

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO. 96 OF 2018**

**Dated: 5<sup>TH</sup> APRIL, 2018**

**Present: HON'BLE MR. N.K. PATIL, JUDICIAL MEMBER  
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

**IN THE MATTER OF**

**M/s Jai Balaji Industries Limited**

5, Betnick Street (West Bengal),  
Through its Authorized Signatory – Mr. Ajay Tantia,  
Company Secretary, at Jai Balaji Industries Ltd.  
Kolkata

.....

**Appellant**

***Versus***

**1. State of Chhattisgarh,**  
Chief Electrical Inspector,  
Indravati Bhawan, Block-B,  
Naya Raipur Chhattisgarh – 492002

**2. Chhattisgarh State Electricity Regulatory Commission**

Through its Secretary,  
Vidhyut Niyamak Bhawan,  
Irrigation Colony, Shanti Nagar,  
Raipur (C.G.) – 492 001

..... **Respondents**

Counsel for the Appellant ... Mr. Ankit Pandey  
Mr. Kaustubh Shukla

Counsel for the Respondent(s)... Mr. C.S. Khandey  
Chief Electrical Inspector  
State of Chhattisgarh

Mr. Sakesh Kumar for R-2

**(I) M/s Jai Balaji Industries Limited, Kolkata**, Appellant herein, assailing the Order dated 27.11.2017 passed by the Chhattisgarh State Electricity Regulatory Commission, Raipur (hereinafter referred to as the “State Commission”) in Petition No. 53 of 2017(M) filed by the Appellant seeking following reliefs as under:

- A. Quash and set aside the impugned Order dated 27.11.2017 passed by the Respondent Commission in Review Petition 53 of 2017(M) to the extent challenged herein;
- B. For such other and further reliefs as the nature and circumstances of the case may require.

**(II) The Appellant herein presented this Appeal for considering the following questions of law:**

- i. Whether the impugned order dated 27.11.2017 is illegal, arbitrary, perverse and is based on a wrong appreciation of facts and in total contravention to the provisions of law?
- ii. Whether the impugned order dated 27.11.2017 passed by the respondent no.2 is illegal, unlawful, contrary to the provisions of law and therefore, requires to be quashed and set aside?
- iii. Whether respondent njo.2 failed to address the issues raised in the application under Order IX Rule 13 R/W section 94 of the Electricity Act along with an application under section 5 of the Limitation Act 1963 and illegally and arbitrarily treated the same as an application for review?

- iv. Whether the respondent no.2 erred in not considering that the appellant presented an application under Order IX Rule 13 R/W section 94 of the Electricity Act along with an application under section 5 of the Limitation Act 1963 and not the application under Order 47 Rule1?
- v. Whether the respondent no.2 failed to exercise jurisdiction vested in it?
- vi. Whether respondent no.2 ought not to have rejected the application of the petitioner treating the same as an application for review whereas the application filed by the Petitioner was under Order IX Rule 13 R/W section 94 of the Electricity Act along with an application under section 5 of the Limitation Act 1963 and the same cannot be treated as an application for review and thus respondent no.2 though having jurisdiction refuse to exercise the jurisdiction on an erroneous interpretation of facts and law?

## **J U D G M E N T**

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

1. Though the matter was posted regarding maintainability of the Appeal, with the consent of the learned counsel appearing for the Appellant, Respondent No.1/Party-in-person and the learned counsel appearing for the second Respondent, the matter was taken up for final disposal.

2. **M/s Jai Balaji Industries Limited, Kolkata**, (hereinafter referred in short as “**Appellant**”) has filed the instant Appeal, being Appeal No. 96 of 2018, under Section 111 of the Electricity Act 2003, on the file of the Appellate Tribunal for Electricity, New Delhi , questioning the legality, validity and propriety of the Impugned Order dated 27.11.2017 passed in Petition No. 53 of 2017(MM) on the file of the Chhattisgarh State Electricity Regulatory Commission, Raipur (hereinafter referred to as, “**State Commission**”) and to pass such other and further order or orders as this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice and equity.

