

COURT-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA No. 1675 OF 2024
IN
APL No. 400 OF 2017 & IA No. 1674 OF 2024

Dated: 02.12.2024

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

In the matter of:

Sarda Energy and Minerals Ltd Appellant(s)

Versus

Central Electricity Regulatory Commission & Anr. Respondent(s)

Counsel for the Appellant(s) : Raunak Jain

Counsel for the Respondent(s) : Sitesh Mukherjee, Sr. Adv.
Syed Jafar Alam, Deep Rao Palepu
Vishal Binod for Res. 2

M. G Ramachandran, Sr. Adv
for CTUIL/applicant in (IA1675/2024)

Poorva Saigal, Shubham Arya,
Pallavi Saigal, Reeha Singh,
Devyanshu Sharma, Tanya Singh,
Shirin Gupta for Impleader (IA-1674/2024)

ORDER

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. By way of this application (IA No.1675/2024), the applicant Central Transmission Utility of India Limited (in short "CTUIL") is seeking setting aside / recall of order dated 27.08.2024 passed in this appeal.

2. We may note at the outset that applicant CTUIL is not a party to the appeal. Instead, its predecessor in interest Power Grid Corporation of India Limited (in short “PGCIL”) is arrayed as respondent No.2 in the appeal.

3. The matter in issue relates to long-term access granted to appellant to the interstate transmission system and the relinquishment thereof by the appellant as well as the claim of the appellant for return of the bank guarantee furnished by it in respect of the LTA to PGCIL. The appellant has assailed the order dated 29.09.2017 passed by the Central Electricity Regulatory Commission i.e. 1st respondent, in petition No.188/MP/2015, whereby it has rejected the claim of appellant seeking discharge from its obligations under the long-term access agreement dated 14.03.2012 due to impossibility and frustration, as claimed by the appellant. Since, as per the terms of long-term access agreement, the appellant had furnished two bank guarantees to PGCIL in the amounts of Rs.2.8 crores and Rs.5.0 crores respectively, PGCIL had been impleaded as the respondent in the petition before the Commission and as respondent No.2 in this appeal before this Tribunal.

4. The 2nd respondent PGCIL was duly served in this appeal and had even filed its reply affidavit dated 03.07.2018. After the completion of pleadings, as reflected in the order sheet dated 05.09.2018, the appeal was listed for hearing on 22.11.2018. Thereafter, it came to be adjourned from time to time and the hearing could not be held. Vide order dated 21.04.2022, the appeal was included in *List of Finals* to be taken up from there in its turn.

5. The appeal was listed for hearing on its turn on 02.07.2024 on which date none was present on behalf of 2nd respondent PGCIL. Again, none appeared on behalf of PGCIL on three consecutive dates i.e. 22.07.2024, 01.08.2024 and 27.08.2024. It is in these circumstances that the appeal was heard ex-parte on 27.08.2024 and the judgment was reserved.

6. The appellant CTUIL is now seeking recall / setting aside of the said order dated 27.08.2024.

7. We may note that on 09.03.2021 the Government of India notified the applicant CTUIL as Central Transmission Utility under Section 38 of the

Electricity Act, 2003 with effect from 01.04.2021. Accordingly, the functions of Central Transmission Utility were vested in applicant. The Government of India also notified “The Division and Demerger of the Central Transmission Utility and Power Grid Corporation of India Limited Transfer Scheme 2021” on 09.03.2021 which came into force on 01.04.2021. Thus, the functions of Central Transmission Utility including the functions of billing and collection on behalf of transmission licensee stood vested in applicant CTUIL with effect from 01.04.2021. Also, rights and liabilities related to functions of Central Transmission Utility including the pending litigations became part of applicant CTUIL. It is in these circumstances that in place of 2nd respondent PGCIL, applicant CTUIL is seeking setting aside / recall of order dated 27.08.2024 passed in this appeal.

8. It also needs mention here that by way of separate application bearing IA No.1674/2024, the applicant CTUIL has sought impleadment as respondent No.3 in this appeal.

9. It was argued by learned senior counsel appearing on behalf of the applicant that respondent No.2 PGCIL was being represented by advocate

Mr. Sitiesh Mukherjee in this appeal who was later on designated as senior advocate. He further submitted that Mr. Sitiesh Mukherjee had sent an email to PGCIL as well as CTUIL apprising them of his designation as senior advocate but due to lack of coordination between these two entities for appointment of a new counsel on record, they remained unrepresented in this appeal when it was taken up for hearing on 02.07.2024 as well as on subsequent dates. The learned senior counsel vehemently argued that the absence of PGCIL or CTUIL in this appeal on the above noted dates was due to inadvertence and bonafide mistake but not deliberate. He urged this Tribunal to recall / set aside order dated 27.08.2024 and to provide an opportunity to applicant to present its case.

