

COURT-II

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**ORDER ON IA NO.100 OF 2018, IA NO.101 OF 2018 &
IA NO.102 OF 2018 IN APPEAL NO. 03 OF 2018
ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI**

Dated: 30th 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 Bhadreswar,
Taluka – Mundra,
District Kutch
Gujarat – 370 411.**

..... Appellant(s)

Versus

1. Mahatashtra Electricity Regulatory Commission

Through its Secretary,
World Trade Centre
Centre No.1, 13th Floor,
Cuffe Parade, Colaba,
Mumbai-400 001.

2. Mahatashtra State Electricity Distribution Company Ltd.

Through its Managing Director,
Hongkong Building,
M.G.Road, Fort
Mumbai-400 001.

..... Respondent(s)

Counsel for the Appellant(s) : Mr. Prabhuling Navadgi, Sr.Adv.
Mr. Hemant Singh
Mr. Matrugupta Mishra
Mr. Divyanshu Bhatt
Mr. Nishant Kumar

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan for R.1
Mr. Udit Gupta for R-2

(I) The Appellant has sought the following reliefs in IA No. 100 of 2018 in Appeal No. 03 of 2018:

- (a) Continue the interim protection granted by the Hon'ble Appellate Tribunal in favour of the Applicant which is expiring on 23.01.2018, till the pendency of the Review Petition before the Respondent Commission;
- (b) Direct the Respondent No.2 not to take any coercive actions against the Applicant, and its captive users, till the pendency of the above review petition, including but not limited to the following :
- I. Treating the Applicant as a non-captive generating plant for the FYs 2015-16 and 2016-17;
 - II. Collecting Cross Subsidy Surcharge and Additional Surcharge from the captive users thereby making a threat of disconnection of power supply of the said users in the event of non-payment of the said charges, in terms of the letters dated 28.11.2017 and invoices dated 04.12.2017 and 05.12.2017; and
- (c) Pass such other and further order or orders as this Hon'ble Tribunal deems fit and proper under the facts and circumstances of the present case.

ORDER
IA NO.100 OF 2018
(for Extension of Time for Interim Relief)

We have heard the learned senior counsel, Mr. Prabhuling Navadgi appearing for the Appellant and the learned counsel, Mr. Buddy A. Ranganadhan, appearing for the first Respondent and the learned counsel, Mr. Udit Gupta appearing for the second Respondent on IA No.100 of 2018 in Appeal No.03 of 2018.

2. The learned senior counsel appearing for the Appellant, at the outset, submitted that, in pursuance of Order dated 09.01.2018 passed in Appeal No.3 of 2018 on the file of Appellate Tribunal for Electricity, New Delhi, the Appellant herein, has filed a Review Petition along with interim application for seeking protection, the same has numbered as Case No.48 of 2017. The matter was pending for adjudication before the first Respondent, the State Commission. Hence things thus stood. There is no sitting of the Respondent Commission on account of which the Appellant constraint to approach this Hon'ble Tribunal for filing an IA No.100 of 2018, seeking appropriate direction may be issued to the second Respondent not to take any coercive action till the Respondent Commission functioning on account of the threat from the second Respondent. Therefore, it is submitted that appropriate direction may

kindly be issued to the second Respondent not to take any coercive action till the Application filed by the Appellant, being Case No. 48 of 2017, is considered by the first Respondent in the interest of justice and equity.

3. **Per-contra**, the learned counsel appearing for the first Respondent fairly submitted that on account of not sitting of the Bench of the first Respondent Commission, the interim application filed by the Appellant could not be taken up for consideration. When the Bench is sitting, the application filed by the Appellant will be taken up for consideration and appropriate orders will be passed in accordance with law.

4. The learned counsel appearing for the second respondent fairly submitted that, the interim direction ordered by the first Respondent in its order dated 29.12.2017 at Para 11 Clause 3, sub-clause (iv) may be extended till interim application filed by the Appellant will be considered by the Respondent Commission.

5. 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 interim direction ordered by the first Respondent in its order dated 29.12.2017 at Para 11 Clause 3, sub-clause (iv) reads thus:-

“In view of the above the Commission directs OPGS to agitate the matter before CERC and seek appropriate relief, if they deem fit, within one month. The Commission also directs MSEDCL not take any coercive action during this period.”

7. In view of the submissions made by the learned counsel appearing for the Appellant as well as Respondents, the interim direction in the Order dated 29.12.2017 at Para 11 Clause 3, sub-clause (iv) issued by the Respondent Commission, is continued till the interim application filed by the Appellant in Case No.48 of 2017 is considered by the Respondent Commission.

8. With these observations, the instant application filed by the Appellant, being IA No. 100 of 2018, stands disposed of.

IA NO. 101 OF 2018 (for clarification) &
IA NO. 102 OF 2018 (for urgent listing)

9. In view of the IA No.100 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi has been disposed of as withdrawn, on account of which, the prayer in these two applications being IA No. 101 of 2018 and IA No. 102 of 2018 do not survive for consideration as it has become infructuous.

10. Order accordingly.

(S.D. Dubey)
Technical Member

(Justice N. K. Patil)
Judicial Member

bn/pr