tribunal to the effect that the Interim Order passed by this Tribunal on 26.11.2012 in the Appeal holding that the Tariff Order dated 19.10.2012 would come into effect from 1.11.2012 instead of from 1.10.2012 has merged with the final judgment dated 28.11.2013 in the Appeal.

2. The short facts are as under:

(a) In the Petition filed by the Respondent (Distribution Licensee) praying for fixing the Annual Revenue Requirement and the Tariff for the Year 2010-11, 2011-12 and 2012-13, the State Commission passed the Tariff Order on 19.10.2012 giving effect to the Order retrospectively from 1.10.2012.

(b) Challenging this Order, the Association of Steel Rolling Mills and Furnaces and Others, the Appellants have filed the Batch of Appeals in Appeal No.243 of 2012 etc raising various issues. Along with the Appeal, the Appellants filed the Interim Applications seeking for the stay of the operation of the Impugned Order dated 19.10.2012.

(c) After hearing the learned Counsel for the parties, this Tribunal, in those Interim Applications, passed the interim order dated 26.11.2012 instead of granting stay

of the Operation of the Impugned Order in entirety, directed that pending disposal of the Appeals, the Impugned Order dated 19.10.2012 would come into effect from 1.11.2012 prospectively as per Regulations 139 of Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 instead of from 1.10.2012 as ordered by the State Commission in the Impugned Order by giving retrospective effect.

(d) After hearing the parties in the final disposal of the Appeal, this Tribunal rendered final judgment dated 28.11.2013 disposing of the above Appeal as well as other batches of the Appeals by partly allowing the Appeals after considering the merits of the various issues and giving various directions to the State Commission.

(e) Even though in the Interim Order dated 26.11.2012, this Tribunal specifically directed that the Impugned Order dated 19.10.2012 passed by the State Commission would come into effect from 1.11.2012, as per Regulations, the final judgment dated 28.11.2013 did not mention the date on which the said tariff order dated 19.10.2012 would come into effect.

(f) Although this Tribunal while deciding all the issues on merits did not mention about prospectivity of the Tariff Order, it did not disturb the findings contained in the interim directions issued through the Interim Order dated 26.11.2012 to the effect that the Tariff Order dated 19.10.2012 would take effect prospectively from 1.11.2012.

(g) Despite this, on 31.1.2014, the Uttar Pradesh Power Corporation Limited (R-2) issued an office Order making the tariff order dated 19.10.2012 applicable from 1.10.2012. Accordingly, the Respondent 2 issued communication to all Distribution Licensees asking them to levy and collect the electricity charges for the period from 1.10.2012 to 1.11.2012 as per the Impugned Order passed by the State Commission giving retrospective effect.

(h) Challenging this action taken by the Respondent, these Applications have been filed by the Appellants and Interveners in IA 92 and IA No.97 of 2014 in Appeal No.243 of 2012 seeking respectively for clarification to the effect that the Interim order passed by this Tribunal on 26.11.2012 giving effect to the

Impugned Order from 1.11.2012 has been merged with the final judgment dated 28.11.2013.

3. These Applications have been stoutly opposed by the R-2 and R-3 contending that these Applications were not maintainable because the Applicants have filed these Applications under the guise of clarifications virtually praying for Review of the Judgment dated 28.11.2013 which are barred by limitation that too when no ground was made out for Review.
4. So, in the light of the rival contentions urged by the parties, we have to analyse the following question:

“Whether the Interim order dated 26.11.2012 passed by this Tribunal pending disposal of the Appeal giving the prospective effect to the Impugned Order, has been merged with the final Judgment dated 28.11.2013 ?”

5. According to the Applicants, the State Commission had wrongly mentioned in its Tariff Order dated 19.10.2012 that the same shall come into effect from 1.10.2012 which is in contravention of Regulations, 139 of the Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 which prescribes that the Tariff Order

should be enforced only prospectively and when this was brought into notice of this Tribunal through the Applications for stay, this Tribunal directed through the Interim Order dated 26.11.2012 that the Impugned Order dated 19.10.2012 would become effective prospectively from 1.11.2012 as per Regulations, 139. This Interim Order giving prospective effect had merged with the final judgment dated 28.11.2013 and as such, the Distribution Licensee cannot now levy and collect electricity charges from 1.10.2012 to 1.11.2012 and as such, a clarification is required to be issued by this Tribunal.