**BRIEF FACTS OF THE CASE:**

3. The Appellant is a Company duly registered under the Companies Act and is a Steel and Iron manufacturer in the State of Chhattisgarh. Be that as it may, it appears that the first Respondent, Chief Electrical Inspector, State of Chhattisgarh, the first Respondent herein, has submitted a report with regard to Captive Status of Power Plant for the year 2014-15 along with details of the production and consumption annexed in prescribed format of Prapatra B of 08 consumers for necessary action. On the basis of the said report, a suo-moto proceeding was initiated against the Appellant by the State Regulatory Commission and Notice was issued on 13.06.2016 to the

Appellant. The Appellant, in turn, represented through its Electrical Consultant before the second Respondent on 28.07.2017. Accordingly, late B.K. Chaubey, Electrical Consultant of the Appellant Company, has submitted his reply on the file of the second Respondent. Hence, thing thus stood. What has emerged from the relevant material on records that due to prolonged illness of the Electrical Consultant, late B.K. Chaubey, he has not informed further progress of the case and also failed to communicate about the reply he has already filed to the second Respondent. But, unfortunately, Mr. B.K. Chaubey died on account of grievous disease.

4. The State Commission, instead of considering the application filed by the Appellant for setting aside the ex-parte Order, the said application has been treated as review petition and rejected the same without affording reasonable opportunity of hearing to the Appellant. On account of rejecting the application on misconceived grounds not on merit and contrary to the relevant provisions of the Electricity Act and Rules, there is no other remedy for the Appellant to redress their grievances, they felt necessitated to present the instant appeal seeking appropriate relief, as stated above.

**SUBMISSIONS OF THE APPELLANT:**

5. The learned counsel, Mr. Ankit Pandey, appearing for the Appellant, at the outset, submitted that, the representative-cum-legal

consultant late Mr. B.K. Chaubey, after receipt of the notice issued by the second Respondent on the basis of the alleged report submitted by the first Respondent, has filed the reply on behalf of the Appellant to the second Respondent.

6. It is the case of the Appellant that due to prolonged illness Mr. B.K. Chaubey died on 07.07.2017. After his death the representative of late Mr. B.K. Chaubey returned the documents to the Appellant's Office and after verification of those records issued from the office of late Mr. B.K. Chaubey, they came to know that the second Respondent have issued a notice on the basis of alleged report submitted by the first Respondent and, accordingly, the reply has been filed on behalf of the Appellant by late Mr. B.K. Chaubey. Thereafter, no reasonable opportunity as such has been provided by the second Respondent to the Appellant.

7. On the basis of material available on records, the second Respondent has proceeded further and passed the order rejecting the reply filed by the Appellant. Immediately without any further delay, on account of passing ex-parte order by the second Respondent, the Appellant has filed necessary application as provided under the relevant provisions of the Electricity Act and Rules, to set-aside the ex-parte order passed by the second Respondent. The second Respondent has treated this application as review petition and rejected

the same treating as a review petition is unsustainable in law and in spite of specifically pleaded and brought to the notice of the second Respondent that on account of untimely death of their Electrical Consultant late Mr. B.K. Chaubey, and due to non-communication of the proceeding pending before the second Respondent, this aspect of the matter has not been looked into or considered by the second Respondent and proceeded to conclude the proceedings. Therefore, the order impugned passed by the second Respondent is liable to be set-aside on account of non-affording of reasonable opportunity of hearing to the Appellant. Further, the learned counsel appearing for the Appellant submitted that, the impugned order passed by the second Respondent may be set aside and matter may be remitted back to the second Respondent for consideration afresh and pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the Appellant and the first Respondent.

**SUBMISSIONS OF THE 1<sup>ST</sup> RESPONDENT/PARTY-IN-PERSON AND THE 2<sup>ND</sup> RESPONDENT:**

8. *Per-contra*, Mr. C.S. Khandey representing party-in-person/first Respondent and the learned counsel, Mr. Sakesh Kumar, appearing for the second Respondent, inter-alia, contended and substantiated the impugned Order passed by the second Respondent.

9. To substantiate their submissions, they quick to point out and submitted that when the matter was taken-up for consideration, there was no representation on behalf of the Appellant. On account of non-representation on behalf of the Appellant and on the basis of material available on record, the second Respondent has rightly justified the order in the passing the impugned order. Therefore, interference by this Appellate Tribunal does not call for.

**OUR CONSIDERATION:**

10. We have heard the learned counsel, Mr. Ankit Pandey, appearing for the Appellant, the learned counsel, Mr. Sakesh Kumar, appearing for the second Respondent and Mr. C.S. Khandey, Chief. Electrical Inspector, State of Chhattisgarh/party in person (first Respondent).

