

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

**ORDER IN APPEAL NO. 20 OF 2018 &**  
**IA NO.93 OF 2018 &**  
**IA NO.92 OF 2018**  
**ON THE FILE OF THE**  
**APPELLATE TRIBUNAL FOR ELECTRICITY NEW DELHI**

**Dated: 23<sup>rd</sup> January 2018**

**Present: Hon'ble Mr. Justice N. K. Patil, Judicial Member**  
**Hon'ble Mr. S. D. Dubey, Technical Member**

**In the matter of:**

**OPGS Power Gujarat Private Limited**  
Village Bhadreshwar,  
Taluka – Mundra,  
District Kutch  
Gujarat – 370 411

..... Appellant(s)

***Versus***

**Mahatashtra Electricity Regulatory Commission**  
Through its Secretary,  
World Trade Centre  
Centre No.1, 13<sup>th</sup> Floor,  
Cuffe Parade, Colaba,  
Mumbai-400001.

**Mahatashtra State Electricity Distribution Company Ltd.**  
Through its Managing Director,  
Hongkong Building,  
M.G.Road, Fort  
Mumbai-400001.

..... Respondent(s)

Counsel for the Appellant(s) : Mr. Prabhuling Navadgi, Sr.Adv.  
Mr. Hemant Singh  
Mr. Biju Muttam  
Mr. Divyanshu Bhatt

Counsel for the Respondent(s) : Mr. Raunak Jain for  
Mr. Buddy A. Ranganadhan for R.1

Mr. Udit Gupta for Caveator, R-2

## **ORDER**

OPGS Power Gujarat Pvt. Limited, the Appellant herein, has filed the instant Appeal, being Appeal No. 20 of 2018, under Section 111 of the Electricity Act, 2003, on the file of the Appellate Tribunal for Electricity, New Delhi, herein questioning the correctness of the impugned order dated 12.1.2018 passed in Case No.27 of 2018 on the file of the Maharashtra Electricity Regulatory Commission, Mumbai and requested to direct the Respondent Commission to adjudicate the petition, being Case No. 27 of 2018 on merits with respect to all the issues and pass such other and further order or order(s) as this Hon'ble Tribunal may deem fit and proper under the facts and circumstance of the present case.

**The Appellant has sought the following reliefs in Appeal No. 20 of 2018:**

- (i) "Set aside the impugned order dated 12.01.2018, passed by the Ld. Maharashtra Electricity Regulatory Commission in Case No. 27 of 2018.

- (ii) direct the Respondent Commission to adjudicate the petition, being Case No. 27 of 2018, on merits with respect to all the issues; and

Pass such other and further order or orders as this Hon'ble Tribunal may deems fit and proper under the facts and circumstances of the present case.

**The Appellant has presented this Appeal for consideration of the following substantial Questions of Law:**

- I. Whether the Respondent Commission is correct in directing the Appellant to approach the Ld. Central Electricity Regulatory Commission for seeking adjudication of a dispute between the Appellant, which is a captive generating plant, and the Respondent No.2, which is a distribution licensee?
- II. Whether the Respondent Commission had the jurisdiction to adjudicate the present dispute under Sections 86(I)(c) and 86(I)(f) of the Electricity Act, 2003?
- III. Whether there has been an exercise of improper jurisdiction by the Respondent Commission in passing the impugned order without referring and analysing the various provisions of law, including its own regulations, in coming to the conclusion that the said commission does not have jurisdiction?
- IV. Whether an order deciding jurisdiction can be sustained, when the said order has been passed without any adequate reasoning?

