

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

**APPEAL NO.68 OF 2019
AND
APPEAL NO.69 OF 2019**

Dated: 01.11.2022

Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

APPEAL NO.68 OF 2019

KORES (INDIA) LIMITED

Through its Authorised Signatory,
Mr. Manish M. Kedia
301/302/202, Ashford chambers,
Lady Jamshedji Road, Mahim (W),
Mumbai-400016

... Appellant

Versus

1. MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

Through its Chairman,
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade,
Mumbai – 400005.

**2. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO.
LTD.**

Through its Executive Director & General Manager,
Prakashgad, Plot No. G-9,
Bandra (East), Mumbai – 400051.

3. COOPER CORPORATION PVT. LTD.

Through its Authorised Signatory,
Mr. Yogesh B. Shewade,
Nariman House, M 60-1,
Addl. MIDC, Post Kodoli,
Satara – 415005.

... Respondent(s)

Counsel for the Appellant (s) : Mr. Gaurav Dudeja
Mr. Ishwar Ahuja

Counsel for the Respondent (s) : Mr. Harinder Toor
Mr. Rahul Sinha for R-2

In the matter of:

APPEAL NO.69 OF 2019

COOPER CORPORATION PRIVATE LIMITED

Through its Authorised Signatory,
Mr. Yogesh B. Shewade,
Nariman House, M 60-1,
Addl. MIDC, Post Kodoli,
Satara, Maharashtra – 415005.

... Appellant

Versus

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Counsel for the Appellant (s) : Mr. Gaurav Dudeja
Mr. Ishwar Ahuja

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Mr. Rahul Sinha for R-2

J U D G M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellants had a contractual arrangement with respondent – *Maharashtra State Electricity Distribution Company Limited* (“MSEDCL”) for supply of electricity, the contract demand having been specified therein. The appellants were desirous of availing *Short Term Open Access* (“STOA”) to obtain supply of electricity from other sources in terms of the relevant regulations. This obliged them to reduce the contract demand correspondingly.

2. Each of these appellants had applied for STOA for the month of August, 2016, the same having been granted by MSEDCL. It appears that MSEDCL subsequently cancelled the STOA, indisputably unilaterally, for certain infrastructural reasons. The MSEDCL subsequently levied higher tariff on the ground that the appellants had drawn electricity exceeding the reduced contract demand. This led to disputes being raised by the appellants through petitions (Case Nos. 37 & 38 of 2017) the prayer being for direction to MSEDCL to revise/restore the original contract demand and charge the appellants accordingly. The petitions thus filed were successful, the Commission having upheld the claims by its order dated 04.05.2018, the reduction in the contract demand for the relevant period having been set aside, MSEDCL having been directed to pass on consequential reliefs in the energy bills for ensuing billing cycle with applicable interest to the appellant. The said relief granted, however, was taken back by Maharashtra Electricity Regulatory Commission (the State Commission), by its order dated 30.10.2018, on a petition for review (Case No. 248 of 2018) taken out by MSEDCL. It is the last order which is assailed in these appeals.

3. The facts found and the view taken thereupon by the Commission in the original round in the case of the first appellant are as under:

“13.The main issue in both these Cases is that the Contract Demand of the Petitioners, which was reduced to the extent of the OA quantum they had applied for, was not restored immediately after MSEDCL cancelled their STOA permissions for August,2016. Consequently, the Petitioners had to pay for the energy supplied by MSEDCL at the higher Temporary category tariff and with the applicable Additional Demand Charges to the extent that they exceeded their reduced Contract Demand till it was eventually restored.

14.The Commission’s findings and directions in KIL’s Case are as follows:

14.1KIL had applied online on 7 July, 2016 to MSEDCL for STOA for the month of August, 2016. It also wrote to the Chief Engineer (Commercial) on 29 June, 2016 stating that it is surrendering its Contract Demand to the extent of the OA applied for.

14.2MSEDCL granted the STOA on 29 July, 2016. However, it cancelled it the next day stating that MSEDCL had some issues with regard to the Thermal Generator from whom power was to be sourced through OA. KIL has not raised any issue on this.

14.3However, when KIL came to know that MSEDCL had not restored its Contract Demand while cancelling the STOA permission and had, therefore, levied the Temporary category tariff, KIL raised the matter with MSEDCL, but without response.

14.4The DOA Regulations, 2016 provide as follows with regard to revision of Contract Demand in the context of a consumer availing OA:

“4.2RevisionofContract Demand

The Contract Demand of a consumer availing LTOA or MTOA shall be governed by the provisions of the Electricity Supply Code and the Regulation of the Commission governing Standards of Performance:

Provided that a consumer availing STOA shall not be eligible to revise his Contract Demand with the Distribution Licensee during the tenure of the STOA, but may do so at the time of applying for Open Access.”