11. After carefully considering the material available on record, it emerges that after receipt of the notice issued by the second Respondent/State Commission on the basis of the report submitted by the first Respondent/Chief Electrical Inspector, the Appellant has requested the Electrical Consultant to represent and follow-up the case initiated by the second Respondent on the basis of the report submitted by the first Respondent. But, unfortunately, what has emerged from the statement made in the application filed by the Appellant for setting aside the ex-parte Order dated 03.10.2016 wherein it has been specifically pointed out in paragraph no.5 of the



application that late Mr. B.K. Chaubey, engaged as Electrical Consultant, was suffering from cancer disease and he died on 07.07.2017. After the death of Mr. B.K. Chaubey, the Appellant has received certain files and documents from the office of Mr. B.K. Chaubey on 07.09.2017 and after going through the files and records received from the office of late Mr. B.K. Chaubey, the Appellant came to know about the notice dated 13.06.2016 issued to the Appellant for appearance on 28.07.2016 before the second Respondent and also came to know about the reply submitted by Mr. B.K. Chaubey on behalf of the Appellant. Unfortunately, when the case came up for hearing, there was no representation on behalf of the Appellant before the second Respondent and on the basis of reply available on record, the second Respondent proceeded in the matter and passed an ex-parte Order dated 03.10.2016 in Suo-Motu Petition No. 31 of 2016(M) on the file of the Chhattisgarh State Electricity Regulatory Commission, Raipur.

12. Taking into consideration the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the second Respondent and also party-in-person/first Respondent, as stated supra, and having regard to the peculiar facts and circumstances of the case, we hold that the instant appeal filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi is maintainable in the interest of justice and equity.

13. The impugned Order has been passed by the second Respondent without affording the reasonable opportunity to the Appellant which is in gross violation of the principles of natural justice. The second Respondent has committed error, in treating the application filed by the Appellant as review petition, and passed the order contrary to the prayer sought by the Appellant in their Application. The Appellant has not filed a review application. The Appellant has filed an application for setting aside the ex-parte Order dated 03.10.2016. The said application ought to have been entertained and passed an appropriate order after affording reasonable opportunity of hearing to the Appellant. Treating the application filed by the Appellant for setting aside the ex-parte order as review petition, is not sustainable and liable to be vitiated.

14. It is worthwhile to refer that the simple case made out by the Appellant that they have filed application under Order IX Rule 13 of Code of Civil Procedure, 1908 read with Section 94 of the Electricity Act for setting aside the ex-parte Order dated 03.10.2016 passed in Suo-Moto Petition No. 31 of 2016(M) along with application filed by the Appellant for condonation of delay under Section 5 of Limitation Act before the Second Respondent.

15. It is pertinent to note that the second Respondent ought to have considered the application filed by the Appellant and pass an appropriate order on merits of the case and grounds urged by the Appellant in their application. But, instead of recalling the ex-parte order, the application filed by the Appellant has been treated as review petition on the wrong notion and proceeded to pass the order contrary to the well settled law laid down by the Hon'ble Apex Court and this Appellate Tribunal in host of judgments. Therefore, we are of the considered opinion that on this ground also order impugned, is liable to be set aside on account of not affording the reasonable opportunity of hearing to the Appellant and non-compliance of principles of natural justice without going further into merit or de-merit of the case.

### **ORDER**

16. Having regard to the facts and circumstances of the case, as referred above, the Order impugned dated 27.11.2017 passed in Petition No. 53 of 2017(M) on the file of the Chhattisgarh State Electricity Regulatory Commission, Raipur is hereby set-aside.

The matter stands remitted back to the State Commission for fresh consideration to pass an appropriate order after affording reasonable opportunity of hearing to the Appellant and to the first Respondent and dispose of the case as expeditiously as possible at any

rate within a period of six months from the appearance of the parties before the second Respondent.

The Appellant and the first Respondent are directed to appear personally or through their counsel before the State Commission on 03.05.2018 without notice to collect necessary date of hearing.

The learned counsel, Mr. Sakesh Kumar, appearing for the second Respondent is permitted to file his Vakalatnama within four weeks from the date of receipt of the copy of this Order.

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

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

*vt/kt*