

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA No.7 OF 2014 IN DFR No.2675 OF 2013

AND

IA No.8 OF 2014 IN DFR No.2676 OF 2013

Dated: 10th Mar, 2014

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

I.A. No.7 of 2014 IN DFR No.2675 OF 2013

In the Matter of:

**Pushpendra Surana
D-173, Ramprastha,
Ghaziabad, Uttar Pradesh
PIN-201 011**

...Appellant/Applicant

Versus

- 1. Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi-110 001**
- 2. Adani Power Limited
9th floor, Shikhar, Mithakal Six Roads,
Navrangpura, Ahmedabad-380 009
Gujarat**
- 3. Gujarat Urja Vikas Nigam Limited
Sardar Patel Bhawan,
Race Course Circe,
Vadodara-390 007
Gujarat**

4. **Uttar Haryana Bijli Vitran Nigam Limited**
Vidyut Sadan
Plot No.C-16, Sector-6,
Panchkula, Haryana-134 112

5. **Dakshin Haryana Bijli Vitran Nigam Ltd.**
Vidyut Nagar, Vidyut Sadan,
Hissar,
Haryana-125 005

...Respondent(s)

Counsel for the Appellant(s) : Mr. Salim A Inamdar
Mr. Parinay D Shah

Counsel for the Respondent(s): Mr. Nikhil Nayyar
Mr. Dhananjay Baijul
Ms. Ritu for R-1
Mr. Amit Kapur
Mr. Gaurav Duedja for R-2

I.A. No.8 of 2014 IN DFR No.2676 OF 2013

In the Matter of:
Pushpendra Surana
D-173, Ramprastha,
Ghaziabad, Uttar Pradesh
PIN-201 011

...Appellant/Applicant

Versus

1. **Central Electricity Regulatory Commission,**
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi-110 001

2. **Coastal Gujarat Power Limited.,
C/O Tata Power Company Limited,
34, Sant Tuka Ram Road,
Carnac Bunder,
Mumbai-400 021**
3. **Gujarat Urja Vikas Nigam Limited
Sardar Patel Bhawan,
Race Course Circe,
Vadodara-390 007
Gujarat**
4. **Maharashtra State Electricity Distribution Co. Ltd.,
'Prakashgad' Bandra (East),
Mumbai-400 051**
5. **Ajmer Vidyut Vitran Nigam Ltd.,
Old Power House,
Hathi Bhata,
Jaipur Road,
Ajmer-305 001**
6. **Jaipur Vidyut Vitran Ltd.
Vidyut Bhawan, Janpath,
Jaipur-302 005**
7. **Jodhpur Vidyut Vitran Ltd.,
New Power House,
Industrial Area
Jodhpur-342 003**
8. **Punjab State Power Corporation Ltd.,
The Mall, Patiala-147 001**
9. **Haryana Power Generation Corporation Ltd,
Chief Engineer/PPM,
Room No.329, Sector-6,
Panchkula-134 109**

**10. Union of India
Through Secretary
Ministry of Power,
Shram Shakti Bhawan,
New Delhi-110 001**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Salim A Inamdar
Mr. Parinay D Shah

Counsel for the Respondent(s): Mr. Nikhil Nayyar
Mr. Dhananjay Baijul
Ms. Ritu for R-1
Mr. Amit Kapur
Mr. Apoorva Misra
Mr. Gaurav Duedja for R-2

ORDER

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

1. **“Whether the Applicant, claiming himself as an aggrieved person, is entitled to file these Appeals as against the Impugned Orders dated 2.4.2013 and 15.4.2013 passed by the Central Commission in the Petitions filed by the Respondent Companies? This is the question posed in these Appeals.**
2. Since the Applicant/Appellant is the same in both the Applications/Appeals and Impugned Orders also dealt with

the same issue, a common Order is being passed in these two Applications.

3. The short facts in IA No.7 of 2014 are as follows:

(a) Adani Power Limited, Gujarat, the Second Respondent in IA No.7 of 2014 being a Generating Company filed a Petition before the Central Commission seeking redressal on the increase in the coal price as a result of promulgation of Indonesian Regulations.

(b) In the said Petition, the Central Commission passed the Impugned Order on 2.4.2013 holding that the Central Commission has got the jurisdiction to provide redressal to the Generating Companies.

