

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 342 OF 2017 & IA No. 1254 of 2024

Dated : 12th August, 2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Surat Citizens' Council Trust

Through its President
Shri Sharad Champaklal Kapadia
205/206, Tirupati Plaza
Beside Collector's Office
Nanpura, Surat – 395 001.
Email: bizcon.kapadia@gmail.com

...Appellant

Versus

1. Gujarat Electricity Regulatory Commission

Through its Secretary
6th Floor, GIFT ONE
Road 5C, Zone 5, GIFT City
Gandhinagar – 382 355 (GUJARAT)

2. Torrent Power Ltd.

Through its Vice President (Corporate Affairs)
Electricity House
Lal Darwaja, Ahmedabad – 380 001 (GUJARAT)

3. Mrs. Bhavna Bhasker Patel

Through her Power of Attorney Holder,
Shri Chandubhai Fakirbhai Patel,

Geet, Ranchhodnagar Co. Op. Housing Society Ltd.,
Shital Plaza, Sandesh Press Road,
Bodakdev, Admedabad – 380 054

...Respondents

Counsel for the Appellant(s) : Ankit Swarup
Tanya Swarup for App. 1

Counsel for the Respondent(s) : C.K. Rai
Mohit Rai for Res. 1

Anand K. Ganesan
Swapna Seshadri
Kriti Soni
Hardik Luthra
Alok Shukla
Aishwarya Subramani for
Res.2

M.G. Ramachandran Ld. Sr.
Adv. (Amicus Curiae)

JUDGMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Multi Year Tariff Order dated 09/06/2017 issued by the 1st Respondent, Gujarat Electricity Regulatory Commission (hereafter referred to as "Commission") under Sections 62 and 64 of the Electricity Act, 2003 for truing up for Financial Year 2015-16, approval of ARR for Financial Year 2016-17 & determination of Tariff for Financial Year 2017-18 for the 2nd Respondent M/s. Torrent Power Ltd., is under challenge in this Appeal.

2. The appellant is stated to be a Public Charitable Trust registered under the Bombay Public Trusts Act, 1950 with the object, inter alia, to take the problems of the people in general and make an attempt of helping them resolving the same.

3. The second respondent is a distribution licensee in the State of Gujarat. It had filed Petition No. 1627 of 2016 for truing up of Financial Year 2015-16, ARR for Financial Year 2016-17 to 2020-21 & determination of Tariff for Financial Year 2017-18 which has been disposed off by the Commission vide impugned order dated 09/06/2017.

4. During the hearing of the appeal on 02/05/2024, an issue of maintainability of the appeal cropped up as it appeared prima facie that the Appellant, not being a consumer of electricity supplied in the concerned area by 2nd Respondent, was not competent to challenge the Impugned Tariff Order under Section 111 of the Electricity Act, 2003.

5. Accordingly, we heard the Learned Counsel for the Appellant at length on this issue of maintainability of appeal. Written Submission filed by him have been perused.

6. We had also requested Mr. M. G. Ramachandran, Senior Advocate to assist the Tribunal as an Amicus Curie in adjudicating this legal issue. He has filed a written note which we have gone through.

7. Sub-Section (1) of Section 111 of the Electricity Act, 2003 which specifies as to who can approach this Tribunal by way of appeal lays down :-

“Section 111. (Appeal to Appellate Tribunal): --- (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity: Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty: Provided further that wherein any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.”

8. Thus, as per the legal provision, a person who is aggrieved by the order of the Commission is competent to file appeal against that order before this Tribunal. Of Course, as per definition of the word “Person” in Section 2(49) of the Act, it includes a company, association or body of individuals (whether incorporated or not) or an artificial judicial person. Therefore, one cannot dispute that a trust (like the appellant herein) fits into the definition of “Person” envisaged under Section 2(49) of the Act and hence can maintain an appeal before this Tribunal.

9. However, what Section 111(1) further provides is that the person filing the appeal should be aggrieved by the order appealed against. So,

essentially it is only that person who has been affected by the order in question, who is competent to maintain appeal against the same. “Aggrieved” means “wronged”, “harmed”, “affected”, “injured”..... Thus, the person coming up in appeal to the Tribunal against an order of the Commission has to satisfy us as to in what manner is he harmed or injured by that order.

10. In the instant case, there is no averment at all as to how and in what manner is the Appellant aggrieved by the Impugned Tariff Order. Learned Counsel for the Appellant submitted that the Appellant Trust has its office in Surat, Gujarat and therefore, it is a consumer of the electricity supplied in the area by the 2nd Respondent which entitled it to assail the impugned Tariff Order by way of appeal before this Tribunal.