6. On the other hand, the Respondent-2 and Respondent-3 vehemently opposed contending submit that the Applications for clarifications are not maintainable since the prayer would amount to seeking Review touching the merits of the matter.
7. The learned Counsel for the Respondents cited various decisions with regard to the law laid down relating to the prayer for the clarification over the Interim Order getting merged with the final order.
8. Let us refer to the ratio laid down by the authorities pronounced:

(a) (2003) 8 SCC 648 South Eastern Coalfields Ltd Vs State of MP and Others

The Principle of Restitution takes care of the contention raised by the consumers/purchasers. That principle has been statutorily recognised in Section 144 CPC, 1908. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it.

This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situation not strictly falling within the terms of Section 144 CPC.

(b) (2004) 12 SCC 713 Ram Chandra Singh Vs Savitri Devi and Others

13...It is now well settled than an application for clarification or modification touching the merit of the matter would not be maintainable.

14.If there exist errors apparent on the fact of the record, an application for review would be maintainable, but an application for clarification and/or modification cannot be entertained unless it is shown that the same is necessary in the interest of justice.

(c) (2009) 11 SCC 479 Prem Chandra Agarwal and Another Vs Uttar Pradesh Financial Corporation and Others

Once a final order is passed, all the earlier interim orders merge into the final order, the interim orders cease to exist.

(d) (2009) 3 SCC 250 State of West Bengal and Others Vs Banibrata Ghosh and Others

The Interim Order does not decide the fate of the parties to the litigation finally, it is always subject to and merges with the final order passed in the proceedings.

(e) (2010) 1 SCC 417 Amarjeet Singh and Others Vs Devi Ratan and Others

No person can suffer from the act of the Court and in case an interim order has been passed and the Petitioner takes advantage thereof and ultimately the Petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised.

9. Bearing these principles in mind, let us now go into the question framed above.
10. As narrated above in the facts, the State Commission passed the Tariff Order dated 19.10.2012 deciding the annual requirements and fixing the tariff for the FY 2010-11, 2011-12 and 2012-13 in the Petition filed by the Distribution Licensee (R-3). This order had been challenged on various

grounds in Appeal No.243 of 2012 and batch by the Applicants as well as other consumers. Along with the Appeal, the Appellants moved an Application for the Interim direction. In this Interim Applications, the Applicants prayed for the stay of the operation of the Impugned Order dated 19.10.2012. One of the issues raised in the Main Appeal as well as in the Interim Application is that the Tariff Order should not be given retrospective effect in the teeth of Regulation 139 of the UPERC (Conduct of Business) Regulation, 2004.

11. Regulation, 139 of the UPERC (Conduct of Business) Regulation, 2004 is quoted as below:

“139.

(1) The licensee or the Generating Company shall publish the tariff or tariffs approved by the Commission in at least two daily newspapers (one English and one Hindi) having circulation in the area of supply as provided in sub section (7) of Section 24 of the UP Reforms Act. The publication shall, besides other things as the Commission may require, include a general description of the tariff amendment and its effect on the Clauses of the Consumer.

(2) The tariffs so published under (1) above shall become the notified tariffs applicable in the area of supply and shall come into force after seven days from the last date of such publication of the tariffs, and shall be in force until any amendment to the tariff is

approved by the Commission and published. The Commission shall, within seven days of making the order, send a copy of the order to the State Government, the Authority, the concerned licensees and to the person concerned.”

12. So, these Regulations would clearly provide that the Tariff order would come into effect only prospectively that too after seven days from the last date of the publication of the Tariff.
13. But, in this case, the State Commission has given effect to the Order dated 19.10.2012 from 1.10.2012 itself retrospectively in violation of the Regulation. When this was brought to the notice through the Interim Application, we passed the Interim Order on 26.11.2012 directing that the Impugned Order dated 19.10.2012 would become effective only from 1.11.2012 prospectively as per Regulation 139 of the UPERC (Conduct of Business) Regulations, 2004 pending disposal of the Appeal. Accordingly, this Interim Order was acted upon by the parties.
14. Ultimately, the batch of the Appeals was taken up for final disposal and after hearing the learned Counsel for the parties, this Tribunal rendered final judgment dated 28.11.2013 disposing of this Appeal as well as other Batch of Appeals. This Tribunal had decided all the issues on merits. But, there was no reference about the aspect of

prospectivity as referred to in the Impugned Order. However, this Tribunal did not disturb the findings given in the Interim Order dated 26.11.2012 with reference to the prospectivity i.e. giving effect from 1.11.2012 in the final judgment dated 28.11.2013.

