

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

**IA NO. 307 OF 2019 IN
DFR NO. 4478 OF 2018**

Dated : 17th July, 2019

**PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF :

Siddharth Balkrishna Verma
Patwardhan Apartment
Patil Lane 3
College Road – 422005
Nashik

.... **APPELLANT**

Versus

- 1. Maharashtra Electricity Regulatory Commission**
World Trade Centre, Centre No.1,13th Floor,
Cuffe Parade,
Mumbai – 400 005
- 2. Maharashtra State Electricity Distribution Co. Ltd.,**
5th Floor, Prakashgad Plot No. G-9,
Bandra (East)
Mumbai – 400 051
- 3. Maharashtra Veej Grahak Sanghatana (MVGS),**
3/456/4,Kestij Hotel Building
Mahasatta Chowk, Sangli Road
Ichalkaranji, Distt. Kolhapur – 416 115
- 4. Thane-Belapur Industries Association**
P 14 TTC MIDC Area
Thane Belapur Road Rebale

Navi Mumbai, Maharashtra – 400701

5. **Prayas (Energy) Group**

Unit III A and B Devgiri

Kothrud Industrial Area

Joshi Railway Museum Lane Kothrud Pune

Maharashtra - 411038

.... **RESPONDENTS**

Counsel for the Appellant(s) : Mr. Matrugupta Mishra
Ms. Shikha Ohri
Ms. Pratiksha Chaturvedi

Counsel for the Respondent(s) : Mr. S. K. Raungta, Sr. Adv.
Ms. Pratiti Rungta
Mr. Sumit Pargal
Mr. Shivankur for R-1

Mr. Pulkit Tare
Ms. S. Rama for R-2

ORDER

PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON

1. The Appellant herein is an advocate who filed this Appeal under Section 111 of the Electricity Act, 2003 contending that as a consumer in the area in question, he has locus standi to file this Appeal since he has not only worked as an authorised consumer representative of Maharashtra Electricity Regulatory Commission (**hereinafter referred to as "MERC"**) for couple of years but also in the interest of consumers in general.

2. The issue or controversy raised in the Appeal is impact of arbitrary increase of unmetered agriculture consumption and the sale on such

consumers without corresponding increase in the number of consumers or connected load in the absence of any independent and credible method of assessment study of unmetered agriculture consumption.

3. The said issue came up for consideration before MERC in the Mid-Term Review Petition of the second Respondent herein, Maharashtra State Electricity Distribution Co. Ltd. (**hereinafter referred to as “MSEDCL”**).

4. MSEDCL contends that the present applicant is neither a proper party nor necessary party to prefer the accompanying Appeal. The second Respondent also contends that name of the present Appellant is not reflected in the impugned order wherein the objections on the issues raised were being recorded along with the names of parties as well as individual objectors. Only after considering submissions of objectors, the matter came to be disposed of. MSEDCL also contends that the entire application for leave to file the Appeal does not reflect that the Appellant either appeared or argued in his individual capacity or as a representative of any group; therefore, the application lacks bona fides and has to be dismissed.

5. The second Respondent also contends that the Appellant has approached this Tribunal with un-clean hands with all distorted facts to gain an undue advantage for himself. Nothing is placed on record in what

manner and in what capacity he is aggrieved by the impugned order in order to prefer the Appeal in terms of Section 111 of Electricity Act, 2003 as an “aggrieved person”. The impugned order was passed through public consultation process wherein public hearing was conducted. Objections of all stakeholders were duly recorded and considered in the impugned order. The conduct of the Appellant should not be encouraged, since if orders passed in Mid-Term Review Petitions are being challenged in an appeal by an un-aggrieved/non-stakeholder person, then it would open floodgates for unwanted and unwarranted litigation. Further, it would affect the tariff determination, i.e. it would never reach finality. Therefore, it is in the larger interest of public that such action should be discouraged.

6. We heard learned counsel for Appellant as well as Respondents.

7. Learned counsel for Appellant places on record decision of this Tribunal dated 17.05.2017 in the matter of **Shri Rama Shankar Awasthi Vs. Uttar Pradesh Electricity Regulatory Commission & Ors.** on IA No. 550 of 2016 in DFR No. 3056 of 2016, Para 21 and 22, which read as under:

“21. The Appellants’ case is that they are consumers of Respondent No.2 and as such they are affected by the impugned order. We find substance in this submission. The

Appellants, in our opinion, are “aggrieved persons” and leave to appeal can be granted to them.

22. We may also usefully refer to the order of this Tribunal in **Energy Watchdog v. Tamil Nadu Electricity Regulatory Commission & Ors – IA No.118 of 2016 in DFR No.2565 of 2015 dated 09/09/2016**, where this Tribunal has after discussing **Pushpendra Surana** on which reliance is placed by Respondent Nos.2 & 3 held that a consumer who would be affected by the power procurement by the distribution licensee, is an aggrieved person. We are unable to come to a conclusion that the present appeal is in the nature of public interest litigation. We are also not impressed by the argument based on the date of stamp paper and the contention that Appellant No.1 has not signed on each page of the Lease Agreement. When the landlord himself has filed affidavit supporting Appellant No.1’s tenancy these arguments are liable to be rejected and are rejected as such. We, however, reiterate that in these proceedings arising out of the said Act, we are concerned only with the question whether the Appellants are consumers of Respondent No.2 or not. Since Respondent Nos.2 and 3 have raised issue regarding

tenancy, we have dealt with it. This Tribunal is, however, not expected to go beyond the scope of its jurisdiction and enter into intricacies of the Rent Act and other related statutes. On the basis of available material, we have come to a conclusion that the Appellants are consumers of Respondent No.2 and are aggrieved persons.”