(c) Challenging the said order, the Applicant/Appellant, a member of the public, claiming himself as an aggrieved person has filed this Appeal. Since he was not a party to the proceedings before the Central Commission, he filed Interim Application in IA No.7 of 2014 seeking leave to file the Appeal.

(d) Adani Power Limited, the 2nd Respondent, the contesting party raised the preliminary objection to locus-standi of the Applicant in seeking leave to file the

Appeal since he is not a consumer of the Respondent Company.

4. Let us see the facts in IA No.8 of 2014:

(a) Coastal Gujarat Power Limited, the Respondent No.2, a Generating Company, filed a Petition before the Central Commission on 13.7.2012 seeking redressal of the increase in the coal price as a result of the promulgation of the Indonesian Regulations.

(b) The Central Commission passed the Impugned Order on 15.4.2013 holding that the Central Commission has got the jurisdiction to provide redressal to the Generating Company such as the Respondent No.2.

(c) Challenging this order, the Applicant as a member of the public, filed the Appeal before this Tribunal claiming himself as an aggrieved person along with an application seeking leave to file the Appeal in IA No.8 of 2014 since the Applicant was not a party to the proceedings of the Central Commission.

(d) The contesting party namely Coastal Gujarat Power Limited (R-2) raised the preliminary objection regarding the locus-standi of the Applicant to file the

Appeal contending that he is not the consumer of the Respondent Company and that therefore, he is not entitled to file the Appeal.

5. The learned Counsel for both the parties made elaborate submissions on the issue of locus-standi of the Applicant seeking leave to file the Appeals.
6. According to the Applicant the Applicant has got locus-standi to file the Appeals as he could question the Impugned Order as a member of the public in the public interest.
7. According to the Respondents, merely being a member of the public in the absence of satisfying the ingredients of definition of the consumer would not entitle the Applicant to file the Appeals.
8. Having regard to the elaborate submissions made by the parties with reference to the question as to whether leave to file the Appeal could be granted to the Applicant in these Appeals holding that he is an aggrieved party; we shall deal with the question framed above.
9. The gist of the elaborate submissions made by the Applicant/Appellant is as follows:

(a) The Impugned Order impacts the public at large. It imposes an additional financial burden on the consumers without any justification in law. The Applicant being a member of the public is generally concerned for the welfare of the consumer at large, is aggrieved by the Impugned Order.

(b) Section 111 of the Electricity Act vests the right with any person aggrieved to file an Appeal as against the Order made by the Appropriate Commission. The words “any person aggrieved” contained in Section 111 have been interpreted liberally by the Courts including Hon’ble Supreme Court of India. Hence, it requires liberal interpretation.

(c) Any member of the public, who seeks to represent the interest of the consumers, has a right to make representations under the Electricity Act, 2003. It therefore follows that the members of the public also would be construed to be a person aggrieved under the Electricity Act, 2003 and they could file the Appeal, if an illegal tariff order is passed. Therefore, the Applicant who is deprived of his legal rights and suffered a legal grievance over the illegal Impugned Order, is entitled to file the Appeal as a person aggrieved.

10. The crux of the reply made by the Respondents in both these Applications are as under:

(a) By the Impugned Order, the Central Commission has adjudicated contractual disputes arising between the Generating Companies and the procurers out of the PPAs entered into between them. Admittedly, the Applicant is not a party to the said PPAs.

(b) The Applicant is a resident of Ghaziabad (UP). He is not a consumer of either Gujarat or Haryana of the Respondent Companies as per Section 2 (15) of the Electricity Act, 2003. Thus, the Applicant is not affected by the Impugned Order or has not suffered any legal injury because of the Impugned Order.

(c) The party which is not a consumer of the concerned Respondent Company cannot be considered to be a person aggrieved by the Impugned Order to enable it to challenge the same u/s 111 of the Electricity Act. There is no provision in the Act for filing of the public interest litigation as member of the public as against the order of the Appropriate Commission.

