

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

ORDER IN APPEAL NO. 01 OF 2014 &
IA NO. 05 OF 2014
ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY NEW DELHI

Dated: 5th December, 2018

Present: HON' BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON' BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

In the matter of:

Steel Authority of India Ltd.

Ispat Bhawan,
Lodhi Road,
New Delhi.

Having its units at Bokaro Steel Plant,
Bokaro Stell City,
P.O. & P.S. – Bokaro Steel City,
District – Bokaro,
Jharkhand

..... Appellant(s)

Versus

1. Damodar Valley Corporation,
DVC Towers, VIP Road,
Kolkata-700054.

2. The Chairman,
Damodar Valley Corporation,
DVC Towers, VIP Road,
Kolkata-700054.

3. The Chairman,
Central Electricity Supply Company Ltd. (HESCOM),
3rd & 4th Floor, Chandralok Building,
36, Janpath,
New Delhi-110 001.

..... Respondent(s)

Counsel for the Appellant(s) : Mr. Rajiv Shankar Dvivedi
Ms. Arti Dvivedi

Counsel for the Respondent(s) : Mr. M.G. Ramachandran
Ms. Anushree Bardhan
Ms. Poorva Saigal for R1

The Appellant has sought the following reliefs in Appeal No.384 of 2017:

- (i) Set aside the order dated 30.09.2013, passed by Hon'ble CERC in Petition No.293 of 2010;
- (ii) Pass such other or further orders as this Hon'ble Commission may deem appropriate.

The Appellant has presented this Appeal considering the following substantial Questions of Law:

1. Whether in view of the categorical determination of the Hon'ble APTEL as held in para 48, 110 and 111 of the order dated 23.11.2007, in Appeal No.272 of 2006, the issue of jurisdiction of CERC does not remain res integra and the CERC cannot take a stand which is contrary to the finding of the Hon'ble APTEL in aforesaid paragraphs?
2. Whether the CERC, who had heard the parties only on the preliminary issues of maintainability can give a finding on the merit of the matter, without deciding the preliminary issue first and then hearing the parties on the merit of the matter?
3. Whether the gap between the hearing of the matter and the final pronouncement of judgement, which is more than 2 years, in itself is sufficient to render the judgment bad?

4. Whether the appellant, who is a Distribution Licensee himself can be denied the status of beneficiary, particularly in view of the PPA?
5. Whether or not if the appellant is subjected to the distribution tariff, and its tariff is determined by the JSERC it would create an anomalous situation?
6. Whether or not the CERC has erred in holding that SAIL-BSL cannot be considered as beneficiary distribution company of DVC in so far as determination of distribution tariff is concerned?
7. Whether or not the CERC has erred in holding that the petitioners including the bulk consumers cannot invoke the jurisdiction of this Commission under Section 79(1)(f)?
8. Whether or not the CERC has misinterpreted and ignored the findings of the APTEL with regard to the jurisdiction of CERC alone to determine the tariff of the DVC?

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

The Appellant / Steel Authority of India Ltd., herein questioning the legality and validity and propriety of the order dated 30.09.2013 passed in Petition No.277 of 2010 on the file of the Central Electricity Regulatory Commission, New Delhi filed the instant Appeal, being Appeal No. 01 of 2014, under Section 111 of the Electricity Act, 2003 presented this Appeal.

2. The learned counsel, Shri Rajiv Shankar Dvivedi, appearing for the Appellant submitted that the instant Appeal filed by the Appellant may be disposed of in the light of the reasoning assigned in paragraph 33 & 64 of the judgment reported in 2018 (8) SCC, 281 in the case of *Bhaskar Shrachi Alloys Ltd. & Others Vs. Damodar Valley Corporation & Others* reserving liberty to the Appellant to redress his grievances before the appropriate legal forum and all the contentions urged in this Appeal may be left open in the interest of justice.

3. ***Per contra***, learned counsel Ms. Anushree Bardhan along with Shri M.G. Ramachandran, appearing for the Respondent No.1, *inter alia*, submitted that the submission made by learned counsel appearing for the Appellant, as stated above, may be placed on record and in the light of the judgment in the case of *Bhaskar Shrachi Alloys Ltd. & Others Vs. Damodar Valley Corporation & Others* reported in 2018 (8) SCC, 281, the instant appeal may be disposed of.

4. Submissions made by the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent No.1, as stated above, are placed on record. Other respondents served, unrepresented.

5. After careful consideration of the submissions made by the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent No.1, as stated above and for the reason stated therein and in the light of the judgment of the apex court in the case of *Bhaskar Shrachhi Alloys Ltd. & Others Vs. Damodar Valley Corporation & Others* reported in 2018 (8) SCC, 281 and in terms of the reasoning assigned in Paragraph 33 & 64 of the said judgment, the instant appeal filed by the Appellant stands disposed of reserving liberty to the Appellant to redress their grievance before the appropriate legal forum.

6. All the contentions of the Appellant are left open.

7. With these observations, the instant Appeal filed by the Appellant, being Appeal No. 01 of 2014, stands disposed of.

IA NO. 05 OF 2014

In view of the Appeal No. 01 of 2014 being disposed of, the relief sought in IA No. 05 of 2014 does not survive for consideration and, hence, stands disposed of.

Order accordingly.

(Ravindra Kumar Verma)
Technical Member

Pr/pk

(Justice N. K. Patil)
Judicial Member