

COURT-II

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

**APPEAL NO. 221 OF 2015 &
IA NO. 1048 OF 2017**

Dated : 25th March, 2019

**Present: Hon'ble Mr. Justice N. K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:

Silvasa Industries Association & Ors. Appellant(s)

Vs.

Joint Electricity Regulatory Commission & Ors. Respondent(s)

Counsel for the Appellant(s) : Mr. Rohit Rao N.
Ms. Devahuti Tamuli

Counsel for the Respondent(s) : Ms. Rimali Batra
Ms. Shruti Awasthi
Ms. Saroj Bala
Ms. Krishna Singh for R-1

Mr. Gaurav Mitra
Mr. Vishnu Sharma
Mr. Rohan Ganpathy for R-3

ORDER

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

The Appellant has presented the instant Appeal seeking the following reliefs:

- a) Call for the entire records pertaining to the Petition No. 151 of 2014 dated 02.12.2014 for Review of financial year 2014-2015, Aggregate Revenue Requirement and Retail Supply Tariff for financial year 2015-2016 of the 2nd Respondent filed before the 1st Respondent Commission, which resulted in the passing of the impugned order dated 01.04.2015;

- b) Set aside the impugned order dated 01.04.2015 passed in Petition No. 151 of 2014 by the 1st Respondent Joint Electricity Regulatory Commission, to the extent as mentioned in appeal herein;
- c) Set aside the categorization of earlier HT(A) category of consumer into HT(A)-I and HT(A)-II;
- d) Set aside the tariff applicable to all categories of consumers for the financial year 2015-2016;
- e) Grant cost of this appeal, and
- f) Grant such other and further reliefs as this Tribunal deems fit to pass under the facts and circumstances of the case, in the interest of justice.

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

- A. Whether Regulation 9 of the Joint Electricity Regulatory Commission (Determination of Tariff) Regulations, 2009, does not contemplate that 70% of the gain arising from the over-achievement of the norms/targets set by the Commission, shall be passed on to the consumers?
- B. Whether the Commission did not err in not passing on 70% of the approved revenue surplus to the consumers in terms of Regulation 9 of the JERC Tariff Regulations, 2009?
- C. Whether the bifurcation of HT(A) consumers to HT(A)-I and HT(A)-II and granting them different tariffs, without there being a prayer for such sub-categorization by the distribution company, is not discriminatory and against the provisions of Section 62(3) of the Electricity Act, 2003?

D. Whether cross-subsidizing heavy power intensive industries at the cost of smaller industries consuming lesser power, can be permitted under the scheme of the Electricity Act, 2003, particularly Section 61?

In the instant Appeal, Silvassa Industries Association & Ors. (in short, the “Appellants”) are questioning the legality and validity of the Impugned Order dated 01.04.2015 passed in Petition No. 151 of 2014 by the Joint Electricity Regulatory Commission, Gurgaon.

The learned counsel Ms. Devahuti Tamuli on behalf of the learned counsel Mr. Rohit Roa N. appearing for the Appellants at the outset submitted that in the light of the statement made in the Memo dated 25.03.2019 on the ground that the prayer sought in the instant Appeal does not survive for consideration by virtue of subsequent tariff order passed by the Joint Electricity Regulatory Commission, Gurgaon. Therefore, she submitted that the instant Appeal filed by the Appellant may be disposed of as having become infructuous.

The submissions made by the learned counsel appearing for the Appellants, as stated supra, are placed on record.

We have heard the learned counsel for the Appellant and learned counsel appearing for the Respondents.

The statement made in the Memo dated 25.03.2019 reads as follows:-

- “1. The above appeal filed by the Appellants pertains to the tariff order passed for the year 2014-15.
2. That upon instructions from the Appellants it is submitted that the issues that arise in the instant appeal have been rendered

infructuous by virtue of the subsequent tariff orders passed by the JERC.

3. Therefore, it is prayed that this Tribunal may be pleased to:
 - A. Pass as order disposing of the Appeal, by keeping the questions of law open, as infructuous;
 - B. Pass any other order as is deemed fit and appropriate in the interest of justice.”

In the light of the submissions and the statement made in Memo dated 25.03.2019 as stated supra, the instant Appeal filed by the Appellant stand disposed of on the ground that the prayer sought in the present Appeal does not survive for consideration by virtue of subsequent tariff order passed by the Joint Electricity Regulatory Commission, Gurgaon.

It is needless to clarify that the Appellants are entitled to redress their grievances regarding question of law if advised or if the need so arises.

With these observations, the instant Appeal being Appeal No. 221 of 2015 stands disposed of as having become infructuous.

In view of the Appeal No. 221 of 2015 being disposed of, the relief sought in IA No. 1048 of 2017 does not survive for consideration and, hence, stands disposed of.

Order accordingly.

(Ravindra Kumar Verma)
Technical Member

mk/bn

(Justice N. K. Patil)
Judicial Member