11. The learned Counsel for the Applicant has cited the following authorities to substantiate his plea:

- (a) 2009 ELR (APTEL)0459 GRIDCO Vs Jindal Stainless Steel Limited;
- (b) MANU/DE/0657/1990 Union of Inida V. Customs, Excise & Gold (Control) Appellate Tribunal & Ors
- (c) 1975 2 SCC 702 Bar Council of Maharashtra v. M. V Dabholkar;

12. The learned Counsel for the Respondent cited the following decisions in support of its argument questioning the locus standi of the Applicant:

- (a) (2013) ELR (APTEL) 0768 Gujarat Electricity Regualtory Commission Vs Century Rayon case;
- (b) IA No.392, 393, 394 and 399 of 2012 dated 20.12.2012 passed by this Tribunal in Bharat Jhunjhunwala vs UPERC;
- (c) (2010) ELR (APTEL) 0404 BSES Rajdhani Power Ltd Vs Delhi Electricity Regulatory Commission & Ors;
- (d) (2008) 13 SCC 414 Grid Corporation of Orissa Ltd vs Gajendra Haldia and Ors ;
- (e) (2002) 8 SCC 715 West Bengal Regulatory Commission vs CESC Ltd;

(f) (1980) 4 SCC 62 Thammanna Vs K Veera Reddy
& Ors'

13. The principles laid down in the above decisions cited by both the parties are as follows:

(a) A person who was not made a party to the original proceedings may still file an Appeal with leave of the Appellate Court, provided that the person claiming himself to be the aggrieved person shall make out a prima facie case as to how he is prejudiced.

(b) A person can be said to be aggrieved by an order only when it causes on him, some prejudice in some form or another. Unless the person is prejudicially or adversely affected by the order, he cannot be entitled to file an Appeal as an aggrieved person;

(c) The words "person aggrieved" do not mean a man who is merely disappointed of a benefit which he may have received if some other order had been passed. The 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 wrongfully affected his title to something;

(d) When a person had not been deprived of a legal right when he has not subjected to a legal wrong when he has not suffered any legal grievance, and when he has no legal peg for a justifiable claim to hang on, he cannot claim that he is a person aggrieved;

(e) Without demonstrating a legal injury, a person cannot claim that he considers himself as “an aggrieved person”.

(f) Even if a person was a party to the proceedings before the lower Court, the person filing Appeal still has to establish that he is an aggrieved person i.e. he has suffered legal injury.

14. From these propositions, laid down by this Tribunal as well as Hon’ble Supreme Court, it is clear that a person who was not made a party to the original proceedings may still file an Appeal with leave of the Appellate Court provided the person claiming himself to be aggrieved shall make out a prima facie case to the Appellate Court that he was affected and prejudiced due to the Order impugned.

15. Therefore, a person cannot be disentitled to file an Appeal merely because he was not a party to the proceedings. However, the words “person aggrieved” did not really mean

a man who is disappointed of a benefit which he may have received. On the other hand, he has to establish that the Order impugned has caused a legal grievance to him; the Order Impugned is prejudicially or adversely affected him; or the Order has wrongfully deprived him of something or wrongfully refused him of something and only then, he is entitled to file an Appeal as an aggrieved party.

16. In term of the aforesaid propositions, in order for the Appellant to be a 'person aggrieved", the Appellant should have:

- (a) Suffered a legal grievance;
- (b) Suffered a legal injury; or
- (c) Been deprived of something it was entitled to;

17. The above principles have to be borne while deciding the question raised in the light of the facts of this case.

18. At this juncture, it shall be stated that the very same question had been raised in another matter before this Tribunal in IA No.392 batch of 2012 with similar facts in which, order has been passed by this Tribunal on 20.12.2012 in the case of Bharat Jhunjunwala vs Uttar Pradesh Electricity Regulatory Commission wherein we have decided that the party who is a mere member of the

public cannot file an Appeal by seeking leave to file an Appeal claiming that the party has got the public interest in the absence of the ingredients to satisfy the definition of the term “consumer”.

19. Let us quote those relevant paras of the Impugned Order in the above IA:

“6. According to Section 111 of the Electricity Act, only a person aggrieved by the order of the Appropriate Commission can prefer an Appeal before the Appellate Tribunal. The Applicant is not a consumer of the distribution licensees of Uttar Pradesh are the beneficiaries of the PPA with Alaknanda Hydro Power Co. Ltd.

7. According to the Ld. Counsel, the Applicant/Appellant is presently living somewhere in incognito and therefore the address of correspondence in the Appeal has been mentioned as his lawyer’s chamber in Delhi High Court. Even if it is assumed that he is a resident of Uttrakhand, the PPA for purchase of power from Alaknanda Hydro Power Corporation has been entered into by UP Power Corporation for supply to the distribution licensees of Uttar Pradesh.