8. Learned counsel appearing for Respondents also referred to Appeal decided on 17.04.2009 in the case of **GRIDCO Ltd. Vs. Jindal Stainless Limited & Ors.**, Para 17, 19 and 20 which read as under:

“17. Before dealing with this question, it would be appropriate to refer to the ratio decided by the Supreme Court in various authorities cited by both the Counsel, in regard to the locus standi of the party to file an Appeal as an aggrieved person. Those propositions are as follows:

- i. A person who was not made a party to the original proceedings may still file an Appeal with leave of the Appellate Court, provided that the person claiming himself to be the aggrieved party shall make out a prima-facie case as to how he is prejudiced.*
- ii. A person can be said to be aggrieved by an Order only when it causes him some prejudice in some form or another. Unless the person is prejudicially or*

adversely affected by the Order, he cannot be entitled to file an Appeal as an aggrieved person.

iii. The words 'person aggrieved' did not mean a man who is merely disappointed of a benefit which he may have received if some other order had been passed; the person aggrieved must be a person who has suffered a legal grievance; a person against whom a decision has been pronounced, which has wrongfully deprived him of something; or wrongfully refused him of something; or wrongfully affected his title to something.

iv. When a person had not been deprived of a legal right; when he has not been subjected to a legal wrong; when he has not suffered any legal grievance; when he has no legal peg for a justifiable claim to hang on; he cannot claim that he is a person aggrieved.

19. At the outset, it shall be pointed out that a person who was not made a party to the original proceedings may still file an Appeal with leave of the Appellate Court provided the person claiming himself to be aggrieved shall make out a prima-facie case to the Appellate Court that he was affected and prejudiced due to the Order impugned. This is the

dictum laid down by the Hon'ble Supreme Court in 1970 2 SCC 13 Nookala Sitaramaiah vs. Kotaiah Naidu.

20. *Therefore, a person cannot be disentitled to file an Appeal merely because he was not a party to the proceedings. However, the words 'person aggrieved' did not really mean a man who is disappointed of a benefit which he may have received. On the other hand, he has to establish that the Order impugned has caused a legal grievance to him; the Order impugned is prejudicially or adversely affected him; or the Order has wrongfully deprived him of something or wrongfully refused him of something and only then, he is entitled to file an Appeal as an aggrieved party."*

9. The point that would arise for our consideration is "whether the present Appellant/applicant should be granted leave to prefer this Appeal?"

10. Learned counsel for Appellant apart from relying upon the above decision, has strongly contended that the Respondents have raised extraneous and irrelevant contentions which do not deserve consideration at the hands of this Tribunal. He further submits that the applicant is an advocate by profession who works for the interest of consumers within the

State of Maharashtra and has also worked as an authorised consumer representative of State Advisory Committee notified by MERC for couple of years in the recent past. He has submitted detailed objections at public hearing conducted by MERC at Nashik to the Mid-Term Review Petition of MSEDCL. The applicant vehemently argued in the interest of agricultural consumers and the impact of arbitrary increase of unmetered agriculture consumption and the sale of such consumers without any corresponding increase in the number of consumers or connected load and in the absence of any independent credible method of assessment/study of unmetered agriculture consumption. He further contends that if the Appellant is not permitted to prefer this Appeal, such agricultural consumers otherwise do not have the means to approach the Commission. The logbook of MERC indicates that the Appellant was one of the objectors to Mid-Term Review Petition of MSEDCL; however, the impugned order does not reflect his name. He further contends that the Appellant/applicant being a consumer of MSEDCL in the Nashik area, comes within the definition of “aggrieved person” as explained in the judgment of **Shri Rama Shankar Awasthi**.

11. After taking into consideration the respective arguments of parties through their counsel and the citations relied upon by the parties, we are of the opinion that the facts of each case has to be analysed in order to conclude whether a person is “aggrieved person” as defined or whether he

is prosecuting the Appeal as a Public Interest Litigation which concept is alien to the Electricity Act. No doubt, certain exceptions are carved out to permit a person to seek leave to appeal espousing the cause of other consumers, provided such applicant is a consumer of the Second Respondent and such applicant is affected by the impugned order. From the facts on record, what we notice is, the Appellant/applicant, at the most, was authorised representative of Advisory Committee constituted by MERC in the past years. Such fact cannot bring him in the category of “aggrieved person”.

12. Even if the applicant is a consumer having residential address in Nashik, he is not an agricultural consumer. He is an advocate by profession. The grievance or controversy raised in the Appeal pertains to alleged arbitrary increase in the metered and unmetered agriculture consumption. In other words, the alleged impact is on the consumer tariff (agriculturist). Even if the Appellant/applicant comes within the area of the second Respondent licensee having a consumer number, since he is not agricultural consumer in the light of the earlier opinion expressed by this Tribunal in the above two judgments, he cannot fall within the category of “aggrieved person” to prefer an Appeal under Section 111 of the Electricity Act, 2003.

13. Therefore, we are of the opinion that the instant application to grant leave to file appeal deserves to be dismissed. Accordingly, the application being IA No. 307 of 2019 is dismissed.

14. Consequently, other IAs, if any, and the appeal under DFR No. 4478 of 2018 shall stand dismissed.

15. Pronounced in the Open Court on this **17th day of July, 2019.**

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

✓
REPORTABLE / NON-REPORTABLE

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