14.5 Under the earlier DOA Regulations, 2014, reduction of Contract Demand to the extent of OA and its restoration to the original level upon expiry of the OA period was automatic. However, the DOA Regulations, 2016 provide that a consumer availing STOA cannot revise its Contract Demand during the tenure of the STOA, but may do so at the time of applying for OA. Thus, the choice of reducing its Contract Demand to the extent of the OA granted or retaining it is that of the consumer.

14.6 KIL had applied for reduction in its Contract Demand to the extent of the STOA permission. MSEDCL's contention is that, although it had admittedly cancelled it shortly thereafter, KIL did not apply afresh to restore the Contract Demand.

14.7 The DOA Regulations, 2016 provide for change in Contract Demand sought by LTOA or MTOA consumers in accordance with the procedure specified in the Supply Code and SoP Regulations. The SoP Regulations, 2014 provide as follows:

“Reduction in Load

4.14 Upon receipt of a request by a consumer for reduction of contract demand/sanctioned load of such consumer, the Distribution Licensee shall, unless otherwise agreed, so reduce the contract demand /sanctioned load of such consumer before the expiry of the second billing cycle after the receipt of such request;

Provided that the Distribution Licensee and consumer should execute fresh agreement for such revised load before the second billing cycle.”

14.8 While citing this provision for not restoring the Contract Demand since KIL had not applied accordingly to the concerned authority, the Commission notes that MSEDCL itself did not follow the specified procedure for reducing the Contract Demand for August, 2016 in the first place and cancelled the STOA permission the day after it was granted. As such, by its own argument, the reduction of Contract Demand by MSEDCL was itself unfounded. In any case, it was clear from KIL's applications that the Contract Demand reduction was sought in conjunction with and predicated upon its application for STOA.

14.9 Thus, with the unilateral cancellation of STOA the day after it was granted, the entire process concerning the OA application and the permission granted stood revoked. The application for surrender of Contract Demand was an integral part of that process and was not independent of it, and cannot be seen in isolation. In fact, had the application for reduction in Contract Demand been entirely independent of the application for OA, it

would not have been entertained by the Head Office of MSEDCL in the first place.

14.10 Moreover, Regulation 4.2 of the DOA Regulations,2016 (quoted earlier) provides that the retention or reduction of Contract Demand shall be governed by the provisions of the Supply Code and the SoP Regulations only in respect of a consumer availing LTOA or MTOA. As regards STOA consumers, the proviso to Regulation 4.2 only provides that the Contract Demand cannot be revised during the STOA period, but can be sought at the time of applying for STOA. Thus, a distinction has been made in this regard between the principles for revision in Contract Demand, in relation to OA, applicable to STOA on the one hand, and to LTOA/MTOA on the other.

14.11 In view of the foregoing, the Commission set asides the reduction of the Contract Demand of KIL for the month of August, 2016. MSEDCL shall pass on the consequential relief to KIL in its energy bill for the ensuing billing cycle, with applicable interest”.

4. And similarly, in the case of second appellant, the Commission had found certain facts on the basis of which relief was granted, the same reading thus:

15.1 CCPL has stated that it had not applied for reduction in Contract Demand at the time of applying for STOA for August, 2016. The Commission notes that CCPL had earlier applied to CE (Commercial), MSEDCL on 6 April,2016 for reduction in its Contract Demand for May, 2016 in connection with its application for STOA for that month:

“...[CCPL] have applied for Open Access from 1-05-16 to 31-5-2016 for 2.5MW.

...We confirm from our side that we will surrender the Contract Demand to the extent of Open Access power from 1-05-16 to 31-5-2016...”

Accordingly, MSEDCL had granted STOA for May, 2016 with reduced Contract Demand as sought.

15.2 The correspondence or facts of the subsequent months till August, 2016 have not been submitted by either party. MSEDCL has stated that STOA for August, 2016 had also been granted for sourcing power from RE sources, and that permission had not been cancelled. However, no material has

been placed on record by MSEDCL to rebut CCPL's contention that it had not applied for reducing its Contract Demand for August, 2016 in the first place for sourcing either the thermal power from AEL or the RE power from other sources.

15.3 It can only be surmised, presuming that CCPL had also sought STOA and reduction in Contract Demand for the months after May, 2016, that either MSEDCL had continued with that reduction in August, 2016, or decided on such reduction for that month on its own. MSEDCL has also not shown that CCPL had applied for reduction in Contract Demand in the months prior to August, 2016 independently of its OA applications, in which case it might have been justified in not restoring it without a specific application for the purpose.