8. Admittedly the Applicant/Appellant has neither produced any material nor indicated in the Appeal Paper Book that he is a consumer of the distribution licensees in Uttar Pradesh. Therefore, he can not be considered as a person aggrieved by the impugned orders, so as to challenge the same under Section 111 of the Act.

9. *When we sought clarifications on this issue, the Ld. Counsel for the Applicant said that this Appeal has been filed as a Public Interest Litigation. We do not find any provision in the Electricity Act for filing PIL against the orders of the State Commission. In view of above, we are unable to entertain the above IAs and the Appeal. Thus, the Application Nos. 392, 393, 394 and 399 of 2012 in DFR No. 1844 of 2012 are dismissed. Consequently, the Appeal is also rejected”.*

20. This Order passed by this Tribunal has been affirmed by the Hon’ble Supreme Court in Civil Appeal No.7303-7304 of 2013 by the Order dated 19.8.2013. The relevant portion of the Order is as follows:

“Since the Public Interest Litigation was not maintainable before the U.P. Electricity Regulatory Commission, we find no reason to entertain these Appeals, which are, accordingly, dismissed”.

21. In the light of the settled law laid down by this Tribunal as well as Hon’ble Supreme Court, we are constrained to consider the validity of the objections raised by the Applicant regarding locus-standi of the Applicant seeking leave to Appeal in the present case in the light of the facts of this case.

22. Even according to the Applicant, the Applicant is the resident of Ghaziabad (UP). The Applicant is neither a consumer of any of the procurers, the Respondents, in

terms of Section 2 (15) of the Electricity Act, nor he is receiving supply of electricity from the Respondents through any of the procurers. Therefore, it cannot be said that the Applicant is an aggrieved person who has suffered any legal grievance or injury.

23. It has not been demonstrated by the Applicant before this Tribunal that due to the Impugned Orders he has been deprived or denied of the same under which it would have otherwise been entitled to.
24. In fact, we have asked the learned Counsel for the Applicant/Appellant as to how he could distinguish the judgment of Bharat Jhunjunwala Vs UP Commission from the present Application. But, the Applicant failed to distinguish the said decision.
25. It is settled law as laid down in various decisions referred to above that a person filing the Appeal, will have to demonstrate as to how the Impugned Order under challenge has made an impact on him.
26. According to the Applicant, the term “public” used under Section 64 of the Electricity Act would mean any member of the public and he need not be a consumer and as such he is entitled to file Appeal. This contention is misconceived.

27. The term “public” as appearing in Section 64 of the Electricity Act, 2003 has to be read in the context of Section 61 (d) of the Electricity Act. This provision mandates that Appropriate Commission to ensure that the rights of the consumers are protected while the tariff is being determined by it. Therefore, the term “public” as contained in Section 64 have to be read in the context of the term “consumer” and not to any person as a member of the public, as sought to be interpreted by the Applicant.
28. Furthermore, Section 111 of the Electricity Act which vests Appellate jurisdiction in this Tribunal specifically provides that an aggrieved person alone can file an Appeal before this Tribunal against the Order passed by the appropriate Commission. This means the right to file an Appeal has been granted only to the persons who are aggrieved by the order of the Appropriate Commission and not to any members of the public irrespective of the fact that whether he participated in the proceedings before the appropriate Commission or not.
29. As indicated above, the Applicant himself admitted in his Affidavit that he is neither a consumer of the Respondent Utilities nor has he received any supply of electricity from the procurers or the Respondent Companies who are concerned

in the proceedings. Probably, this was the reason as to why he has not participated in the proceedings.

30. As pointed out by the Respondents, the relief sought for by the Respondents before the Central Commission would pertain to the contractual relief available to it with reference to the PPA entered into between the parties. No relief was sought for by the Respondents against the Applicant who is not a party to the PPA. The Applicant has no role to play in the adjudication upon the claims for offset of adverse impact of PPA with regard to commercial impracticability.

31. Therefore, viewed from any angle, it cannot be claimed that the Applicant is a person aggrieved over the Impugned Orders and as such, he has got a locus-standi to file this Appeal.

32. To Sum-UP

“In view of the above discussion, these Applications seeking for leave to file the Appeals as against the Impugned Orders dated 2.4.2013 and 15.4.2013 are not maintainable as the Applicant is not a person aggrieved”.

33. Hence, these Applications are dismissed.

34. Consequently, the Appeals are also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:10th Mar, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~