10. The application has been filed under section 120 of the Electricity Act, 2003. Sub-section 2 of this Section is relevant and is extracted hereinbelow: -

“(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil

Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;*
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;*
- (e) issuing commissions for the examination of witnesses or documents;*
- (f) reviewing its decisions;*
- (g) dismissing a representation of default or deciding it ex parte;*
- (h) setting aside any order of dismissal or any representation for default or any order passed by it ex parte;*

(i) any other matter which may be prescribed by the Central Government.”

11. Thus, sub-section 2(h) of Section 120 of the Electricity Act, 2003 empowers this Tribunal to set aside any order of dismissal for default or any order passed ex-parte as a civil court under the Code of Civil Procedure, 1908. Civil Courts are empowered under Order IX Rule 7 of CPC to set aside any order passed ex-parte by them. Therefore, the instant application is to be taken to have been filed under Order IX Rule 7 of CPC and has to be decided in the light of the principles governing the exercise of power under the said legal provision. Order IX Rule 7 of CPC is reproduced hereunder: -

“7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.—Where the Court has adjourned the hearing of the suit, ex parte, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in

answer to the suit as if he had appeared on the day fixed for his appearance.”

12. A bare reading of this legal provision i.e. Rule 7 of Order IX CPC would reveal that it is applicable only in the situations where, while proceeding ex-parte against defendant / respondent, the court must have adjourned the proceedings of the case to some other date. The defendant / respondent may appear on the adjourned date and participate in the proceedings of the case but cannot claim the same position as it had at the beginning of the trial. In order to get relegated back to the position as defendant / respondent occupied at the beginning of the trial it is incumbent upon him to show good cause for his non-appearance on the date when he was set ex-parte. The principle behind Order IX Rule 7 CPC is that a defendant / respondent has the right to defend him until the case is decided by the Court. The underlying objective is to prevent unnecessary delays in the judicial process and to ensure that the defendant / respondent participates in the proceedings regularly.

13. In the instant appeal, we have already noted that on 27.08.2024, the appeal was heard ex-parte and the judgment was reserved. No further

date of hearing was given. Therefore, the maintainability of the application under consideration having been filed purportedly under Order IX Rule 7 of CPC seeking recall / setting aside of the ex-parte order dated 27.08.2024 is doubtful.

14. We had completed the hearing of the appeal, even though ex-parte, on 27.08.2024. Nothing remains to be done by the parties and it is only for us to deliver the judgment as and when it becomes ready. Hence, manifestly Order IX Rule 7 CPC is not attracted in these circumstances and the application filed by the applicant CTUIL is not maintainable at all at this stage.

15. The Hon'ble Supreme Court had occasion to deal with a similar situation in Arjun Singh v. Mohinder Kumar AIR 1964 SC 993 and it was held:

“19. ... In the present context when once the hearing starts, the Code contemplates only two stages in the trial of the suit: (1) where the hearing is adjourned or (2) where the

hearing is completed. Where, the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order 20 Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It would, therefore, follow that after the stage contemplated by Order 9. Rule 7 is passed the next stage is only the passing of a decree which on the terms of Order 9 Rule 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under Order 9. Rule 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order 9 Rule 7. We are, therefore, of the opinion that the Civil Judge was not competent to entertain the application dated 31-5-1958 purporting to be under Order 9 Rule 7 and that consequently the reasons given in the

order passed would not be res judicata to bar the hearing of the petition undo Order 9 Rule 13 filed by the appellant.”

[Emphasis supplied]

16. Thus, the apex court has in clear terms held that where the hearing is complete, the parties have no further rights or privileges in the matter and it is only for the convenience of the court that Order XX Rule 1 permits judgment to be delivered after an interval after the completion of hearing. It has also been held that there is no hiatus between the two stages of reservation of judgment and pronouncement of judgment so as to make it necessary for the court to afford to the party the remedy of getting orders passed on the lines of Order IX Rule 7 CPC.

17. This judgment has been quoted with approval by the Supreme Court in subsequent case reported as Andhra Pradesh Southern Power Distribution Power Co. Ltd. v. Hinduja National Power Corpn. Ltd 2022 5 SCC 584 decided on 02.02.2022.

18. Therefore, in view of the law laid down by the Hon'ble Supreme Court in the above noted two judgments, the instant application filed by CTUIL is not maintainable and cannot be entertained at this stage. The same is hereby dismissed. Consequently, IA No.1674/2024 (for impleadment/ intervention) also stands dismissed.

Pronounced in the open court on this the 2nd day of December, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~
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