- V. Whether the impugned order is a non-speaking order, thereby violating the principles of natural justice to the Appellant?
- VI. Whether the Appellant has an unfettered right to seek consent for open access under Section 9 of the Electricity Act, 2003 on the basis of being a captive generating plant?
- VII. Whether the grant of consent for open access by the Respondent No.2 under Section 10 of the Electricity Act, 2003, in between a Financial Year, violates the 4<sup>th</sup> proviso of Section 42(2) of the Electricity Act, 2003?
- VIII. Whether the Respondent No.2 was correct in issuing the letter dated 26.12.2017 by linking previous FYs (2015-16 and 2016-17) with FY 2017-1?
- IX. Whether the impugned order could have been passed by completely ignoring Regulations 8.3, 14.7 and 32 of the MERC (Distribution Open Access) Regulations, 2016?
- X. Whether the present case falls under composite scheme mentioned under Section 79 of the Electricity Act, 2003 when the said case has nothing to do with “regulation of tariff”?
- XI. Whether the present case falls under composite scheme mentioned under Section 79 of the Electricity Act, 2003 when supply of captive power cannot be construed as sale?

- XII. Whether, through the impugned order, the Respondent Commission has vitiated/made infructuous the judgment/final order dated 09.01.2018 passed by this Hon'ble Tribunal in Appeal No.03 of 2018?
- XIII. Whether the impugned order is a non-speaking order thereby being violative of Article 14 of the Constitution of India?

2. We have heard the learned senior counsel, Mr. Prabhuling Navadgi appearing for the Appellant and the learned counsel, Mr. Raunak Jain, learned counsel appearing for the Maharashtra Electricity Regulatory Commission, Respondent No.1 and Mr. Udit Gupta learned counsel appearing for Respondent No.2.

3. The learned senior counsel appearing for the Appellant at the outset fairly submitted that, the instant Appeal filed by the Appellant may kindly be dismissed as withdrawn with the liberty to file review petition, reviewing the order dated 12.01.2018 passed in Case No. 27 of 2018 on the file of Maharashtra Electricity Regulatory Commission, Mumbai. Further, he has submitted to stay the operation/execution of the communication dated 26.12.2017 for a period of three weeks thereby restraining the second respondent from taking any coercive action in any manner whatsoever so far it relates to Financial Year 2017-18 in the interest of justice and equity.

4. ***Per-contra***, the learned counsel appearing for the first respondent and the learned counsel appearing for the second respondent, *inter-alia*, contended and submitted that, the submission made by the learned senior counsel appearing for the Appellant, as stated above, may be placed on record. Accordingly, the appeal filed by the Appellant may be disposed of and all the contentions of the parties may be left open.

5. In the light of the submissions made by the learned senior counsel appearing for the Appellant and the submissions made by the learned counsel appearing for the respondents, as stated above, are placed on record.

6. The Appellant, herein is permitted to file the Review Petition to review the Order dated 12.01.2018 passed in Case No.27 of 2018 on the file of Maharashtra Electricity Regulatory Commission, Mumbai within a period of two weeks from the date of receipt of copy of this order. Stay the operation/execution of the communication dated 26.12.2017 thereby restraining the second respondent from taking any coercive action in any manner whatsoever so far it relates to Financial Year 2017-18 for a period of three weeks from today.

7. Taking into consideration the facts and circumstances of the case, as stated above, we hereby direct the first respondent to dispose of the review petition filed by the Appellant in accordance with law after offering reasonable opportunity of hearing to the Appellant and to the Respondents and dispose of as expeditiously as possible on priority basis.

All the contentions of the Appellant and Respondents are left open.

8. The learned counsel appearing for the first Respondent is permitted to file Vakalatnama within a period of two weeks.

9. With these observations, the instant Appeal filed by the Appellant, being Appeal No. 20 of 2018, stands disposed of. Order accordingly.

**IA NO. 93 OF 2018 & IA No.92 of 2018**

1. In view of the Appeal No. 20 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being dismissed as withdrawn with a liberty to file a review petition before the Maharashtra Electricity Regulatory Commission, Mumbai. The relief sought in IA No.93 of 2018 and IA No.92

of 2018 does not survive for consideration and, hence, stands disposed of.

2. Order accordingly.

**(S.D. Dubey)**  
**Technical Member**

**(Justice N. K. Patil)**  
**Judicial Member**

*bn/pr*