- 15.** So, on the basis of this, the consumers Applicants had bona fide proceeded on the above premise that the Interim order dated 26.11.2012 had merged with the final judgment dated 28.11.2013.
- 16.** At this stage, the Respondents decided to collect the charges for the period from 1.10.2012 to 1.11.2012 and sent the communication and the bills to the concerned consumers.
- 17.** On receipt of the communication, which has given rise to the cause of action, the Applicants have now approached through the present Applications seeking clarification contending that the Interim Order dated 26.11.2012 had merged with the final judgment dated 28.11.2013 and as such, the Respondents are not entitled to collect the charges retrospectively.
- 18.** These Applications are stoutly opposed by the Respondents through the detailed reply raising the objection that when

there is no reference about the prospectivity in the final judgment, this clarification Petition cannot be entertained in view of the fact that the prayer would amount to review of the judgment.

- 19.** It is true that there is no mention about the aspects of the prospectivity in the final judgment. But, the fact remains that this Tribunal while dealing with the Interim Applications, prima facie felt that the Impugned Order dated 19.10.2012 giving effect to the retrospectively, is virtually against 139 of the Regulations, 2004 and as such, the same has to be corrected.
- 20.** That was why we thought it fit to give the interim direction for giving a prospective effect to the Tariff Order though we are not inclined to grant the stay of the operation of the order in entirety.
- 21.** In the absence of any observation in the final judgment dated 28.11.2013 disturbing the Interim Order dated 26.11.2012, it is settled law that the Interim order dated 26.11.2012 modifying the Impugned Order giving the effect of the prospectivity from 1.11.2012 by correcting the illegality, gets merged with the final judgment.

- 22.** As pointed out by the Hon'ble Supreme Court in (2003) 8 SCC 648 in the case of South Eastern Coal Fields Ltd Vs State of MP and Others that wrong order should not be allowed to be perpetuated by keeping it alive and in exercise of the inherent powers, the order could be clarified with reference to the prospectivity.
- 23.** The Hon'ble Supreme Court has specifically held in the case of (2009) 11 SCC 479 in the case of Prem Chandra Agarwal and Another Vs Uttar Pradesh Financial Corporation and Others that "it is a well settled principle that once a final order is passed, all the earlier interim orders merge into the final order and the interim orders cease to exist".
- 24.** If this principle is applied to the present case, then it can be safely held that the Interim Order passed by this Tribunal dated 26.11.2012 by which the effect of prospectivity was given to the tariff order has merged with the final judgment dated 28.11.2013 in the absence of any disturbance to the findings.
- 25.** It cannot be disputed that the State Commission in the Impugned order dated 19.10.2012 has wrongly held that the Order shall come into effect from 1.10.2012 i.e. retrospectively and the same is in contravention of the Regulations, 139 of the UPERC (Conduct of Business)

Regulations, 2004. As per this Regulation, the Tariff Order shall come into effect only after 7 days from the last date of publication of the tariff. It specifically provides that the Commission shall within 7 days of making the order will send a copy of the order to the State Government, the authorities concerned, the licensees and the persons concerned. Therefore, the Tariff Order could not have been enforced retrospectively. As such, the direction issued by the State Commission in the Impugned Order that the Tariff Order shall come into effect from 1.10.2012 i.e. retrospectively is illegal as it is contrary to its own Regulations, i.e. Regulations 139 of the UPERC (Conduct of Business) Regulations, 2004 framed by the State Commission.

- 26.** Of course, this issue has not elaborately been dealt with in the final judgment. But the fact remains that the Order giving effect retrospectively cannot be sustained in law and that was the reason as to why we were constrained to pass the Interim Order correcting the said illegality giving the finding on that aspect. Therefore, mere now mentioning of this aspect in the final judgment would not put an embargo on the Applicants to approach this Tribunal to seek clarification on this aspect.