15.4 In these facts and circumstances and the regulatory provisions cited earlier, and for the reasons explained above in respect of CCPL, the Commission sets aside the reduction of the Contract Demand of CCPL for the month of August, 2016. MSEDCL shall pass on the consequential relief to CCPL in its energy bill for the ensuing billing cycle, with applicable interest.

5. The above-mentioned conclusions have been displaced and contrary conclusions reached by the Commission by its subsequent order dated 30.10.2018 purportedly in exercise of power of review, but improperly so, in our view, in a manner as if the Commission was rehearing the matter, which is not permissible in the limited jurisdiction it was exercising.

6. The learned counsel for MSEDCL, in his valiant attempt to defend the impugned review order, referred to Regulation 4.2.1 as forming part of *Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2014*, in force earlier, the same to the extent germane reading thus:

“ ...

4.2.1 Provided that for Short-term Open Access, the minimum period of such reduction of Contract Demand shall be one (1) month from the date of granting Open Access. For Medium-term Open Access, the minimum period of such reduction of Contract Demand shall be three (3) months

from the date of granting Open Access or Open Access period sought by consumer, whichever is higher and for Long-term Open Access, the minimum period of such reduction of Contract Demand shall be three (3) years from the date of granting Open Access or Open Access period sought by consumer, whichever is higher.”

7. It is pointed out that the above provision underwent some change by DOA Regulations, 2016 which would apply for the period to which the matter pertains, the same now reading thus:

“4.2 Revision of Contract Demand

The Contract Demand of a consumer availing LTOA or MTOA shall be governed by the provisions of the Electricity Supply Code and the Regulation of the Commission governing Standards of Performance:

Provided that a consumer availing STOA shall not be eligible to revise his Contract Demand with the Distribution Licensee during the tenure of the STOA, but may do so at the time of applying for Open Access.”

(Emphasis supplied)

8. It is not in dispute that the agreements reflecting the contract demand run parallelly to the obligations of the entity to seek STOA for drawing electricity from other sources. STOA is generally granted on *month to month* basis. Indisputably, as and when there is move made to avail STOA, the contract demand has to be correspondingly reduced. Given the very limited nature of STOA, such reduction, in our understanding, cannot be open-ended or for all times to come thereafter, it being restricted to the month to which the STOA application pertains. To put it simply, the application for STOA for the month of August 2016 would require to be accompanied by a simultaneous request for reduction of the contract demand which reduction would be only for that month alone. At any rate, the application made by the first appellant was clearly for grant of STOA for August, 2016 and for reduction of the contract demand during the month of August, 2016 only. In the case of second appellant, there was no such request for reduction of the contract demand for the period for which STOA

had been applied. The reference to a previous such request, pertaining to May, 2016 was shown and rejected, and rightly so, by the Commission in its original order since such request had served its purpose and stood exhausted with the elapse of the month of May, 2016. MSEDCL was called upon by the Commission but it was not able to point out any document showing request for reduction of contract demand for any subsequent period, this fact having been duly noted in the original order of the Commission itself.

9. In our view, the Commission has misconstrued the change brought about in the DOA Regulations in 2016. The proviso to Regulation 4.2 of Regulation DOA, 2016 only talks of inhibition against reduction of revision of the contract demand “during the tenure of the STOA”. That is not even the situation at hand.

10. We do not accept the conclusion reached by the Commission, as has been the contention of MSEDCL, that once there was a request for reduction of the contract demand accompanying an application of STOA, the parallel contract pertaining to demand would stand revised for all times to come or such that a fresh application for restoration will have to be moved. There is no such requirement shown in the extant regulations.

11. In above view, we set aside the impugned order passed in review jurisdiction by the State Commission by 30.10.2018 and restore the original order dated 04.05.2018.

12. We find that MSEDCL has unnecessarily dragged the appellants into an unending round of litigation by taking out review proceeding which were

wholly uncalled for, based on specious contentions. We impose cost of Rupees One Lakh in each case against the MSEDCL which the Appellant will be entitled to recover by taking out appropriate proceedings.

13. Needless to add, MSEDCL will be obliged to comply with the directions in the order of dated 04.05.2018 within four weeks hereof.

14. The appeals are disposed of in above terms.

Pronounced in open court on this 01st Day of November, 2022.

(Sandesh Kumar Sharma)
Technical Member

pr/mkj

(Justice R.K. Gauba)
Officiating Chairperson