11. We may note that only two classes of persons/entities would be affected/aggrieved by a Tariff order issued by the appropriate Commission. One such class consists of the Generating Stations/Distribution Licensees/Transmission Licensees for whom the order determines the tariff and other comprises of the Consumers of the electricity who have to pay the Tariff. The Appellant, admittedly, does not fall within the first mentioned class. It needs to be seen as to whether or not does it fall in the second mentioned class i.e. Consumer.

12. Section 2(15) of the Electricity Act, 2003 defines “Consumer” as:-

(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

13. Hence, only that person who gets supply of electricity for his own use from a distribution licensee or the Govt. or whose premises is connected with the works of such licensee or the Govt. for the purpose of receiving electricity, qualifies as a “Consumer” under the Act. So, even if a person is not being supplied electricity but his premises is connected to the network of the distribution licensee or the govt., he would be a “Consumer”. What this indicates clearly is that a person cannot be treated as a “Consumer” merely because he owns a premises within the area where the electricity is being supplied, the premises must be connected to the supply network.

14. The trust deed of the Appellant, upon which heavy reliance is placed by its counsel, does show that the trust has its office at “Samruddhi”, Nanpura, Surat, Gujarat. However, the Learned Counsel has failed to point out any document from the record which shows that

this premises belongs to Appellant or that the Appellant was getting electricity in this premises from the 2nd Respondent. The electricity bills issued by the 2nd Respondent for the said premises which have been annexed as Annexure 'B' to the written submissions filed on behalf of the Appellant, relate the some other premises i.e. 205/206, Second Floor, Tirupati Plaza, Athwalines, Surat, Gujarat and bear the name of the Consumer as M/s. Samarpan Organisers Pvt. Ltd. and not of the Appellant. Thus, as per the documents submitted by the Appellant itself, M/s. Samarpan Organisers Pvt. Ltd. was being supplied electricity in their premises and not the Appellant. Evidently, therefore, nothing on record shows or suggests that the Appellant Trust is in any manner connected to the said premises and is getting electricity in the aforesaid premises.

15. The judgement of this Tribunal in Energy Watchdog V/s. Tamil Nadu Electricity Regulatory Commission & others (DFR No. 2565 of 2015) cited by Appellant Counsel is of no help to the Appellant. In that case, this Tribunal had found that the person concerned Mr. Rama Sanganathan (on whose behalf appeal was filed) resided in the premises in question as tenant, was consuming electricity even though

the connection was in the name of landlord and had applied for transfer of the electricity connection in his name. Noting that a person residing as a tenant in a premises and getting electricity, also qualifies as “Consumer”, appeal was held maintainable. That is not the case herein. It is nowhere pleaded by the Appellant that it is occupying the premises 206, Tirupati Plaza either as a tenant or licensee and is consuming the electricity supplied to the premises.

16. Further, we have perused the trust deed of the Appellant minutely. None of the objects for which the Trust was created relates to espousing the rights of Citizens qua the public utility services including the supply of Electricity. Therefore, the trust deed also does not permit the appellant to foray into the sphere of electricity supply. It is also not the case of the Appellant that any consumer has approached and authorized it to file appeal against the Tariff order.

17. Learned Counsel for Appellant also drew our attention to the IA No. 1254 of 2024 by way of which impleadment of one of the trustees namely I.J. Desai is sought as Appellant in place of Trust on the contention that he is a consumer of electricity and therefore competent to maintain the appeal.

18. We have gone through the application as well the documents annexed to it. Copy of an electricity bill issued by 2nd Respondent in the name of applicant have been annexed to the application to show that he is being supplied electricity and, thus, is a Consumer. We find that the said electricity bill pertains to the month of March, 2024. Here, it needs note that this appeal has been filed in the year 2017 against the Commission's order dated 09/06/2017. Nothing has been placed on record along with the application to show that applicant I.J. Desai was getting electricity in the premises reflected in the Electricity Bill in the year 2017 when the impugned order was passed and appeal was filed. The applicant cannot be permitted to maintain the appeal against the Tariff order dated 09/06/2007 on the basis of electricity bill for the month of March, 2024. The application is totally misconceived and deserves outright dismissal.

19. It is, therefore, evident that the Appellant cannot be termed as "Consumer" as defined in Section 2(15) of the Electricity Act, 2003 and is not competent to maintain this appeal against the impugned Tariff order. The appeal is held not maintainable and is dismissed as such. All pending IAs stand disposed off.

20. Before parting with, we would like to convey our appreciation and gratitude to the amicus curie Mr. M. G. Ramachandran, Senior Advocate for his able assistance.

Pronounced in the open court on this 12th day of August, 2024.

(Virender Bhat)
Judicial Member

Js

(Sandesh Kumar Sharma)
Technical Member (Electricity)