- 27.** The prayer made in these Applications is not for seeking modification of our judgment nor Review of our judgment Order. The simple prayer is only for clarifications, which we have to consider these Applications.
- 28.** We are not concerned with the question whether any apparent error has been committed so as to attract the review jurisdiction. We are only concerned with the question as to whether the Interim Order dated 26.11.2012 which has been passed by this Tribunal to the effect that the tariff order being given the retrospective effect which is against Regulations, 139 of the UPERC (Conduct of Business) Regulations, 2004 would be given prospective effect i.e. from 1.11.2012 had merged with the final judgment dated 28.11.2013 or not. We are not called upon to alter, modify or decide the issue on merit afresh.
- 29.** There are three aspects to be noticed in this context:
- (a) Under Regulations, 139 of the UPERC (Conduct of Business) Regulations, 2004, the tariff order would come into effect only after 7 days from the last date of the publication of the tariff. It does not provide retrospectivity.

(b) Admittedly, in the Impugned Order held that the tariff order would come into effect from 1.10.2012 itself giving retrospective effect even though the Tariff order has been issued on 19.10.2012 which came into effect after 7 days from the date of publication of the tariff. This is wrong order which cannot be allowed to be perpetuated.

(c) After hearing the parties in the Interim Applications though we did not incline to grant the stay of the operation of the Impugned Order in entirety, we felt that as per Regulation 139 of the UPERC (Conduct of Business) Regulations, 2004, the order should be given effect to only from 1.11.2012 in violation of Regulation and not from 1.10.2012 and accordingly we had directed so in the order dated 26.11.2012 by way of correcting the said illegality. Admittedly, this order has not been challenged by any of the Respondents. In fact, this order has been acted upon by both the parties. Further, the findings given in the Interim Order on this aspect has not been disturbed by this Tribunal in the Final Judgment.

30. In the light of the above circumstances, we are to reiterate that we are only called upon to decide as to whether the

Interim Order which has been passed on 26.11.2012 giving effect of prospectivity had merged with the final judgment dated 28.11.2013.

- 31.** It is true that this Tribunal would have referred to and reiterated the same thing in the final Judgment also but the same has not been referred to. This necessitated the Applicant to seek for clarification.
- 32.** As mentioned above, it cannot be debated that the Interim Order on finding prima facie as against the Order relating to the retrospectivity has not been disturbed in the final judgment.
- 33.** It is true that the interim order does not decide the fate of the parties to the litigation finally but it is always subject to merger of the final order.
- 34.** In this connection it would be worthwhile to refer to the observations made by the Hon'ble Supreme Court reported in (2004) 12 SCC 713 in the case of Ram Chandra Singh Vs Savitri Devi and Others. As per this decision though an application for clarification or modification touching the merits of the matter would not be maintainable but the application for clarification may be entertained when it is

shown that such a clarification is necessary to the interest of justice when it does not touch the merits of the matter.

- 35.** The Applicants have also mentioned in the Applications that they were bona fide proceeded on the basis of the Interim order which got merged with the final judgment without any disturbance and at that stage, to the surprise of the consumers, the Respondents issued office order making the Tariff Order dated 19.10.2012 applicable from 1.10.2012 and this is contrary to the orders passed by this Tribunal. On that basis, it is contended that the Applicants have filed these Applications for clarification not for seeking any review not for reconsideration of the judgment dated 28.11.2013 on the merits but only seeking for a clarification to the effect that the Respondent Distribution Licensee cannot violate the provisions of Regulation 139 of the UPERC (Conduct of Business) Regulations, 2004 and the Interim Order passed by this Tribunal in the interest of justice. We find force in these submissions. Having regard to the fact that Interim Order had been acted upon by the parties and in the absence of any observation disturbing the finding on this aspect in the Impugned Order, the Respondents should have approached this Tribunal seeking for clarification before issuing the bills. But, this was not done.

- 36.** In the light of the above, we deem it appropriate to give a clarification with reference to the above aspect to the effect that Interim order passed by this Tribunal got merged with the final judgment dated 28.11.2013. We feel that this clarification has to be issued necessarily in the interest of justice as held by the Hon'ble Supreme Court in (2004) 12 SCC 713 in the case of Ram Chandra Singh Vs Savitri Devi and Others. Accordingly ordered.
- 37.** With the above clarifications, these Applications are allowed as prayed for.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:25th April, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~